

transportation funding to ensure that States are not penalized for providing regulatory relief consistent with the statutory exemption. The statute states that "Federal transportation funding to a State may not be terminated, limited, or otherwise interfered with as a result of the State exempting a covered farm vehicle, including the individual operating that vehicle, from any State requirement relating to the operation of that vehicle."

In its simplest terms, the statute makes it clear that States adopting compatible regulations concerning motor carriers and drivers operating covered farm vehicles in intrastate commerce must not be penalized through the withholding of Federal transportation funding, specifically grants associated with the FMCSA's (MCSAP) and highway construction grants that could be withheld from States for substantial non-compliance with the CDL.

As indicated previously in this notice, States are required by 49 CFR 350.331 to amend their laws and regulations within three years after the effective date of any newly enacted regulation or amendment to the FMCSRs or HMRs. While this notice is not a rulemaking action amending the FMCSRs, FMCSA requests that States immediately take action to put into place policies and procedures to provide the regulatory relief provided by MAP-21, and to follow-up with the appropriate amendments to their laws and regulations to reflect the statutory exemption in section 32934. FMCSA will issue, at a later date, a final rule to amend the FMCSRs to reflect this MAP-21 provision. The effective date of that rule would begin the three-year period during which the States must adopt compatible regulations to remain eligible for MCSAP funding.

As far as the impact of section 32934 on States' CDL programs, the statute makes clear that the U.S. Department of Transportation must not withhold Federal-aid highway funds from a State because the State provided exceptions or exemptions from its CDL requirements when that relief is compatible with the language in MAP-21. Therefore, such exceptions or exemptions will not be considered substantial non-compliance, and section 384.301, Withholding of funds based on noncompliance, would not be applicable in these circumstances.

#### Future Action

The Agency intends to conform the FMCSRs to the statutory provisions. This notice is intended to ensure that all interested parties are aware of these self-

executing provisions of MAP-21 in the interim.

Issued on: September 26, 2012.

**Anne S. Ferro,**

*Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 600 and 635

[Docket No. 080603729-2454-02]

RIN 0648-AW83

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

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

**ACTION:** Final rule.

**SUMMARY:** This fishery management plan (FMP) amendment addresses Atlantic highly migratory species (HMS) fishery management measures in the U.S. Caribbean territories including Puerto Rico and the U.S. Virgin Islands. There are substantial differences between some segments of the U.S. Caribbean HMS fisheries and the HMS fisheries that occur off the mainland of the United States, including: Limited fishing permit and dealer permit possession; smaller vessels; limited availability of processing and cold storage facilities; shorter trips; limited profit margins; and high local consumption of catches. These differences create an awkward fit between current federal HMS fishery regulations and the traditional operation of small-scale Caribbean HMS fisheries, and some small-scale commercial fishermen in the Caribbean may not be currently operating consistently with HMS fishing and dealer reporting requirements. NMFS is implementing management measures through this rulemaking that amend the HMS fishery management regulations in the U.S. Caribbean territories of Puerto Rico and the U.S. Virgin Islands to better manage the traditional small-scale commercial HMS fishing fleet in the U.S. Caribbean Region, enhance fishing opportunities and improve profits for the fleet, and to provide us with an improved capability to monitor and sustainably manage those fisheries. This final rule creates an

HMS Commercial Caribbean Small Boat (CCSB) permit, which allows fishing for and sale of bigeye, albacore, yellowfin, and skipjack (BAYS) tunas, Atlantic swordfish, and Atlantic sharks within local U.S. Caribbean markets. Management measures under the CCSB permit include specific species authorizations and retention limits, reporting requirement modifications, specific gear authorizations, vessel size restrictions, and mandatory workshop training. Additionally, NMFS stipulates that the CCSB permit cannot be held in combination with any other HMS permit.

**DATES:** Effective on January 2, 2013.

**ADDRESSES:** Copies of the supporting documents—including the Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis, small entity compliance guide, and the 2006 Consolidated Atlantic HMS FMP are available for download from the HMS Web site at <http://www.nmfs.noaa.gov/sfa/hms/or> upon request from the Atlantic HMS Management Division at 1315 East-West Highway, Silver Spring, MD 20910. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Atlantic HMS Management Division (see above), by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or by fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Randy Blankinship, Rick Pearson, or Katie Davis by phone at 727-824-5399 or Delisse Ortiz by phone at 301-427-8503.

**SUPPLEMENTARY INFORMATION:** Atlantic tunas and swordfish are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tuna Conventions Act (ATCA), which authorizes the Secretary of Commerce (the Secretary) to promulgate regulations as may be necessary and appropriate to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Federal Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA. On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas,

Swordfish, and Sharks (1999 FMP). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries, including the HMS handgear fishery. The implementing regulations for the Consolidated HMS FMP and its amendments for Atlantic HMS are at 50 CFR part 635.

### Background

On March 16, 2012, NMFS published a proposed rule (77 CFR 6455) in the **Federal Register** to modify the federal HMS fishery regulations for the U.S. Caribbean Region. This rule finalizes the proposed management measures in the March 16, 2012 Proposed Rule. The purpose of this amendment is to enact HMS management measures that better correspond with the traditional operation of the small boat fishing fleet in the U.S. Caribbean Region and to provide NMFS with an improved capability to monitor and sustainably manage those fisheries.

The specific objectives for this action are to:

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

NMFS will issue the new CCSB permit from its Southeast Regional Permit Office pursuant to this final rule and other applicable provisions of 50 CFR part 635. Application procedures will be similar to those used for other fishing permits issued by the Southeast Regional Permit Office.

A summary of the history and impacts of this action is provided in the proposed rule (77 CFR 6455, March 16, 2012) and environmental assessment, and those details are not repeated here. A more complete summary of Atlantic HMS management can be found in the 2006 Consolidated HMS FMP, the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at <http://www.nmfs.noaa.gov/sfa/>

*hms/*. A brief summary of the actions of this final rule can be found below.

This final rule creates the open access HMS CCSB permit, which allows holders to fish for and sell BAYS tunas, swordfish, and sharks in the U.S. Caribbean Region. The CCSB permit authorizes the possession and use of rod and reel, handline, harpoon, bandit gear, green-stick gear, and buoy gear. The vessels eligible for a CCSB permit are those 45 feet or less in length overall (LOA). The CCSB permit is only valid for fishing and sales in the U.S. Caribbean Region, and may not be held in combination with any other HMS vessel permit. CCSB permit holders are required to physically possess their permit, or a copy of their permit, at all times during the harvest, retention, landing and sale of HMS.

Landings data from the CCSB permit will be collected through cooperation with NMFS and existing territorial government fisheries data collection programs, as specified by those programs. The individual territorial governments will be responsible for supplying these data to the NMFS Southeast Fisheries Science Center and meeting requirements determined to be appropriate by NMFS.

The CCSB permit is a commercial-only permit and, as such, does not authorize the retention of billfish. Rod and reel, handline, harpoon, bandit, green-stick, and buoy gears are authorized for the harvest of BAYS tunas; rod and reel, handline, harpoon, bandit, and buoy gears are authorized for the harvest of swordfish; and rod and reel, handline, and bandit gears are authorized for the harvest of sharks.

Initial retention limits under the CCSB permit are set at 10 BAYS per vessel per trip, 2 swordfish per vessel per trip, and 0 sharks per vessel per trip. Trip limits may be adjusted in the future through the framework procedures codified at § 635.34(b). For BAYS and swordfish, the current size limits and landing restrictions at §§ 635.20 and 635.30, respectively, apply. For sharks, there are no size limits, as there is no current Federal commercial shark size limit; however, current landing restrictions at § 635.30, such as "fins attached" requirements, apply. Size limits and landing restrictions would be considered as appropriate under future rulemaking if NMFS were to increase the retention limit above zero fish.

NMFS considered four alternatives regarding HMS fisheries management in the Caribbean Region. The alternatives considered included various combinations of measures ranging from maintaining the status quo to alternative permit specifications on retention

limits, vessel sizes, and additional restrictions. A description of the alternatives was provided in the proposed rule and is not repeated here.

If shark trip limits are set above zero in a future rulemaking, applicants for a CCSB permit will be required to complete a NMFS Atlantic Shark Identification Workshop and submit a copy of a valid workshop certificate with their permit application. Additionally, NMFS may require CCSB permit holders to possess a copy of this certificate at every point of shark sale. NMFS would conduct rulemaking to implement these requirements through the framework procedures at § 635.34(b) at the time that the shark trip limits are adjusted.

### Comments and Responses

During the proposed rule stage, NMFS received three written comments from the public. NMFS also received comments from the Atlantic HMS Advisory Panel and heard additional comments from constituents who attended the six public hearings held in Puerto Rico, St. Croix, and St. Thomas. A summary of the comments received on the proposed rule during the public comment period is provided below with NMFS' response. All written comments submitted during the comment period can be found at <http://www.regulations.gov/> by searching for RIN 0648-AW83.

*Comment 1:* NMFS should implement a new CCSB permit for the U.S. Caribbean that authorizes the harvest of fish with the gears and retention limits specified in the preferred alternative. There are substantial differences between segments of the HMS fishery in the Caribbean and the rest of the eastern United States due to limited fishing permits, limited dealer permits, limited profit margins, and markets based on fishermen selling fish directly to the public. These characteristics show that this is a small-scale fishery and should be treated differently.

*Response:* As reflected in the proposed and final rules and environmental assessment, NMFS recognizes that there are substantial differences between some segments of the HMS fisheries that occur in the U.S. Caribbean and those that occur off the mainland of the United States, including, but not limited to: Few HMS fishing and dealer permits; smaller vessels; limited availability of processing and cold storage facilities; shorter trips; limited profit margins; and high local consumption of catches. For these reasons, consistent with the commenter's observations, NMFS has

created a new permit for this small-scale fishery.

*Comment 2:* Reporting of commercial fishing activity under the CCSB permit through territorial commercial data collection programs will work well because those programs better fit the markets on the islands where fish are sold directly to the public and not to dealers.

*Response:* A goal of this rulemaking is improving reporting of commercial fishing activity under the CCSB permit through territorial commercial data collection programs. NMFS recognizes that in fish markets on the islands of the U.S. Caribbean fishermen often sell fish directly to the public. Recent efforts to improve commercial fisheries data collection in the U.S. Caribbean have been made by the territorial governments of Puerto Rico and the U.S. Virgin Islands, working in cooperation with NMFS, to better accommodate the practices in these island markets. Such territorial data collection improvements will be utilized to gather data from fishing trips by vessel owners issued the CCSB permit. NMFS agrees that this system should work well with the island markets, but will monitor the program to continue to look for ways to further improve reporting in the region.

*Comment 3:* NMFS should require vessel owners to possess territorial government-issued commercial fishing licenses as a pre-requisite for obtaining the CCSB permit. Additionally, territorial commercial fisheries requirements must be met in order to sell fish in the U.S. Virgin Islands and Puerto Rico even if a fisherman holds a new HMS CCSB permit. These territorial requirements include residency requirements to hold a territorial commercial fishing license and reporting of fisheries landings through territorial commercial fisheries reporting programs.

*Response:* Fishermen operating from and/or landing fish in Puerto Rico or the U.S. Virgin Islands must abide by applicable territorial regulations, including any residency or permitting requirements of that territory. However, NMFS does not require vessel owners to possess territorial government-issued commercial fishing licenses to obtain the federal CCSB permit, because the provisions of the territorial permit, currently or in the future, may not be compatible with federal management requirements. An owner of a vessel with a valid CCSB permit or any other permit issued pursuant to 50 CFR part 635 must agree, as a condition of such permit, to abide by the requirements of 50 CFR part 635 without regard to where the vessel fishes. However, when

a vessel fishes within the waters of a territory or state that has more restrictive regulations pertaining to Atlantic HMS, persons aboard the vessel must abide by the territory's or state's more restrictive regulations.

*Comment 4:* The initial retention limit for BAYS tunas should be more than 10 fish because fishermen sometimes catch more than 10 skipjack and yellowfin tunas on a trip. Also, a larger retention limit may be needed on extended trips to the islands off Puerto Rico, such as Isla Mona and Desecheo, where tunas may be caught over a period of three days, but cannot be landed due to the distances between islands.

*Response:* NMFS sets the initial retention limit for BAYS tunas under the CCSB permit at 10 fish because information obtained during public scoping and during inquiries of federal enforcement agents in the U.S. Caribbean indicated that fishing trips using handgear (under an Atlantic Tunas General, HMS Charter/Headboat, or HMS Angling permit) rarely land more than 10 yellowfin tunas. Under the preferred alternative, NMFS analyzed a range in the number of BAYS tunas that may be retained, from zero to 24 fish. NMFS may increase or decrease the retention limit in a future rulemaking as necessary while considering the status of BAYS tuna populations and management needs. Improvements in data collection anticipated from this action will enable NMFS to better characterize the fishery, including better understanding the nature of extended fishing trips, and adjust management measures in order to better meet the needs of the commercial small boat HMS fishery in the U.S. Caribbean while sustainably managing those fisheries.

*Comment 5:* The retention limit for sharks under a new HMS CCSB permit should be set above zero so that some shark landings can occur in federal waters and data can be collected from those landings to supply stock assessments.

*Response:* NMFS disagrees that shark retention limits under the CCSB permit should be initially set above zero because several shark stocks are overfished and/or overfishing is occurring across their range, which for most shark species extends beyond the U.S. Caribbean. Additional fishing effort on sharks in the Caribbean that may occur if the retention limit is initially set above zero may further deplete shark populations. Data collection to supply shark stock assessments may occur under the existing Atlantic HMS exempted fishing permit and scientific research permit program. In the future,

as shark populations recover and can be sustained under increased fishing effort, shark retention limits for the CCSB permit may be increased.

*Comment 6:* When shark identification workshops are held in the Caribbean, the curriculum should include tuna identification in order to help clarify the use of multiple names for the same tuna species.

*Response:* In the shark identification workshop curriculum, NMFS includes educational information about various topics that are related to Atlantic HMS fisheries. When future shark identification, or other, workshops are held in the U.S. Caribbean, NMFS will consider including tuna identification information as well.

*Comment 7:* The CCSB permit should also allow recreational fishing for billfish.

*Response:* The purpose of the CCSB permit is to better meet the needs of the commercial small boat HMS fishery in the U.S. Caribbean, which are not specifically addressed under existing regulations, and not to exempt fishermen from any of the federal regulations. Current regulations prohibit the retention of Atlantic billfish onboard commercially permitted vessels in order to meet the goals of the rebuilding program established by ICCAT for overfished Atlantic billfish populations. As such, NMFS will not allow the retention of Atlantic billfish onboard commercially permitted vessels as this fails to meet the goals set out by the ICCAT rebuilding plan.

*Comment 8:* The allowance of 35 buoys per vessel per trip under the CCSB permit is too many for the small boat Caribbean commercial fishery for tunas. Six total buoys per vessel per trip with one hook per buoy is the maximum amount of gear needed.

*Response:* Vessels may use fewer buoys than the maximum amount allowable under current regulations for the swordfish buoy gear fishery, which allows for the use of up to 35 buoys per vessel per trip. NMFS does not anticipate that the allowance of up to 35 buoys per vessel per trip will cause an excessive amount of fishing pressure on swordfish and BAYS tunas. The allowance of 35 buoys maintains consistency with existing regulations in the commercial swordfish handgear fishery and provides flexibility for CCSB permit holders to use up to 35 buoys.

*Comment 9:* Implementing Amendment 4 in order to avoid an awkward fit between current federal HMS fishery regulations and the traditional operation of Caribbean fisheries is not a sound basis for exempting any fishing segment from

compliance with U.S. regulations. Efforts should be made to increase compliance with existing federal regulations for HMS.

*Response:* The CCSB permit and related fisheries regulations in this final rule do not exempt fishing segments from regulation. The specific provisions in this rule are warranted to implement management measures specific to the unique characteristics of the small-boat commercial HMS fishery in the U.S. Caribbean Region. The purpose of this action is to better manage the traditional HMS small boat commercial fishing fleet in the U.S. Caribbean Region, enhance fishing opportunities, improve profits for the fleet, and provide NMFS with an improved capability to monitor and sustainably manage the fishery. During Amendment 4 pre-scoping, scoping, and HMS Advisory Panel meetings, NMFS received numerous comments that described the unique characteristics of the Caribbean region and that supported the purpose of the proposed rule. NMFS and the U.S. Coast Guard continue to enforce all fisheries regulations in the U.S. Caribbean and enlist assistance from territorial governments through joint enforcement agreements. On an ongoing basis, NMFS will review fisheries regulations to see if modifications are needed that would better meet management objectives and make those modifications, including regional considerations, as warranted.

*Comment 10:* NMFS should increase education programs to permitted dealers in the U.S. Caribbean, thus improving the means for monitoring and management, rather than legitimizing failure to comply with current federal regulations.

*Response:* NMFS has mass-produced and distributed outreach documents, including Caribbean HMS identification guides and Caribbean HMS outreach brochures summarizing the regulations, to fishermen and other constituents throughout the U.S. Caribbean Region (both in Spanish and English). With Amendment 4, NMFS is not exempting fishermen in any region from federal regulations; rather, NMFS is modifying fishery regulations under the 2006 Consolidated HMS FMP to better meet management objectives and local economic and fishing practice realities, thus encouraging greater regulatory compliance.

*Comment 11:* Vessel length of 45 ft LOA or less is not a good distinguishing characteristic for small boats in the U.S. Caribbean region, especially if the vessels are supposed to be "pangas." A true "panga" ranges from 18 to 28 ft LOA. Preferred alternative 3 should limit vessels eligible for the CCSB

permit to no greater than 30 ft LOA if the amendment is targeting traditional fisheries, and especially if the boats are supposed to be "pangas."

*Response:* The U.S. Caribbean HMS fishery is mostly an opportunistic small-scale fishery, lacking any vessels larger than 45 ft LOA. The requirement that vessels eligible for a CCSB permit be less than or equal to 45 ft LOA was developed in response to comments from the U.S. Virgin Islands territorial government during pre-scoping. The U.S. Virgin Islands preferred that HMS regulations not encourage the movement of new commercial fishing vessels to the U.S. Virgin Islands that might, in time, compete with existing small boat commercial fishermen there. NMFS balanced this comment with the need to be as inclusive as possible of commercial fishing vessels that might participate in the U.S. Caribbean HMS small boat fishery. Vessels described as "pangas" are only one type of small boat used in this commercial fishery and the amendment is not designed specifically for this one type of small boat.

*Comment 12:* High fuel prices have shortened fishing trips from the U.S. mainland, thus there are no differences in the length of fishing trips between the U.S. mainland and the U.S. Caribbean.

*Response:* NMFS received comments during pre-scoping that many HMS fishing trips in the U.S. Caribbean are shorter because they are day trips where commercial fishermen leave port in the morning and return to port by the afternoon. Short trips such as this are only possible in areas where deep water is located close to port, which occurs in only a few locations near the U.S. mainland. The comment mentions that high fuel prices have shortened the trips from the U.S. mainland. Fuel prices in the U.S. Caribbean are normally higher than fuel prices on the U.S. mainland; thus the comment supports the conclusion that economic factors also limit trip length in the U.S. Caribbean.

*Comment 13:* Increased operating costs have reduced profit margins for operators working out of the mainland, thus limited profit margins are not substantially different in the Caribbean.

*Response:* This comment addresses NMFS assertion that among other things, profit margins in the U.S. Caribbean are reduced compared to U.S. mainland profit margins as one of the reasons for a Caribbean-specific permit. In the documents associated with this rulemaking, NMFS has analyzed the extent to which increased operating costs have reduced profit margins in commercial HMS fisheries. However, these increased operating costs are in addition to the already low profit

margins for fishermen in the U.S. Caribbean that result from the low prices for fish available in local, island markets and high operating costs due to factors such as higher fuel prices in the U.S. Caribbean compared to the U.S. mainland. Thus, NMFS believes that profit margins in the U.S. Caribbean continue to be lower than on the US mainland.

*Comment 14:* NMFS should consider allowing HMS permits to be valid for more than a year.

*Response:* The CCSB permit will be valid for one year and may be renewed annually. A longer period of validity would be more likely to result in permit information changing and not being updated by permit holders. NMFS needs to have current permit information in order to make appropriate fishery management decisions and believes that an annual renewal cycle balances the burden on the public and fishery management needs.

*Comment 15:* NMFS needs to do more outreach and training to local state agencies, Coast Guard and enforcement, so that enforcement agents understand the regulations governing HMS in territorial and federal waters.

*Response:* NMFS continues to work with its federal partners and state and territorial enforcement agencies under joint enforcement agreements and provides outreach and training as part of those agreements. Outreach and training are important components of effective enforcement of fisheries regulations.

*Comment 16:* NMFS should evaluate the status of HMS stocks by regions given the different environmental conditions between the Caribbean region and the mainland.

*Response:* The stocks of most Atlantic HMS span broad areas both within and beyond the Caribbean and regional stock assessments are not appropriate in such cases. A few shark species are found mainly in the Caribbean and in such cases, regional stock assessments may be appropriate and are conducted accordingly as data are available.

*Comment 17:* NMFS should not authorize sales of HMS to non-seafood dealers because of seafood safety concerns and incompatibility with the United States Food and Drug Administration's (FDA) Hazard, Analysis, and Critical Control Points (HACCP). NMFS should require HMS to be iced properly in order to improve the quality and price of fish.

*Response:* The FDA published regulations (December 18, 1995; 60 FR 65197) mandating the application of the HACCP principles to ensure the safe and sanitary processing of seafood products. Dealers are responsible for

ensuring product they purchase and sell is in compliance with FDA HACCP regulations.

#### Changes From the Proposed Rule

The permit name "HMS Caribbean Small Boat Commercial permit" was used in the proposed rule and has been changed to "HMS Commercial Caribbean Small Boat permit" in this final rule. Minor changes in the wording to the paragraphs found at § 635.4(d)(3), (e)(1), (e)(2), (o)(3) and (o)(5) and § 635.21(e)(3)(i) were made to provide further clarification. A change to add a new paragraph at § 635.71(a)(56) was made to provide further clarification. A minor change to delete the phrase "After December 31, 2007," was made to the paragraph found at § 635.27(c)(1)(i)(A) because the date is no longer needed.

#### Classification

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

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

Pursuant to the procedures established to implement section 6 of E.O. 12866, OMB has determined that this final rule is not significant.

The agency has consulted, to the extent practicable, with appropriate state and local officials to address the principles, criteria, and requirements of Executive Order 13132.

A final regulatory flexibility analysis was prepared. The final regulatory flexibility analysis incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, NMFS's responses to those comments, and a summary of the analyses completed to support the action.

The final regulatory flexibility analysis analyzed the anticipated economic impacts of the final action and any significant economic impacts on small entities. A summary of the

final regulatory flexibility analysis is below. The initial and final regulatory flexibility analysis and the analysis of social and economic impacts are available from NMFS (see **ADDRESSES**).

The purpose of this final rulemaking, consistent with the Magnuson-Stevens Act, and the 2006 Consolidated HMS FMP and its amendments, is to enact HMS management measures that better correspond with the traditional operation of the small boat fishing fleet in the U.S. Caribbean Region and to provide NMFS with an improved capability to monitor and sustainably manage those fisheries.

Section 604(a)(2) of the Regulatory Flexibility Act (RFA) requires agencies to summarize significant issues raised by the public in response to the IRFA, a summary of the agency's assessment of such issues, and a statement of any changes made as a result of the comments. We received several comments on the proposed rule and IRFA. Those comments and NMFS' responses to them are mentioned above in the preamble for this rule. In particular, comments 1, 2, 12, and 13 address the rule's economic impacts. There are no substantive changes from the proposed rule as a result of these economic comments.

Section 604(a)(3) of the RFA requires Federal agencies estimate the number of small entities to which the rule will apply. The current Caribbean HMS small-scale fishery is partially comprised of fishermen who currently hold an Atlantic General category or a HMS Charter/headboat category permit and the related industries, including processors, bait houses, and equipment suppliers, all of which we consider to be small entities according to the size standards set by the Small Business Administration. There may also be a few new entrants to the Caribbean small-scale HMS fishery; however, the number of new entrants is expected to be low due to the isolated area, small vessels in the region, limited fishing area, and limited profit margins. The final rule applies to small-scale commercial HMS vessels that fish in the Caribbean Region. In 2010, there were 92 vessels permitted in the Atlantic tunas General category in Puerto Rico and 10 in the U.S. Virgin Islands. In 2010, there were 23 vessels permitted in the Charter/Headboat category in Puerto Rico and 21 in the U.S. Virgin Islands. We anticipate that the universe of fishermen who might purchase and fish under a Caribbean permit will be approximately 100 individuals in the U.S. Caribbean Region, with some potential shift of fishermen currently permitted in the

Angling and Charter/Headboat categories.

Under section 604 (a)(4) of the RFA, agencies are required to describe any new reporting, record-keeping, and other compliance requirements in the final rule. This rule does not contain any new reporting requirements, but requires fishermen to apply for a Caribbean permit in a manner similar to the way HMS permit holders apply for their current HMS permits, if they currently hold one.

This final rule does not conflict, duplicate, or overlap with other relevant federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the ACTA, 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. We do not believe that the new regulations duplicate, overlap, or conflict with any relevant regulations, federal or otherwise.

Under section 604(a)(5) of the RFA, agencies are required to describe any alternatives to the rule which accomplish the stated objectives and which minimize any significant economic impacts. Economic impacts are discussed below and in the Environmental Assessment for the action. Additionally, the RFA (5 U.S.C. 603(c) (1)-(4)) lists four general categories of significant alternatives that would assist an agency in developing significant alternatives. These categories of alternatives are: (1) Establishing differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements under the rule for such small entities; (3) using performance rather than design standards; and, (4) exempting from coverage of the rule for small entities.

In order to meet the objectives of this final rule, consistent with legal obligations, we cannot exempt small entities or change the reporting requirements only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting requirements (category two above). The relative absence of a dealer structure in the U.S. Caribbean region

restricts where fishermen may legally sell their catches, so they often sell to non-dealers or become individual dealers themselves. This final action modifies existing requirements that may affect small entities and simplifies reporting requirements. As a result, it better accounts for the business practices of Caribbean fishermen by allowing Caribbean small-scale fishermen with the Caribbean permit to directly sell their catches of authorized HMS without possessing a dealer permit, provided that the fishermen report the harvest and sale of these animals to their respective territorial governments, which will report these data to the NMFS SEFSC. Small entities may not be exempted from the final reporting requirements if the objectives of this final rule are to be met, consistent with legal obligations.

We considered and analyzed four alternatives in this Final Environmental Assessment. These alternatives ranged from maintaining the status quo to creating a CCSB permit valid only in the U.S. Caribbean Region, which could allow fishing for and sales of BAYS tunas, swordfish, and Atlantic sharks (excluding sandbar) under specific limitations. Three alternatives were analyzed that would have allowed us to modify retention limits using the framework adjustment procedures codified at § 635.34(b). We assessed the impacts of the alternatives, which are composed of seven key topics, including: permitting/workshop certification; authorized species; retention limit ranges; reporting; authorized gears; vessel size restrictions; and, regions. Instead of analyzing a range of alternatives under individual topics, the final regulatory flexibility analysis considers a number of alternative suites that pull from a range of alternatives under all the topics.

Alternative 1 would, among other things, maintain current Atlantic HMS vessel and dealer permits structure, current upgrading restrictions, current authorized species and gear structure, current retention limits, and, current observer and reporting requirements. Alternative 2 would create a Caribbean permit allowing fishing for and sales of BAYS tunas and Atlantic swordfish under specific limitations. Alternative 3 would create a Caribbean permit allowing fishing for and sales of BAYS tunas, Atlantic swordfish, and Atlantic sharks, under specific limitations. Alternative 3 differs from Alternative 2 in that it could also allow for the retention of Atlantic sharks. Alternative 4 would create a Caribbean permit allowing fishing for and sales of BAYS tunas, Atlantic swordfish, and Atlantic

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

Under Alternative 1, we do not anticipate any substantive change in economic impacts, as the small-scale fishermen in the Caribbean Region are already operating under the current regulations. However, this alternative may contribute to a loss of potential income by small-scale fishermen in the Caribbean Region, because these fishermen are limited in their ability to gain access to federal commercial limited access HMS fisheries due to the high costs of obtaining permits considering the low volume of their catch and resulting profit. The relative absence of a dealer structure may cause them to sell to non-dealers or to become individual dealers themselves, which may constitute additional financial burden with regard to the cost of a dealer permit. Therefore, for all the reasons mentioned above, we do not prefer this alternative.

Alternative 2 would allow small-scale fishermen in the Caribbean Region to fish for, retain, and sell BAYS tunas and swordfish. This alternative would codify initial retention limits of 10 BAYS tunas/trip and 2 swordfish/trip, but also provides for a defined range within which the retention limits can be adjusted according to specific management criteria (0 to 24 for BAYS and 0 to 6 for swordfish). Alternative 2 would limit the length of vessels eligible for the Caribbean permit to 45 ft. or less. Based on preliminary scoping for this rulemaking, a trip in which 10 BAYS and/or 2 swordfish are captured is considered a very successful trip for the small-scale fishermen; thus, these were selected as initial retention limits for BAYS tuna and swordfish under this alternative. Atlantic yellowfin tuna and “tunas” harvested in the handline fishery may sell for between \$1.75/lb and \$7.00/lb, depending on quality and local demand. Using Commission conversions for yellowfin tuna, a fish meeting the current U.S. minimum size (27 inches CFL) weighs approximately 14 lb. Therefore, if each fisherman conducted two BAYS tunas trips per month (24 trips/yr.), and landed 10 yellowfin tuna on each trip (240 yellowfin tuna/yr.), then the annual revenue per vessel associated with this activity would range from \$5,880.00 (240 yellowfin tuna × 14 lb × \$1.75/lb)—

\$23,520.00 (240 yellowfin tuna × 14 lb × \$7.00/lb). Swordfish is currently selling for approximately \$4.00 to \$6.00 per pound in the Caribbean Region (Lynn Rios, pers. comm.). Using Commission conversions for swordfish, a fish meeting the current U.S. minimum size (47 inches lower jaw fork length) weighs approximately 44 lb. Therefore, if each fisherman conducted two swordfish trips per month (24 trips/yr.), and landed 2 swordfish on each trip (24 swordfish/yr.), then the annual revenue per vessel associated with this activity would range from \$4,224.00 (24 swordfish × 44 lb × \$4.00/lb)—\$6,336.00 (24 swordfish × 44 lb × \$6.00/lb). Because we would have authority to adjust the BAYS tunas limits from 0 to 24 fish under Alternative 2, the annual ex-vessel revenue estimates vary, either higher or lower, according to these calculations if the BAYS and swordfish limits were to change. This alternative could result in positive economic impacts for Caribbean small-scale fishermen. The ability to land and sell swordfish under Alternative 2 could increase the profitability of the localized fishery. During the comment period on the proposed rule, commenters requested a higher initial retention limit for BAYS tunas, as sometimes fishermen catch more than 10 BAYS tunas on a trip, as well as include a retention limit for commercial shark fisheries that is above zero per trip. While this alternative provides the Agency the ability to adjust the retention limits as needed and provide positive social and economic benefits, it would provide potential access to the federal commercial shark fishery when stocks rebuild. Therefore, we do not prefer this alternative.

Alternative 3, the preferred alternative, allows Caribbean small-scale fishermen to retain and sell from 0 to 24 BAYS tunas/trip and from 0 to 6 swordfish/trip. This alternative also provides Caribbean small-scale fishermen the capacity to participate in the federal commercial fishery for sharks by establishing a retention limit range of 0 to 3 for non-sandbar large coastal sharks and 0 to 16 for small coastal sharks and pelagic sharks. To be conservative, we are considering setting the initial shark retention limit at 0, with the ability to modify the retention limits once the shark complexes have recovered and the Agency has more data on regional participants, catches, and discards in the Caribbean permit fishery.

With regard to BAYS tunas and swordfish, Alternative 3 would have the same positive economic impacts as Alternative 2 discussed above (BAYS:

\$5,880.00–\$23,520.00; swordfish: \$4224.00–\$6,336.00). In the Caribbean, “shark” sells for between \$1.57/lb and \$4.00/lb depending on quality and demand. We would set the initial shark retention limit at 0 under Alternative 3. This could potentially result in some initial negative economic impacts; however, sharks cannot legally be harvested from the U.S. exclusive economic zone without possessing a shark limited access fishing permit. There is a potential for future revenue increases under this alternative because we retain the ability to modify the retention limits once the shark complexes have recovered and the Agency has more data on regional participants, catches, and discards in the Caribbean permit fishery. In addition, during the comment period for the proposed rule, we heard strong support for allowing potential access to the commercial shark fisheries from small-scale HMS fishery participants when shark stocks rebuild. Therefore, allowing Caribbean permit fishermen the ability to participate in the future in the federal commercial shark fishery under this alternative by analyzing a range of retention limits can potentially result in a larger positive economic impact than Alternatives 1 and 2, if a retention limit of greater than zero is authorized in the future. Therefore, based on consideration of public comment and all the reasons described above, we prefer this alternative in the final rule.

Alternative 4 would allow Caribbean small-scale fishermen to retain and sell from between 0 to an unlimited number of BAYS tunas, 0 to an unlimited number of swordfish, 0 to 33 sharks non-sandbar large coastal sharks, and from 0 to an unlimited number of small coastal sharks and pelagic sharks. Under Alternative 4, we would set initial retention limits of 24 BAYS tunas per trip, 6 swordfish per trip, and 1 non-sandbar large coastal shark and 2 small coastal sharks or pelagic sharks combined, with the ability to modify the retention limits once the shark complexes have recovered and the Agency has more data on regional participants, catches, and discards in the Caribbean permit fishery. Additionally, this alternative would not limit the vessel size of participants in the Caribbean permit fishery. If each fisherman conducted two BAYS tunas trips per month (24 trips/yr.), and landed 24 yellowfin tuna on each trip (576 yellowfin tuna/yr.), then the annual revenue per vessel associated with this activity would range from \$14,112.00 (576 yellowfin tuna × 14 lb

(average weight of a landed yellowfin tuna) × \$1.75/lb)—\$56,448.00 (576 yellowfin tuna × 14 lb × \$7.00/lb). If each fisherman conducted two swordfish trips per month (24 trips/yr.), and landed 6 swordfish on each trip (144 swordfish/yr.), then the annual revenue per vessel associated with this activity would range from \$25,344.00 (144 swordfish × 44 lb × \$4.00/lb)—\$38,016.00 (144 swordfish × 44 lb × \$6.00/lb). If each fisherman conducted two shark trips per month (24 trips/yr.), and landed 1 non-sandbar large coastal shark and 2 small coastal sharks on each trip (24 large coastal sharks/yr. & 48 small coastal sharks/yr.), then the annual revenue per vessel associated with this activity would range from \$4,296.00 (24 large coastal sharks × 95 lb × \$1.57/lb + 48 small coastal sharks × 10 lb × \$1.57/lb)—\$11,040.00 (24 large coastal sharks × 95 lb × \$4.00/lb + 48 small coastal sharks × 10 lb × \$4.00/lb). These estimates of annual revenues could be higher if more pelagic sharks were landed due to their larger average size. Because we would have framework authority to adjust the trip limits for BAYS, swordfish, and sharks within the range analyzed under Alternative 4, this alternative could potentially have the largest positive economic impacts when compared with Alternatives 1, 2, and 3 discussed above. However, this alternative could also result in local overcapitalization in the fishery, lead to depressed market prices, and other potentially adverse economic impacts, a concern expressed by small-scale HMS fishermen in the comment period of the proposed rule. Based on public comment and reasons described above, we do not prefer this alternative.

During the public comment period of the proposed rule, one commenter requested to know the economic costs and reporting burden associated with having to buy the new Caribbean permit. The social and economic impacts expected from Alternatives 2, 3, and 4 as a result of fishery participants in the U.S. Caribbean having to purchase the new permit are the same. For instance, if individuals needed to obtain the Caribbean permit, it will cost them a total of \$25 on an annual basis. Because fishery participants in the Caribbean region are already reporting to the same existing territorial data collection programs required under the new Caribbean permit, we do not expect any additional reporting burden under any of the alternatives analyzed.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0205).

Public reporting burden for the HMS CCSB permit is anticipated to result in an estimated 100 new responses for fishermen who may wish to apply for the new permit and an estimated average of 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget control number.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. Copies of this final rule and compliance guide are available upon request from NMFS or on the Web page (see **ADDRESSES**).

#### List of Subjects

##### 50 CFR Part 600

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

##### 50 CFR Part 635

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

Dated: September 26, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 600 and 635 are to be amended as follows:

PART 600-MAGNUSON-STEVENS ACT PROVISIONS

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

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

2. In § 600.725, in the table in paragraph (v), under the heading "IX.

Secretary of Commerce," entry 1, add entry "N" to read as follows:

§ 600.725 General prohibitions.

(v) \* \* \*

IX. Secretary of Commerce

1. Atlantic Highly Migratory Species Fisheries (FMP):

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

PART 635-ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

4. In § 635.4:

a. Revise paragraphs (a)(5), (a)(10), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2), (f)(1), (f)(2), (g)(1), (g)(2), (g)(3), (h)(1) introductory text, (m)(1), and (m)(2); and

b. Add paragraph (o).

The revisions and addition read as follows:

§ 635.4 Permits and fees.

(a) \* \* \*

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

(10) Permit condition. An owner of a vessel with a valid swordfish, shark, HMS Angling, HMS Charter/Headboat, Incidental HMS squid trawl, or HMS Commercial Caribbean Small Boat permit issued pursuant to this part must agree, as a condition of such permit, that the vessel's HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether

such fishing occurs in the U.S. EEZ, or outside the U.S. EEZ, and without regard to where such HMS, or gear, are possessed, taken, or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations pertaining to HMS, persons aboard the vessel must abide by the state's more restrictive regulations.

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

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

(3) A vessel issued an Atlantic Tunas permit in any category for a fishing year shall not be issued an HMS Angling permit, HMS Charter/Headboat permit, or an Atlantic Tunas permit in any other

category for that same fishing year, regardless of a change in the vessel's ownership. A vessel issued an Atlantic Tunas permit may be issued an HMS Commercial Caribbean Small Boat permit, subject to restrictions set forth at § 635.4(o), within that same fishing year; however, a vessel may not hold any other HMS fishing permit simultaneously with the HMS Commercial Caribbean Small Boat permit.

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

(2) The owner of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in sections A, B, or C of Table 1 of Appendix A with an intention to sell must obtain a Federal Atlantic commercial shark directed or incidental limited access permit or an HMS Commercial Caribbean Small Boat

permit. The only valid Federal commercial shark directed and shark incidental limited access permits are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

\* \* \* \* \*

(f) \* \* \*

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

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

\* \* \* \* \*

(g) \* \* \*

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

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

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

(h) \* \* \*

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

\* \* \* \* \*

(m) \* \* \*

(1) *General.* Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an

Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, swordfish, Incidental HMS squid trawl, or HMS Commercial Caribbean Small Boat vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to § 635.8, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit are met, including those described in paragraphs (h)(1)(iv) and (l)(2) of this section; all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in §§ 635.5 and 300.185 of this title; the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section; and the workshop requirements specified in § 635.8 are met.

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

\* \* \* \* \*

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

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

(3) A vessel issued an HMS Commercial Caribbean Small Boat

permit may not be issued any other HMS fishing permit, except those issued under § 635.32, as long as the HMS Commercial Caribbean Small Boat permit is valid.

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

(5) HMS landed under an HMS Commercial Caribbean Small Boat permit may be sold by the owner or operator to individuals who do not possess a valid HMS dealer permit otherwise required under § 635.4(g). HMS Commercial Caribbean Small Boat permit holders may not sell HMS harvested or landed by another vessel or purchase, barter, or trade for HMS harvested by other vessels with the intent to sell.

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

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

\* \* \* \* \*

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

\* \* \* \* \*

(e) \* \* \*

(1) *Atlantic tunas.* A person that fishes for, retains, or possesses an Atlantic bluefin tuna (BFT) may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the category for which the Atlantic tunas or HMS permit has been issued for such vessel. Primary gears are the gears specifically authorized in this section. When fishing for Atlantic tunas other than BFT, primary gear authorized for any Atlantic Tunas permit category may be used,

except that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit, a LAP other than handgear for swordfish, and a LAP for sharks. A person issued an HMS Commercial Caribbean Small Boat permit who fishes for, retains, or possesses BAYS tunas in the U.S. Caribbean, as defined at § 622.2, may have on board and use handline, harpoon, rod and reel, bandit gear, green-stick gear, and buoy gear.

\* \* \* \* \*

(3) \* \* \*

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

\* \* \* \* \*

(4) \* \* \*

(iii) A person aboard a vessel issued or required to be issued a valid directed handgear LAP for Atlantic swordfish or an HMS Commercial Caribbean Small Boat permit may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel using or having on board longline gear. Only vessels that have been issued, or that are required to have been issued, a valid directed or handgear swordfish LAP or an HMS Commercial Caribbean Small Boat permit under this part may utilize or possess buoy gear. Vessels utilizing buoy gear may not possess or deploy more than 35 floatation devices, and may not deploy more than 35 individual buoy gears per vessel. Buoy gear must be constructed and deployed so that the hooks and/or gangions are

attached to the vertical portion of the mainline. Floatation devices may be attached to one but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. Buoy gears must be released and retrieved by hand. All deployed buoy gear must have some type of monitoring equipment affixed to it including, but not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is affixed, the vessel deploying the buoy gear must possess on board an operable spotlight capable of illuminating deployed floatation devices. If a gear monitoring device is positively buoyant, and rigged to be attached to a fishing gear, it is included in the 35 floatation device vessel limit and must be marked appropriately.

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

\* \* \* \* \*

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

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

(a) \* \* \*

(4) \* \* \*

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

\* \* \* \* \*

(b) \* \* \*

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

(c) BAYS tunas. Persons aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit under § 635.4 may retain,

possess, land, or sell no more than 10 BAYS tunas per vessel per trip.

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

**§ 635.27 Quotas.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit, or a handgear permit for swordfish, or an HMS Commercial Caribbean Small Boat permit has been issued or is required to be issued is counted against the directed fishery quota. The total baseline annual fishery quota, before any adjustments, is 2,937.6 mt dw for each fishing year. Consistent with applicable ICCAT recommendations, a portion of the total baseline annual fishery quota may be used for transfers to another ICCAT contracting party. The annual directed category quota is calculated by adjusting for over- or underharvests, dead discards, any applicable transfers, the incidental category quota, the reserve quota and other adjustments as needed, and is subdivided into two equal semi-annual: one for January 1 through June 30, and the other for July 1 through December 31.

\* \* \* \* \*

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

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

(a) \* \* \*

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

\* \* \* \* \*

(2) \* \* \*

(ii) Dealers may first receive BAYS tunas only if they have submitted reports to NMFS according to reporting requirements of paragraphs § 635.5(b)(1)(ii) and only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category. Individuals issued a valid HMS Commercial Caribbean Small Boat permit, and operating in the U.S. Caribbean as defined at § 622.2, may sell their trip limits of BAYS tunas, codified at § 635.24(c), to dealers and non-dealers.

\* \* \* \* \*

(d) \* \* \*

(1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may offload such swordfish only to a dealer who has a valid permit for swordfish issued under this part; except that individuals issued a valid HMS Commercial Caribbean Small Boat permit, and operating in the U.S. Caribbean as defined at § 622.2, may sell swordfish, as codified at § 635.24(b)(3), to non-dealers.

\* \* \* \* \*

■ 9. In § 635.71:

- a. Revise paragraphs (a)(3), (a)(4), and (a)(53);
- b. Add paragraph (a)(56); and
- c. Revise paragraphs (e)(1), (e)(10), (e)(11), and (e)(16).

The revisions and addition read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(3) Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, Atlantic bluefin tuna landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer Atlantic bluefin tuna without the appropriate valid Federal Atlantic tunas dealer permit issued under § 635.4. Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, other than solely for transport, any BAYS tunas, swordfish, or sharks landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer, for commercial purposes, other than solely for transport, any BAYS tunas, swordfish, or sharks without the appropriate valid dealer permit issued

under § 635.4 or submission of reports by dealers to NMFS according to reporting requirements specified in § 635.5. This prohibition does not apply to HMS harvested by HMS Commercial Caribbean Small Boat vessel permit holders operating in the U.S. Caribbean as defined at § 622.2 or to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(4) Sell or transfer or attempt to sell or transfer, for commercial purposes, an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4, except that this does not apply to HMS Commercial Caribbean Small Boat vessel permit holders operating in the U.S. Caribbean as defined at § 622.2, or to a shark harvested by a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

\* \* \* \* \*

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

\* \* \* \* \*

(56) Have been issued a valid HMS Commercial Caribbean Small Boat permit and to purchase, barter for, or trade for HMS harvested by other vessels with the intent to sell.

\* \* \* \* \*

(e) \* \* \*

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

\* \* \* \* \*

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

(11) As the owner of a vessel permitted, or required to be permitted, in the swordfish directed, swordfish handgear limited access permit

category, or issued a valid HMS Commercial Caribbean Small Boat permit and utilizing buoy gear, to possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(e)(4)(iii).

\* \* \* \* \*

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

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 110620343-2450-02]

RIN 0648-BB18

**Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Amendment 97**

**ACTION:** Final rule.

**SUMMARY:** NMFS publishes regulations to implement Amendment 97 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 97 allows the owner of a trawl catcher/processor vessel authorized to participate in the Amendment 80 catch share program to replace that vessel with a vessel that meets certain requirements. This action establishes the regulatory process for replacement of vessels in the Amendment 80 fleet and the requirements for Amendment 80 replacement vessels, such as a limit on the overall length of a replacement vessel, a prohibition on the use of an AFA vessel as a replacement vessel, measures to prevent a replaced vessel from participating in Federal groundfish fisheries off Alaska that are not Amendment 80 fisheries, and measures that extend specific catch limits (known as Amendment 80 sideboards) to a replacement vessel. This action is necessary to promote safety-at-sea by allowing Amendment 80 vessel owners to replace their vessels for any reason at any time and by requiring replacement