



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 160531477-6477-01]**

**RIN 0648-BG10**

**Atlantic Highly Migratory Species; Removal of Vessel Upgrade Restrictions for Swordfish Directed Limited Access and Atlantic Tunas Longline Category Permits**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would remove vessel upgrading restrictions for vessels issued swordfish directed and Atlantic tunas Longline category limited access permits (LAPs).

Currently, regulations allow for upgrading vessels or transferring permits to another vessel only if the vessel upgrade or permit transfer results in an increase of no more than 35 percent in length overall, gross registered tonnage, and net tonnage, as measured relative to the baseline vessel specifications (i.e., the specifications of the vessel first issued an HMS LAP). The proposed rule eliminates these restrictions on upgrades and permit transfers. This action could affect vessel owners issued swordfish directed and Atlantic tunas Longline category LAPs and fishing in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. Swordfish handgear LAP upgrade restrictions are not being addressed in this proposed rule.

**DATES:** Written comments must be received by [*insert date 60 days after date of publication in the FEDERAL REGISTER*]. An operator-assisted, public conference call and webinar will be held on August 23, 2016, from 2:30 p.m. to 4:30 p.m., EST.

**ADDRESSES:** The conference call information is phone number 888-843-6165; participant passcode 6512640. Participants are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by public comment. To join the webinar go to:

<https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=e7bad02475e6061ff9227fb0842ccf332>; meeting number: 998 920 078; event password: NOAA. Participants that have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar.

You may submit comments on this document, identified by NOAA-NMFS-2016-0087, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0087](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0087), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Margo Schulze-Haugen, NMFS/SF1, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address,

etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Presentation materials and copies of the supporting documents are available from the HMS Management Division website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Steve Durkee by phone at 202-670-6637 or Rick Pearson by phone at 727-824-5399.

**FOR FURTHER INFORMATION CONTACT:** Steve Durkee by phone at 202-670-6637 or Rick Pearson by phone at 727-824-5399.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The U.S. Atlantic swordfish and tuna fisheries are managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

In 1999, the National Marine Fisheries Service (NMFS) issued initial LAPs in the Atlantic swordfish and shark fisheries (64 FR 29090, March 28, 1999). To be eligible to fish with pelagic longline gear, a vessel had to be issued a swordfish directed or incidental LAP, a shark directed or incidental LAP, and an Atlantic tunas Longline category permit. After initial issuance of these permits, no new permits were issued by NMFS, but permits could be

transferred to other vessels. Swordfish and shark directed LAPs included restrictions on vessel upgrading and permit transfers. Vessel upgrades and permit transfers were allowed only if the upgrade or permit transfer to another vessel did not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage relative to the respective specifications of the first vessel issued the initial LAP (the baseline vessel). Additionally, vessels could only be upgraded one time. These vessel upgrading restrictions were put into place to limit capacity in the swordfish fishery and to be consistent with the New England and Mid-Atlantic Fishery Management Council's permit policies at the time. Incidental LAPs for these species did not have vessel upgrading restrictions. Upgrading restrictions for Atlantic tunas Longline category LAPs were not explicitly implemented in the 1999 rule. As a practical effect, Atlantic tunas Longline category LAPs were limited by the same upgrading restrictions as the swordfish and shark directed permits due to the requirement to hold all three permits when fishing with pelagic longline gear.

On June 7, 2007 (72 FR 31688), NMFS issued a final rule amending the highly migratory species (HMS) fishery regulations to provide additional opportunities for U.S. vessels to more fully utilize the North Atlantic swordfish quota, recognizing the improved status of the species. The ICCAT Standing Committee on Research and Statistics (SCRS) had completed a stock assessment for North Atlantic swordfish in October 2006 indicating that the North Atlantic swordfish biomass had improved, possibly due to strong recruitment in the late 1990s combined with reductions in reported catch since then. The SCRS estimated that the stock biomass at the beginning of 2006 ( $B_{2006}$ ) was at 99 percent of the biomass necessary to produce maximum sustainable yield ( $B_{msy}$ ), and the 2005 fishing mortality rate ( $F_{2005}$ ) was estimated to be 0.86 times the fishing mortality rate at maximum sustainable yield ( $F_{msy}$ ). The 2007 action modified

limited access vessel upgrading and permit transfer restrictions for vessels that were concurrently issued, or were eligible to renew, directed or incidental swordfish, directed or incidental shark, and Atlantic tunas Longline category LAPs (i.e., vessels that were eligible to fish with pelagic longline gear). The rule also clarified that Atlantic tunas Longline category LAPs were subject to the same vessel upgrade restrictions as swordfish and shark directed LAPs. These measures allowed eligible vessel owners to upgrade their vessels by 35 percent in size (length overall, gross registered tonnage, and net tonnage) relative to the specifications of the baseline vessel, and removed upgrade limits on horsepower. Additionally, these permits could be upgraded more than once, provided that the new maximum upgrade limits were not exceeded.

NMFS now is considering removing these vessel upgrading restrictions for vessels issued swordfish directed and Atlantic tunas Longline category LAPs. Under the current regulatory framework and given the now rebuilt status of the North Atlantic swordfish stock, these restrictions have the effect of reducing flexibility in the pelagic longline fishery for persons interested in entering the fishery, purchasing a new vessel, or upgrading their existing vessel. Currently, a new entrant to the fishery must obtain an available permit with an associated maximum upgrade limit that accommodates his vessel size. This can limit and complicate the permit transfer as the owner searches for a permit suitable to the vessel. For a vessel owner who is already issued a swordfish directed and/or Atlantic tunas Longline category LAP that wants to purchase a new vessel or enlarge an existing vessel, the new or upgraded vessel may not exceed the permit's maximum vessel upgrading limit. This can limit and complicate the permit holder's purchasing options. Because there are usually only a small number of swordfish directed and Atlantic tunas Longline permits available, it is often difficult to find a permit that accommodates the target vessel size. NMFS also has heard from swordfish and tuna LAP permit holders that

the vessel upgrading restrictions restrict their ability to transfer permits to newer vessels, which could have greater capacity, and address safety issues that exist with older vessels. For these reasons, and those discussed below, NMFS is proposing to remove vessel upgrading restrictions for swordfish directed and Atlantic tunas Longline LAPs.

Since implementing the vessel upgrade requirements in 1999 and modifying them in 2007, several important things have changed in the Atlantic HMS pelagic longline fishery. First, there are fewer swordfish permit holders. From the mid-to-late 1990s, more than 2,000 commercial open access swordfish permits were issued annually, and the pelagic longline fleet had become overcapitalized. The directed swordfish fishery was closed temporarily in 1995, and again in 1997, due to quota overages, and the swordfish stock was overfished ( $B/B_{msy} = 0.715$ ) with overfishing occurring ( $F/F_{msy} = 1.169$ ). Also in 1999, ICCAT adopted an international rebuilding plan for North Atlantic swordfish (ICCAT Recommendation 99-02) and passed a resolution to examine time/area closures and gear modification measures to reduce catches of undersized swordfish (Res. 99-04). Thus, in 1999, NMFS was particularly concerned about ensuring that pelagic longline fishing effort and fleet capacity were commensurate with the available swordfish quota, and the vessel upgrading restrictions were part of NMFS' management strategy to reduce capacity. That situation does not exist today. Fleet capacity has been reduced through the successful application of the initial LAP qualification criteria and attrition over time. In 1998, prior to the implementation of upgrade restrictions, 233 pelagic longline vessels among the 2,000 permit holders landed swordfish and thus were considered "active." The number of such vessels dropped to a low of 102 in 2006 and has remained between 109 and 122 vessels since then. Similarly, as of December 30, 1999, approximately 451 directed and incidental swordfish LAPs had been issued. By 2015, permit numbers had been reduced to

260 directed and incidental swordfish LAPs. Permit numbers are expected to remain at approximately these levels because no new LAPs are being issued.

Second, other requirements implemented since 1999, such as those designed to reduce bycatch in the pelagic longline fishery (e.g., closed areas, bait requirements, individual bluefin tuna quotas, and gear restrictions), have also limited fishing effort. The directed North Atlantic swordfish quota has not been exceeded in almost 20 years and, in fact, has been underharvested for a number of years.

Third, during this same time period, the stock status of north Atlantic swordfish has significantly improved. In 2009, ICCAT declared that the stock has been fully rebuilt. Using domestic stock status thresholds, NMFS has also declared that the north Atlantic swordfish stock is not overfished and that overfishing is not occurring.

In addition to limiting capacity in the HMS pelagic longline fishery, a secondary goal for implementing the specific swordfish directed and Atlantic tunas Longline vessel upgrade limits adopted in 1999 was to be consistent with similar regulations previously established by the New England and Mid-Atlantic Fishery Management Councils (Councils). In August 2015, the Councils removed gross registered and net tonnage limits (80 FR 51754) so that only length and horsepower limits remain in effect. Because this HMS action would remove all upgrade restrictions for vessels issued swordfish directed and Atlantic tunas Longline category LAPs, only the Council regulations would limit vessel upgrading for vessels issued LAPs for both Council-managed species and HMS. Thus, there would be no conflict between Council and HMS vessel upgrade restrictions. This action would simplify compliance for dually permitted vessels and provide greater flexibility for HMS permitted vessels.

The overall reduction in pelagic longline fleet capacity, in combination with the totality of effort controls implemented since 1999, sufficiently limits the fishery's capacity. Vessel upgrading and related permit transfer restrictions are no longer necessary or relevant for the Atlantic HMS pelagic longline fishery at this time. Thus, this proposed rule would remove all upgrading restrictions for vessels issued swordfish directed and Atlantic tunas Longline category LAPs. Although limited in scope, this action would ease a barrier to entry in the pelagic longline fishery, facilitate limited access permit transfers, provide increased business flexibility, and help vessel owners address safety issues.

The proposed action would provide more flexibility for current permit holders by eliminating the upgrading restrictions for swordfish directed and Atlantic tunas Longline category LAP permit holders. Eliminating vessel upgrading restrictions would have short- and long-term minor beneficial socioeconomic impacts, since it would allow fishermen to buy, sell, or transfer swordfish directed and Atlantic tunas Longline category LAPs without concerns about exceeding the maximum upgrade limit for the permits.

Removing the upgrading restrictions is not expected to affect the number of swordfish and tunas being landed by vessels, as these amounts are determined by established quotas and effort controls (including, for example, individual vessel quotas for bluefin tuna) not the size of the vessel. Thus, this action is expected to have no ecological impacts and would not result in additional interactions with protected resources, given the other restrictions on the Atlantic HMS pelagic longline fishery.

### **Request for Comments**

NMFS is requesting comments on any of the measures or analyses described in this proposed rule. NMFS is specifically requesting comments on its decision to certify that the

proposed rule would not have a significant economic impact on a substantial number of small entities and on the analysis below that supports that decision and on our assessment that relieving the restrictions would have no ecological impacts. During the comment period, NMFS will hold one conference call and webinar for this proposed rule. The conference call and webinar will be held on August 23, 2016, from 2:30 – 4:30pm EST. Please see the **DATES** and **ADDRESSES** headings for more information.

The public is reminded that NMFS expects participants on phone conferences to conduct themselves appropriately. At the beginning of the conference call, a representative of NMFS will explain the ground rules (e.g., all comments are to be directed to the agency on the proposed action; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; attendees may not interrupt one another; etc.). NMFS representative(s) will structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and those that do not may be removed from the conference call.

### **Classification**

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, the Atlantic Tuna Convention 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.

NMFS has made a preliminary determination that this action qualifies to be categorically excluded from the requirement to prepare an environmental assessment in accordance with NMFS' Environmental Review Procedures for Implementing the National Environmental Policy Act (NOAA Administrative Order 216-6), subject to further consideration after public comment. This action falls within the scope of effects already analyzed in the Final Environmental Impact Statement (EIS) prepared for the 2006 Consolidated Atlantic HMS FMP, the 2012 Environmental Assessment prepared for the rulemaking on North and South Atlantic Swordfish Quotas and Management Measures (77 FR 45273, July 31, 2012), and the Final EIS for Amendment 7 to the 2006 Consolidated HMS FMP. Section 6.03a.3.(b)(2) of NOAA Administrative Order 216-6 specifies that certain actions may be categorically excluded from further NEPA analysis including minor changes to a management plan when those effects have already been analyzed and additional effects are not expected. This action will have no additional effects that were not already analyzed, and the action is not precedent-setting or controversial. It would not affect the number of swordfish and tunas being landed by vessels and would not result in additional interactions with protected resources, as these amounts are determined by the established quotas and effort controls, not the size of the vessel, and the effects of those established quotas and effort controls have already been analyzed.

NMFS has determined that this proposed rule will have no effects on any coastal use or resource, and a negative determination pursuant to 15 CFR 930.35 is not required. Therefore, pursuant to 15 CFR 930.33(a)(2), coordination with appropriate state agencies under section 307 of the Coastal Zone Management Act (CZMA) is not required. No changes to the human environment are anticipated because removing the vessel upgrading restrictions would not affect

the number of swordfish and tunas being landed by vessels, as these amounts are determined by the established quotas and effort controls, not the size of the vessel.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities under section 605(b) of the Regulatory Flexibility Act (RFA).

The U.S. Atlantic swordfish and tuna fisheries are managed under the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. As discussed above, the purpose of this proposed rule is to remove vessel upgrading restrictions for vessels issued swordfish directed and Atlantic tunas Longline category LAPs to ease a barrier to entry in the pelagic longline fishery, facilitate limited access permit transfers, provide increased business flexibility, and help vessel owners address safety issues.

Section 603(b)(3) of the Regulatory Flexibility Act requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Under SBA's regulations, an agency may develop its own industry-specific size standards after consultation with the SBA Office of Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards,

but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for RFA compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the SBA's current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

NMFS considers all HMS pelagic longline permit holders to be small entities because these vessels have reported annual gross receipts of less than \$11 million for commercial fishing. NMFS has determined that this proposed rule would apply to the 280 permit holders that were issued Atlantic tunas Longline category LAPs in 2015, since these permit holders also already possess the required swordfish directed or incidental permits to fish with pelagic longline gear.

The economic effects of this proposed rule to remove vessel upgrading restrictions for vessels issued swordfish directed and Atlantic tunas Longline category LAPs would likely not result in any significant adverse impacts on the 280 permit holders. The removal of vessel upgrading restrictions would reduce a regulatory burden that prevents fishermen from upgrading their vessels beyond established limits due to an outdated restriction. It would not result in any short-term costs to these small entities. This proposed rule would allow these permit holders to freely upgrade their vessels without being constrained by the length overall, gross registered tonnage, and net tonnage limits currently specified on their permits. In the short-term, it is likely

that only a few permit holders will opt to invest in new vessels or vessel upgrades based on past experience with these kinds of requests. Those who invest in new vessels or upgrades in the short-term would potentially face lower transaction costs, since they would not have to potentially search for and acquire permits with higher upgrade capabilities. In addition, new entrants in the fishery would have more options in acquiring permits, since they would not be limited by vessel size. Current permit holders with permits with high length overall, gross registered tonnage, and net tonnage baselines might face slightly lower demand for their permits, and thus reduced value of their permits under this proposed rule because these permits can currently be transferred to more, and larger, vessels than permits with lower baseline specifications. However, since the implementation of Individual Bluefin Quota (IBQ) program under Amendment 7 to the 2006 Consolidated HMS FMP, much of the economic value of the swordfish directed and Atlantic tunas Longline category permit value has shifted from these permits to the actual IBQ shares bundled with those permits, because IBQ allocation is now required to fish with pelagic longline gear. Therefore, the likely economic impact on permit values of this proposed rule to remove vessel upgrade restrictions is likely very limited. In the long-term, removing the upgrading restrictions would allow greater flexibility for permit holders to upgrade their vessels and address safety issues. The removal of upgrading restrictions is not expected to result in disproportionate adverse effects on pelagic longline fishing operations of different sizes, and is actually likely to help smaller vessel owners slightly more than owners of larger vessels because they are more likely to have lower vessel upgrade limits associated with their permits. Overall, this proposed rule would likely only result in some minor positive impacts on small entity profitability.

This action is not expected to result in a significant economic impact on the small entities currently subject to the vessel upgrading restrictions. Although limited in scope, this action would ease a barrier to entry in the pelagic longline fishery, facilitate limited access permit transfers, provide increased business flexibility, and help vessel owners address safety issues. Therefore, removing vessel upgrading restrictions for vessels issued swordfish directed and Atlantic tunas Longline category LAPs will not have a significant impact on a substantial number of small entities. As a result, no initial regulatory flexibility analysis is required, and none has been prepared.

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

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

Dated: July 21, 2016.

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Samuel D. Rauch III,

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

For reasons set out in the preamble, NMFS proposes to amend 50 CFR part 635 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, revise paragraphs (l)(2)(i), (l)(2)(ii) introductory text, (l)(2)(ii)(B), and (l)(2)(ii)(C) to read as follows:

**§ 635.4 Permits and fees.**

\* \* \* \* \*

(1) \* \* \*

(2) \* \* \*

(i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (l)(2)(ii) of this section, as applicable, and to the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner may transfer a shark or swordfish LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear LAPs for swordfish may be transferred to another vessel or to another person but only for use with handgear and subject to the upgrading restrictions in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section. Shark directed and incidental LAPs, swordfish directed and incidental LAPs, and Atlantic Tunas Longline category permits are not subject to the upgrading requirements specified in paragraph (l)(2)(ii) of this section. Shark and swordfish incidental LAPs are not subject to the ownership requirements specified in paragraph (l)(2)(iii) of this section.

(ii) An owner may upgrade a vessel with a swordfish handgear LAP, or transfer such permit to another vessel or to another person, and be eligible to retain or renew such permit only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications.

\* \* \* \* \*

(B) Subsequent to the issuance of a swordfish handgear limited access permit, the vessel's horsepower may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the baseline specifications of the vessel initially issued the LAP.

(C) Subsequent to the issuance of a swordfish handgear limited access permit, the vessel's length overall, gross registered tonnage, and net tonnage may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. An increase in any of these three specifications of vessel size may not exceed 10 percent of the baseline specifications of the vessel initially issued the LAP. This type of upgrade may be done separately from an engine horsepower upgrade.

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