

discretion, the National Marine Fisheries Service may place an observer on any ship or aircraft involved in marine mammal monitoring either prior to, during, or after explosives detonation.

(g) A final report must be submitted to the Director, Office of Protected Resources, no later than 120 days after completion of shock testing the USS MESA VERDE (LPD-19). This report must contain the following information:

(1) Date and time of all detonations conducted under the Letter of Authorization.

(2) A description of all pre-detonation and post-detonation activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations.

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation due to presence within the designated Safety Range.

(4) Results of coordination with coastal marine mammal/sea turtle stranding networks.

§ 216.166 Modifications to the Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.151(b), the Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** subsequent to the action.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 080130104-8105-01]

RIN 0648-AW46

Atlantic Highly Migratory Species; Renewal of Atlantic Tunas Longline Limited Access Permits; and, Atlantic Shark Dealer Workshop Attendance Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would amend the regulations governing the renewal of Atlantic tunas longline limited access permits (LAPs) and amend the workshop attendance requirements for businesses issued Atlantic shark dealer permits. Specifically, the proposed regulatory changes would allow for the renewal of Atlantic tunas longline LAPs that have been expired for more than one year, if the most recent permit holder of record originally qualified for the Atlantic tunas LAP, or if the most recent permit holder of record subsequently obtained a permit by transfer, and has maintained the associated swordfish and shark LAPs through timely renewal. Also, this rule proposes to amend the Atlantic Shark Identification Workshop requirements by: specifying that a workshop certificate be submitted and displayed for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, rather than from each location listed on their dealer permit; and requiring that a copy of a valid workshop certificate be possessed in a truck or other conveyance serving as an extension of a dealer's business.

DATES: Written comments on the proposed rule must be received by May 12, 2008. Public hearings will be held in May of 2008. See the preamble of this notice for specific dates, times, and locations.

ADDRESSES: Written comments on the proposed rule may be submitted to Richard A. Pearson, Fishery Management Specialist, Highly Migratory Species Management Division. Please submit comments using any of the following methods:

• Federal e-Rulemaking Portal: <http://www.regulations.gov>. Include in the

subject line the following identifier: "RIN 0648-AW46."

• Mail: NMFS HMS Management Division, 263 13th Avenue South, Saint Petersburg, FL, 33701. Please mark the outside of the envelope "Comments on Proposed Tuna Permits/Workshops Rule."

• Fax: (727)824-5398.

All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Related documents, including a 2007 Final Environmental Assessment (EA) and Final Rule (72 FR 31688, June 7, 2007) implementing revised vessel upgrading regulations for vessels concurrently issued Atlantic tunas longline, swordfish, and shark LAPs; and the 2006 Final Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) and its Final Rule (71 FR 58058, October 2, 2006) implementing Atlantic Shark Identification Workshops are available from the HMS Management Division website at: <http://www.nmfs.noaa.gov/sfa/hms>, or by contacting Richard A. Pearson (see **FOR FURTHER INFORMATION CONTACT**).

The public hearings will be held in Gloucester, MA; Saint Petersburg, FL; and Silver Spring, MD. See the preamble of this notice for specific dates, times, and locations.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, by phone: 727-824-5399; by fax: 727-824-5398.

SUPPLEMENTARY INFORMATION:

Background

Atlantic tuna and swordfish fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Consolidated HMS FMP is implemented by regulations at 50 CFR part 635.

Renewal of Atlantic Tunas Longline LAPs

LAPs were first implemented in HMS fisheries in 1999, primarily to

rationalize fleet harvesting capacity in Atlantic swordfish and shark fisheries with the available quota allocation for these species, and to facilitate other fishery management measures implemented at the time. The Atlantic tunas longline LAP was established because of the likelihood of encountering swordfish and sharks when fishing with pelagic longline (PLL) gear for Atlantic tunas, and vice-versa. In recognition of the interrelationship between these longline fisheries, the Atlantic tunas longline LAP complemented management measures in the swordfish and shark fisheries.

Since 1999, vessel owners have been required to simultaneously possess three permits (Atlantic tunas longline; swordfish directed or incidental; and, shark directed or incidental) in order to retain Atlantic tunas caught with longline gear, or to retain swordfish caught with any gear other than handgear. An Atlantic tunas longline LAP is only considered valid, or useable, if the vessel has also been issued both a shark LAP and a swordfish LAP (other than handgear). Similarly, a swordfish LAP (other than handgear) is only considered valid, or useable, when a vessel has also been issued both a shark LAP and an Atlantic tunas longline LAP. The current regulations for each of these permits specify that only persons holding non-expired LAPs in the preceding year are eligible to renew those permits.

During the recent implementation of revised vessel upgrading restrictions for PLL vessels (72 FR 31688, June 7, 2007), NMFS found that a number of vessel owners had inadvertently allowed their Atlantic tunas longline LAPs to lapse for more than one year, although their accompanying swordfish and shark LAPs had been maintained through timely renewal. This may have been because of differences in the operational aspects and renewal procedures between swordfish and shark LAPs, and Atlantic tunas longline LAPs. The Atlantic tunas longline permit renewal system was originally developed as a self-service, web-based electronic system that was administered by an off-site contractor for the primary purpose of issuing other open access permits. It was modified for the issuance of Atlantic tunas longline LAPs by requiring the applicant to either call a contracted customer service office (if there are no changes to the permit), or to call NMFS' Northeast Regional HMS office (if there are changes to the permit). The information is then entered online by the contractor or by NMFS, and the permit is issued using the on-

line website. In contrast, swordfish and shark LAPs are administered and renewed by submitting paper applications to NMFS' Southeast Regional permit office. A significant difference between the two systems is that the Atlantic tunas longline LAP cannot be held in "no vessel" status. "No vessel" status allows a permit holder to retain a permit even if they no longer own a vessel. This is not the case with Atlantic tunas longline LAPs which cannot be renewed without specifying a vessel. An Atlantic tunas longline permit holder must either move the Atlantic tunas longline LAP to a replacement vessel or forfeit the permit. Many vessel owners were not aware of these options, or were confused by them, and let their Atlantic tunas longline LAP permit expire because they no longer owned a vessel even though they thought they remained eligible to renew the Atlantic tunas longline LAP.

Another difference between the Atlantic tunas longline LAP and swordfish and shark LAPs is that the tunas longline LAP does not have a unique permit number associated with it that stays unchanged through time, whereas swordfish and shark LAPs do. Atlantic tunas permit numbers remain directly associated with a vessel's Coast Guard documentation or state registration number. Because of this, "ownership" of the Atlantic tunas longline LAP has been more difficult to track over time because the permit number changes with each transfer of the Atlantic tunas longline LAP to another vessel.

The operational constraints, or differences, associated with the Atlantic tunas longline LAP permit system described above were not fully recognized until revised vessel upgrading regulations were implemented through a recent rulemaking. Specifically, the historical practices that had been used to adapt the electronic web-based Atlantic tunas permit system to the HMS limited access permit regulations were found to be deficient when NMFS was determining, in September 2007, which permit holders were issued, or were eligible to renew, an Atlantic tunas longline LAP. Due to these systematic operational constraints, the regulations governing the renewal of Atlantic tunas longline LAPs were administered differently than for swordfish and shark LAPs prior to September 2007. Furthermore, based upon public comment and statements received at HMS Advisory Panel (AP) meetings and other hearings, NMFS became aware of continuing uncertainty in the fishing

industry regarding the renewal, issuance, and eligibility for the Atlantic tunas longline LAP and the applicability of the one-year renewal requirement. This proposed rule would amend the current regulations to better reflect the operational capabilities of the Atlantic tunas longline LAP permit renewal system and reduce the potential for future confusion.

NMFS has identified approximately 40 vessels/permit holders that originally qualified for the Atlantic tunas longline LAP, or were subsequently transferred the permit, but are no longer eligible to renew the permit because it has been expired for more than one year. Most of these vessel/permit holders have concurrently been issued, or are eligible to renew, both their Atlantic swordfish LAP (other than handgear) and their shark LAP. However, because these permit holders are not eligible to renew their Atlantic tunas longline LAP, they are not allowed to retain any Atlantic swordfish, or any Atlantic tunas captured on longline gear. This exacerbates a situation where the number of available Atlantic tunas longline LAPs is insufficient to match the number of available swordfish and shark incidental or directed permits, thus rendering many swordfish permits essentially unusable because all three permits are required to retain swordfish (with any gear other than handgear).

This proposed rule would amend the HMS regulations to remove the one-year renewal timeframe for Atlantic tunas longline LAPs. It would allow NMFS to issue Atlantic tunas longline LAPs to the most recent permit holder of record, even if they have failed to renew it within one year of expiration, provided that their associated swordfish and shark LAPs have been maintained through timely renewal and all other current requirements for permit renewal are met. The proposed rule would continue to specify that only persons holding non-expired swordfish and shark LAPs in the preceding year would be eligible to renew those permits. Also, the requirement to possess swordfish and shark LAPs in order to obtain an Atlantic tunas longline LAP would remain in effect. Finally, the current requirement to possess all three valid permits (incidental or directed swordfish and shark permits, and Atlantic tunas longline permit) to fish for tunas with PLL gear and to retain commercially-caught swordfish (other than with a commercial swordfish handgear permit) would remain unchanged. The proposed measures would not increase the number of Atlantic tunas longline LAPs beyond the number of permit holders that currently

possess, or are eligible to renew, both their swordfish and shark LAPs.

This proposed action is necessary to help ensure that an adequate number of complementary Atlantic tunas longline LAPs are available for swordfish and shark commercial permit holders to fish legally for Atlantic swordfish and tunas with PLL gear. The proposed measures would reinforce recent efforts by NMFS to “revitalize” the swordfish and tunas PLL fishery. Consistent with the Magnuson-Stevens Act and ATCA, this proposed rule would also help to provide a reasonable opportunity for U.S. vessels to more fully harvest the domestic swordfish quota, which is derived from the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), in recognition that the North Atlantic swordfish stock is almost fully rebuilt (B = 0.99B_{msy}). In doing so, the proposed action could help the United States retain its historic swordfish quota allocation at ICCAT, as domestic landings have been well below that quota in recent years.

Atlantic Shark Dealer Workshop Requirements

Current HMS regulations at 50 CFR 635.8 require that permitted Atlantic shark dealers attend an Atlantic Shark Identification Workshop and receive workshop certification. The purpose of this requirement is to improve the identification and reporting of shark species by dealers for accurate quota monitoring and stock assessments. If a dealer attends and successfully completes a workshop, the dealer will receive workshop certificates for each location listed on their Atlantic shark dealer permit. If the dealer sends a proxy, they must send a proxy for each location listed on the Atlantic shark dealer permit. Atlantic shark dealers may not renew their Atlantic shark dealer permit without submitting either a dealer or proxy certificate for each location listed on their Atlantic shark dealer permit. Additionally, Atlantic shark dealers may not “first-receive” shark products at a location unless a valid workshop certificate is on the premises of each place of business listed under the shark dealer permit. As initially discussed in the proposed rule for Amendment 2 for the Management of Atlantic Shark Fisheries (July 27, 2007; 72 FR 41392), and anticipated to be contained in the final rule, “first-receive” means to take immediate possession of fish, or any part of a fish, as they are offloaded from the owner or operator of a vessel for commercial purposes.

Since implementation of these requirements, NMFS has observed that some dealers may not be first receiving shark products at all of the locations listed on their permit, thus making it unnecessary to require shark workshop certification for those locations. These dealers have multiple locations listed on their Atlantic shark dealer permit, including those where they may not first receive shark products. For example, a dealer may purchase red snapper at one location, and shark at another location. However, the dealer’s shark permit lists both of these locations as owned by the dealer, including the snapper-only site, making it necessary for workshop certification at both the shark site and the snapper site. It is not currently feasible, for both technical and administrative reasons, to modify the NMFS permits database to accommodate dealers who have different locations where they first receive different species.

To remedy this situation, NMFS is proposing a minor amendment to the HMS regulations which would specify that, when applying for or renewing an Atlantic shark dealer permit, an applicant must submit an Atlantic Shark Identification Workshop certificate (dealer or proxy) for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, rather than for each location listed on their dealer permit. This proposed action would eliminate the need for a dealer to send a proxy to a workshop to obtain a certificate for a business location that does not first receive Atlantic shark products for the sole purpose of renewing their Atlantic shark dealer permit. The requirement to display an Atlantic Shark Identification Workshop certificate would similarly only be required at locations listed on the dealer permit where sharks are first received. Additionally, NMFS proposes to require extensions of a dealer’s business, such as trucks and other conveyances, to possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit. This requirement would allow trucks and other conveyances to be immediately identified as extensions of a NMFS certified place of business which is eligible to first receive Atlantic sharks. With these minor amendments, the objective of improved identification and reporting of shark species is expected to continue, while the impact on dealers may be lessened.

Clarification of Buoy Gear Usage

NMFS proposes to make a technical clarification to refine the regulatory

language describing buoy gear usage. It would reinforce existing language in the “prohibitions” section of the HMS regulations regarding which permit holders are authorized to utilize buoy gear. This clarification would not result in any substantive change to the buoy gear usage requirements. NMFS is proposing this minor change to address questions and comments received from constituents and to ensure consistency within the HMS regulations.

Request for Comments

Comments on this proposed rule may be submitted at public hearings, or via the federal e-Rulemaking portal, mail, or fax (see **ADDRESSES**). Written comments on the proposed rule must be received by May 12, 2008.

Public Hearings

NMFS will hold three public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule. These hearings will be physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Richard A. Pearson at (727) 824-5399 at least five days prior to the hearing date. At the beginning of each meeting, 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 register to speak; and the attendees should not interrupt one another, etc.). 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. Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the meeting. For individuals unable to attend a hearing, NMFS also solicits written comments on the proposed rule (see **DATES** and **ADDRESSES**).

The hearing dates and locations are:

1. May 1, 2008, 3:30 - 5:30 p.m., NMFS Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.
2. May 6, 2008, 6 - 8 p.m., NMFS Southeast Regional Office, 263 13th Avenue South, Saint Petersburg, FL 33701.
3. May 7, 2008, 3 - 5 p.m., NOAA Auditorium, 1301 East West Highway, Silver Spring, MD 20910.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Consolidated HMS FMP, other

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

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

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

In compliance with Section 603(b)(1) and (2) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act and ATCA, to synchronize the number of available limited access swordfish, shark, and tunas longline permits to help provide a reasonable opportunity for U.S. vessels to harvest quota allocations recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT), in recognition of the improved stock status of North Atlantic swordfish ($B = 0.99B_{msy}$). The proposed action regarding the renewal of Atlantic tunas longline LAPs that have been expired for more than one year is necessary to help ensure that an adequate number of complementary Atlantic tunas longline LAPs are available for swordfish and shark LAP holders to fish legally for Atlantic swordfish and tunas with PLL gear.

The proposed amendment regarding attendance requirements at Atlantic Shark Identification Workshops would specify that, for permit renewal, a dealer must submit an Atlantic Shark Identification Workshop certificate (dealer or proxy) for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, rather than from each location listed on their dealer permit. This would eliminate the need for a dealer to send a proxy to a workshop to obtain a certificate for a business location that does not first receive Atlantic shark products for the sole purpose of renewing their Atlantic shark dealer permit. The requirement to display an Atlantic Shark Identification Workshop certificate would similarly only be required at locations listed on the dealer permit where sharks are first received. The proposed measure is the

preferred method to address this issue because it is not feasible, for both technical and administrative reasons, to modify the NMFS permits database to accommodate dealers having different locations where they first receive different species. Additionally, the proposed action would require extensions of a dealer's business, such as trucks and other conveyances, to possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit. This requirement would allow trucks and other conveyances to be immediately identified as extensions of a NMFS-certified place of business which is eligible to first receive Atlantic sharks. The identification and reporting of shark species would not be compromised, but impacts on dealers would be lessened.

Section 603(b)(3) requires agencies to provide an estimate of the number of small entities to which the rule would apply. The proposed action to modify permit renewal requirements for Atlantic tunas LAPs would most immediately impact approximately 40 vessel owners that are the most recent permit holders of record, but are currently not eligible to renew that permit because it has been expired for more than one year. Potentially, 245 vessel owners that are currently issued Atlantic tunas LAPs, as well as swordfish and shark LAPs, could be affected by this action if, in the future, they fail to renew their Atlantic tunas longline LAP within one year of expiration.

Prior to the effective date of the shark workshop certificate requirement (December 2007), there were 186 individual Atlantic shark dealer permits issued by NMFS. Fifty-six of these individual dealers had multiple locations listed on their permit (ranging from two to 11 locations). As of February 6, 2008, 67 shark dealers had been issued workshop certificates for all of their locations. NMFS has identified 108 shark dealers that have not been issued any certificates for any locations. Finally, 12 of the 56 dealers with multiple locations listed on their permit have been issued at least one certificate, but not certificates for all of the locations listed on their permit. Thus, under the current regulations, they are not eligible to renew their shark dealer permit. These 12 Atlantic shark dealers who have not been issued proxy certificates for all of their locations would be most immediately affected by the proposed action regarding attendance requirements at Atlantic Shark Identification Workshops. Potentially, any of the 56 shark dealers

with multiple locations listed on their permit could be impacted by the proposed action. All of the aforementioned businesses are considered small business entities according to the Small Business Administration's standard for defining a small entity.

This proposed rule does not contain any new reporting, record keeping, or other compliance requirements (5 U.S.C. 603(c)(1)-(4)). Similarly, this proposed rule does not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)).

One of the requirements of an IRFA, under Section 603 of the Regulatory Flexibility Act, is to describe any alternatives to the proposed rule that accomplish the stated objectives and that minimize any significant economic impacts (5 U.S.C. 603(c)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c)(1)-(4)) lists four categories for alternatives that must be considered. These categories 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 for small entities.

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act and ATCA, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Thus, there are no alternatives that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above). NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act.

NMFS considered two different alternatives to modify the renewal procedures for the Atlantic tunas longline LAP. The impacts and justification for the selection of the preferred alternative are described below.

Alternative 1 for the renewal of Atlantic tunas longline LAPs (alternative 2.1.1 in the IRFA) is the No Action, or status quo alternative. Current HMS regulations at 50 CFR 635.4(m)(2) specify that only persons holding a non-expired Atlantic tunas longline LAP in the preceding year are

eligible to renew that permit. Under alternative 1, there would be no change in the existing regulations and, as such, no change in the current baseline economic impacts. However, the situation regarding the renewal of Atlantic tunas longline LAPs is unique. As discussed in the preamble, until September 2007, the regulations governing the renewal of the Atlantic tunas longline LAP were administered differently than for swordfish and shark LAPs. Since September 2007, the permit renewal regulations have been administered similarly. Thus, the No Action alternative would continue any existing economic impacts, but those impacts have only been in existence since September 2007.

The No Action alternative is not preferred because it has the largest associated adverse economic impacts. Without an Atlantic tunas longline LAP, a permit holder is prohibited from fishing for tunas with longline gear and from retaining swordfish, even if the vessel has been issued a directed or incidental swordfish permit. As many as 40 commercial fishing vessels that have historically participated in the PLL fishery would continue to be prohibited from participating in the fishery, harvesting the U.S. swordfish quota, and creating jobs. Resultant lossess to the overall economy of as much as \$7,842,280 in annual gross revenues would continue to occur under this alternative. Also, between \$200,000 and \$721,839 in fleet-wide lost net revenues would continue to occur, distributed among the 40 vessels that are impacted by this alternative. Each individual vessel owner would continue to lose from \$0 to potentially over \$100,000 in net revenues annually, depending upon the profitability of their business.

Under Proposed Alternative 2 (preferred alternative 2.1.2 in the IRFA), NMFS would remove the one-year renewal timeframe for Atlantic tunas LAPs. This would allow the Agency to issue Atlantic tunas LAPs to the most recent permit holder of record, even if the permit had not been renewed within one year of expiration, provided that the associated swordfish and shark LAPs had been maintained through timely renewal and all other current requirements for permit renewal were met. The requirement to possess swordfish and shark LAPs in order to obtain an Atlantic tunas LAP would remain in effect. Also, current regulations which specify that only persons holding non-expired swordfish and shark LAPs in the preceding year are eligible to renew those permits would remain in effect.

Relative to the No Action alternative, removing the one-year renewal timeframe for Atlantic tunas LAPs is projected to potentially increase net and gross revenues for approximately 40 vessel owners who are otherwise qualified to fish for swordfish and tunas with longline gear, except that they are currently ineligible to renew their Atlantic tunas longline LAP. Overall gross economic benefits could potentially increase as much as \$7,842,280 under this alternative, relative to the baseline. Also, an overall fleet-wide increase in net revenues (profits) of approximately \$200,000 to \$721,839 could occur, distributed among the 40 vessels potentially impacted by this alternative. Under this alternative, each individual vessel owner could see an increase in annual net revenues ranging from \$0 to potentially over \$100,000, depending upon the profitability of their business.

Another important economic benefit associated with the proposed action is that it could help to maintain the domestic swordfish and tuna PLL fishery at historical levels. All of the potentially affected vessels/permit holders originally qualified for the longline fishery in 1999, or received the necessary permits through transfer. If adopted, the proposed action could help the United States retain its historic swordfish quota allocation at ICCAT and sustain employment opportunities by maintaining the PLL fleet at historical levels. Maintaining a viable domestic PLL fishery is important, because it helps to demonstrate to other nations that a well-managed, environmentally-sound fishery can also be profitable. This could eventually provide an incentive for other nations to adopt similar management measures that are currently required of the U.S. PLL fleet such as circle hooks, careful release gears, and others.

A related potential impact associated with both alternatives is that changes to the value of an Atlantic tunas longline LAP could occur by changing the supply of available permits. The no action alternative would likely reduce the supply of available permits over time, thereby increasing the value. The proposed action could initially increase the supply, and thereby reduce the value. These impacts would be either positive or negative for small business entities, depending upon whether the Atlantic tunas longline LAP was being bought or sold.

There are no other significant alternatives for the renewal of Atlantic tunas longline permit, except for the two aforementioned alternatives. The proposed action achieves the objectives

of this rulemaking, provides benefits to small entities, and has few associated impacts because the proposed regulatory changes are more representative of the actual operational capabilities of the Atlantic tunas longline LAP renewal system.

Alternative 1 for attendance requirements at Atlantic Shark Identification Workshops (alternative 2.2.1 in the IRFA) is the no action alternative. All dealers intending to renew their Atlantic shark dealer permit would continue to be required to become certified at an Atlantic Shark Identification Workshop, or to have their proxies certified. Dealers with multiple locations would receive certificates for each location listed on their permit. Dealers opting not to become certified and to send a proxy would continue to be required to send a proxy for each location listed on their Atlantic shark dealer permit. Atlantic shark dealers would not be allowed to renew their permit without submitting either a dealer or proxy certificate for each location listed on their Atlantic shark dealer permit. Additionally, Atlantic shark dealers could not first receive shark products at a location that does not have a valid workshop certificate for that address on the premises.

There are approximately 56 Atlantic shark dealers with more than one location listed on their permit. These dealers have the choice of becoming certified themselves, or sending a proxy to the workshops for each location listed on a permit. As described in the Consolidated HMS FMP and its final rule (71 FR 58058, October 2, 2006), on an individual basis the costs incurred by dealers and/or proxies are those related to travel and the time required to attend the workshops, which result in out of pocket expenses and lost opportunity costs. Travel costs to attend these workshops vary, depending upon the distance that must be traveled. Daily opportunity costs for dealers are not currently known. Therefore, it is not possible to precisely quantify the costs associated with the no action alternative. At a minimum, the costs for a dealer attending a workshop include travel expenses and at least one day of lost opportunity costs. At a maximum, for dealers opting to send proxies for each location listed on their permit, the costs could include travel expenses for several proxies and several days of lost opportunity costs.

Alternative 2 for Atlantic Shark Identification Workshop attendance requirements (preferred alternative 2.2.2 in the IRFA) would specify that, upon permit renewal, a dealer must submit an

Atlantic Shark Identification Workshop certificate (dealer or proxy) for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, rather than from each location listed on their dealer permit. The requirement to display an Atlantic Shark Identification Workshop certificate would similarly only be required at locations listed on the dealer permit where sharks are first received. This would eliminate the need for a dealer to send a proxy to a workshop to obtain a certificate for a business location that does not first receive Atlantic shark products for the sole purpose of renewing their Atlantic shark dealer permit.

As mentioned above, there are currently 56 shark dealers with multiple locations listed on their permit which could be impacted by the proposed action. Of these, 12 Atlantic shark dealers have not currently been issued Atlantic Shark Identification Workshop certificates for all of the locations listed on their permit.

NMFS anticipates that the total costs (travel costs and opportunity costs) associated with proposed alternative 2 for Atlantic Shark Identification Workshop attendance requirements would be lower than those associated with the no action alternative, but only for those Atlantic shark dealers that: (1) opt to send a proxy (or proxies) to the workshop; (2) have multiple locations listed on their permit; and, (3) only first receive shark products at some of the locations listed on their Atlantic shark dealer permit. Costs would remain unchanged for shark dealers that do not meet these three criteria. For dealers that meet these criteria, the costs would be reduced by an amount equivalent to sending proxies for each location listed on the permit that do not first receive shark products. For example, if a dealer chooses to send proxies and has four locations listed on the permit, but only two of those locations first receive shark products, the costs would be reduced by the amount equivalent to sending two proxies to an Atlantic Shark Identification Workshop.

Alternative 2 would also require extensions of a dealer's business, such as trucks and other conveyances, to possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit. This requirement would allow trucks and other conveyances to be immediately identified as extensions of a NMFS certified place of business which is eligible to first receive Atlantic sharks. NMFS anticipates that this requirement would have minimal costs but could

improve the enforceability of existing Atlantic shark regulations.

There are no other significant alternatives for workshop attendance requirements except for these two alternatives. Administratively it is not currently feasible, for both technical and programmatic reasons, to modify the NMFS permits database to accommodate dealers having different locations where they first receive different species. The requirement to display an Atlantic Shark Identification Workshop certificate at all locations where sharks are first received would remain in effect. Therefore, the proposed alternative achieves the objective of improving the identification and reporting of shark species, while simultaneously lessening impacts on dealers. The proposed alternative will also improve the enforceability of existing Atlantic shark regulations by requiring extensions of a dealer's business, such as trucks and other conveyances, to possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Management, Penalties, Reporting and recordkeeping requirements.

Dated: April 7, 2008.

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, paragraph (m)(2) is revised to read as follows:

§ 635.4 Permits and fees.

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(m) * * *

(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. 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 of paragraph (l) of this section.

3. In § 635.8, paragraphs (b)(4), (b)(5), and (c)(4) are revised to read as follows:

§ 635.8 Workshops.

* * * * *

(b) * * *

(4) Dealers may send a proxy to the Atlantic shark identification workshops. If a dealer opts to send a proxy, the dealer must designate at least one proxy, including at least one proxy from each place of business listed on the dealer permit which first receives Atlantic shark by way of purchase, barter, or trade pursuant to § 635.4(g)(2). The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports as required under § 635.5. Only one certificate will be issued to each proxy. If a proxy is no longer employed by a place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must possess a valid Atlantic shark identification workshop certificate.

(5) A Federal Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for inspection a valid Atlantic shark identification workshop certificate at each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. For the purposes of this part, trucks and other conveyances are considered to be extensions of a dealer's place of business and must possess a copy of a valid dealer or proxy certificate issued to a place of business covered by the dealer permit. A copy of this certificate issued to the dealer or proxy must be included in the dealer's application package to obtain or renew a shark dealer permit. If multiple businesses are authorized to receive Atlantic sharks under the dealer's permit, a copy of the workshop certificate for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must be included in the shark dealer permit renewal application package.

(c) * * *

(4) An Atlantic shark dealer may not first receive, purchase, trade, or barter for Atlantic shark without a valid Atlantic shark identification workshop certificate. A valid Atlantic shark identification workshop certificate must be maintained on the premises of each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to § 635.4(g)(2) unless a valid Atlantic shark identification workshop certificate has been submitted with permit renewal application. If the dealer is not certified, the dealer must submit a copy of a proxy certificate for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade.

* * * * *

4. In § 635.21, paragraph (e)(4)(iii) is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(e) * * *

(4) * * *

(iii) A person aboard a vessel issued or required to be issued a valid directed

handgear LAP for Atlantic swordfish 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 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.

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5. In § 635.71, paragraph (d)(14) is revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(14) Receive, purchase, trade, or barter for Atlantic shark without making available for inspection, at each of the dealer's places of business listed on the dealer permit which first receive Atlantic sharks by way of purchase, barter, or trade, a valid Atlantic shark identification workshop certificate issued by NMFS in violation of § 635.8(b), except that trucks or other conveyances of the business must possess a copy of such certificate.

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