



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**Docket No. 170901859-7999-01**

**RIN 0648-BH19**

**Atlantic Highly Migratory Species; Charter/Headboat Permit Commercial Sale Provision**

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

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

**SUMMARY:** This proposed rule would make HMS Charter/Headboat permits a non-commercial category and create a separate regulatory provision for the commercial sale of Atlantic highly migratory species (HMS) by HMS Charter/Headboat permit holders. Currently, all vessels issued an HMS Charter/Headboat permit could be categorized as a commercial fishing vessel and subject to United States Coast Guard (USCG) commercial fishing vessel safety requirements if they also possess a state commercial sale permit, regardless of whether the permit holder engages or intends to engage in commercial fishing. Under the proposed rule, HMS Charter/Headboat permit holders would be prohibited from selling Atlantic tunas or swordfish unless they obtain a “commercial sale” endorsement for their permit. This proposed rule would clarify which HMS Charter/Headboat permitted vessels are properly categorized as commercial fishing vessels. This action would be administrative in nature and would not affect fishing practices or result in any significant environmental or economic impacts.

This proposed rule has a 15-day comment period. The abbreviated comment period is necessary to implement any management changes before January 1, 2018 to ensure all HMS charter/headboat vessels are appropriately categorized as commercial or non-commercial upon initial application or renewal of 2018 HMS Charter/Headboat permits. We do not anticipate the proposal to be controversial or to generate significant public comment and believe that a 15-day comment period will be sufficient to attract any substantive public input.

**DATES:** Written comments must be received by [*insert date 15 days after date of publication in the FEDERAL REGISTER*]. An operator-assisted, public conference call and webinar will be held on November 1, 2017, from 2:00 p.m. to 4:00 p.m., EST.

**ADDRESSES:** The conference call information is phone number 1 (888) 664-9965; participant passcode 5355311. Participants are strongly encouraged to log/dial in fifteen minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by an opportunity for public comment. To join the webinar go to:

*<https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=efb2b4e48c0c4b75f50900b90743b7a18>*, 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-2017-0124, 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-2017-0124](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0124)*, 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, National Marine Fisheries Service, 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). Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the HMS Management Division by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-7285.

Presentation materials and copies of the supporting documents—including the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments and associated documents—are available from the HMS Management Division website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Dianne Stephan by phone at 978-281-9260. **FOR FURTHER INFORMATION CONTACT:** Dianne Stephan or Tobey Curtis by phone at 978-281-9260, or Steve Durkee by phone at 202-670-6637.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Atlantic HMS regulations at 50 CFR 635.4(b) require that charter/headboat vessels (i.e., vessels taking fee-paying passengers) used to fish for, take, retain, or possess Atlantic HMS, must obtain an HMS Charter/Headboat permit. In addition to carrying paying passengers, the

permit also allows charter/headboat fishermen to diversify their operations by fishing commercially for Atlantic tunas and swordfish. They may also sell sharks if they have a commercial shark permit in addition to the Charter/Headboat permit. Relatively few permit holders use the commercial sale provision. From 2012-2016, an annual average of only seven percent of HMS Charter/Headboat permit holders sold any tuna or swordfish.

Legislation and United States Coast Guard (USCG) commercial fishing vessel safety policies and regulatory interpretation may result in an increased compliance burden for HMS Charter/Headboat permitted vessels. Commercial fishing vessel safety provisions contained in the Coast Guard Authorization Act of 2010 (CGAA) and the Coast Guard and Maritime Transportation Act of 2012 were the subject of a Marine Safety Information Bulletin (MSIB 12-15) issued by the USCG on October 20, 2015. MSIB 12-15 clarified that the law would require mandatory dockside safety exams to a broader population of commercial fishing vessels. As clarified in the notice, that broader community included HMS Charter/Headboat vessels that were authorized by the permit to sell fish commercially (e.g., all Charter/Headboat vessels) who also possessed a state commercial sale permit. The mandatory safety exam includes a check for required commercial fishing vessel safety equipment such as life rafts, emergency beacons, and survival suits, and other requirements found in 46 CFR Part 28. Outfitting a vessel with these items comes at a substantial cost. Mandatory dockside safety exams for vessels operating beyond three nautical miles from the baseline under this program began October 15, 2015.

The mandatory safety requirements have been difficult to enforce pending a more effective way to identify which HMS Charter/Headboat permit holders engage in commercial fishing and are therefore subject to the requirements. After receiving questions about applicability from NMFS and the regulated community, on July 10, 2017, the USCG issued

Marine Safety Information Bulletin (MSIB 008-17) in an attempt to clarify the applicability of commercial fishing vessel safety requirements for vessels with HMS permits, including HMS Charter/Headboat permits. USCG regulations at 46 CFR 28.50 define a commercial fishing vessel as a vessel that commercially engages in the catching, taking, or harvesting of fish, or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish. According to the MSIB 008-17, if an individual has an HMS Charter/Headboat permit (which allows commercial sale) and a state permit to sell catch, the vessel is considered subject to commercial fishing vessel safety regulations.

Many HMS Charter/Headboat operators that neither sell, nor intend to sell, their catch but hold a permit to sell have thus found that the USCG policy identifies their operations as a “commercial fishing vessel,” and requires them to adhere to USCG commercial fishing vessel safety requirements. For example, even small charter vessels (i.e., less than 20 feet in length) operating in the warm waters of the Gulf of Mexico and with no intent to sell HMS, may be required under the USCG regulations to carry an inflatable life raft that can cost approximately \$1,750. In addition to the cost burden, a vessel of this size has minimal space to store such gear. These smaller HMS Charter/Headboat permitted vessels were previously subject to the USCG safety regulations for uninspected passenger vessels of less than 100 gross tons and carrying six or less passengers, which are less extensive and less costly.

In late 2016 and early 2017, NMFS and the USCG staff informally discussed how to more effectively categorize HMS charter/headboat vessels under USCG regulations. On October 6, 2017, the USCG formally reviewed this proposed rule and concurred with the approach to provide clarity on the applicability on their requirements. The HMS Advisory Panel discussed this issue at length at its May and September 2017 meetings. Many HMS Advisory Panel

members, including commercial, recreational, and council/state representatives, supported creating a separate regulatory provision for charter/headboat vessels that intend to sell HMS and to thus specify that other such vessels were not engaged in commercial sale and not subject to expensive USCG commercial vessel compliance obligations. Panel members stated that creating a separate sale provision would support more appropriate application and enforcement of USCG commercial fishing vessel safety requirements in the Atlantic HMS Charter/Headboat fishery, and would better clarify for permit holders which USCG regulations apply to their vessels and fishing operations.

*Proposed Action*

This rule proposes to create a “commercial sale” endorsement on the existing HMS Charter/Headboat permit. Under the proposed rule, HMS Charter/Headboat permit holders would be prohibited from selling any catch of HMS unless they first obtain a “commercial sale” endorsement on their permit. Only those HMS Charter/Headboat permit holders with the endorsement would be permitted to sell Atlantic tunas or swordfish or sharks if they also have the additionally required commercial shark permit.

This proposed rule clarifies that any HMS Charter/Headboat vessel that selects this commercial sale endorsement would be categorized as a commercial fishing vessel under USCG criteria, and therefore subject to USCG commercial fishing vessel safety requirements. Those vessels issued an HMS Charter/Headboat permit without a “commercial sale” endorsement would not be categorized as a commercial fishing vessel and would not be subject to the USCG commercial fishing vessel safety requirements. HMS Charter/Headboat permit holders with the commercial sale endorsement selling a tuna or swordfish must adhere to the applicable Atlantic Tunas General Category or General Commercial Swordfish permit possession limits and

restrictions, and the landings would be applied against the appropriate commercial quota. HMS Charter/Headboat permit holders that sell or intend to sell sharks must also obtain the commercial sale endorsement on their permit as well as a commercial shark permit. This proposed rule would only change the permit category under which certain vessels are fishing. It would not affect quotas, gear types, or time/area restrictions, and neither increase or decrease fishing effort or affect fishing timing nor implement other measures that would potentially have any environmental impacts or effects.

#### *Request for Comments*

NMFS is requesting comments on the alternatives and analyses described in this proposed rule, Initial Regulatory Flexibility Act Analysis (IRFA) and Regulatory Impact Review (RIR). Comments may be submitted via <http://www.regulations.gov>, mail, or fax. Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). NMFS solicits comments on this proposed rule by [*insert date 15 days after date of publication in the FEDERAL REGISTER*] (see **DATES** and **ADDRESSES**).

#### *Public Hearings*

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax and comments may also be submitted at a public hearing. During the comment period, NMFS will hold one webinar conference call for this proposed rule (see **ADDRESSES**).

#### **Classification**

Pursuant to the Magnuson-Stevens Fishery Management and Conservation (Magnuson-Stevens) Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, Atlantic Tunas 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.

*Paperwork Reduction Act (PRA)*

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been submitted to OMB under control number (0648-0327). Public reporting burden for HMS Charter/Headboat permit applications initial response is estimated to average 30 minutes and renewal by telephone or web is estimated to average 6 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 this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to 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 PRA, unless that collection of information displays a currently valid OMB Control Number.

For the reasons described in the preamble, this proposed rule is expected to be deregulatory under Executive Order 13771.

*Administrative Procedure Act (APA)*

This proposed rule has a 15-day comment period. The abbreviated comment period is necessary to implement any management changes before January 1, 2018 to ensure all HMS charter/headboat vessels are appropriately categorized as commercial or non-commercial upon

initial application or renewal of 2018 HMS Charter/Headboat permits. This will avoid additional administrative burden on the agency and the regulated community that would result from a later implementation date, which would require those vessel owners needing the commercial endorsement to engage in an additional process. We do not anticipate the proposal to be controversial or to generate significant public comment and believe that a 15-day comment period will be sufficient to attract any substantive public input.

#### *Regulatory Flexibility Act*

NMFS prepared an IRFA, 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 copy of this analysis is available from NMFS (see **ADDRESSES**). The following is a summary of the IRFA.

#### Description of the Reasons Why Action is Being Considered

A description of the action, why it is being considered, and the legal basis for this action are contained in the Background section of the preamble and in the **SUMMARY** of this proposed rule.

#### Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

Section 603(b)(3) of the RFA 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 for-hire charter/headboat businesses. For-hire charter/headboat business fit into the “Scenic and Sightseeing Transportation, Water” industry under NAICS code 487210. SBA has established that the small entity size standard for that industry is \$7.5 million in average annual receipts.

Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with 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. To utilize this provision, NMFS must publish such size standards in the Federal Register (FR), which NMFS did on December 29, 2015 (80 FR 81194, December 29, 2015). In this final rule effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes.

NMFS considers all HMS Charter/Headboat permit holders (3,594 as of October 2016) to be small entities because these vessels have reported annual gross receipts of less than \$11 million for commercial fishing or earn less than \$7.5 million from for-hire fishing trips.

NMFS has determined that this proposed rule would apply to the small businesses associated with the approximately seven percent of HMS Charter/Headboat permit holders that also commercially fish for swordfish and tuna. Based on the most recent number of permit holders, NMFS estimates that this proposed rule would apply to approximately 252 HMS Charter/Headboat vessel owners. NMFS has determined that this action would not likely directly affect any small organizations or small government jurisdictions defined under the RFA.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Would Be Subject to the Requirements of the Report or Record

Section 603(b)(4) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. This proposed rule would create a “commercial sale” endorsement for the HMS Charter/Headboat permit. Under the proposed rule, HMS Charter/Headboat permit holders would be prohibited from selling any catch of HMS unless they obtain a commercial sale endorsement on their permit. The commercial sale endorsement could be added to the Charter/Headboat permit at the time of the permit application or renewal, or anytime thereafter. Only Charter/Headboat permit holders with the endorsement would be allowed to sell HMS although they would not be obligated to sell any HMS. There would be no additional charge for the commercial sale endorsement above the cost of the HMS Charter/Headboat permit; the endorsement would add less than a minute more of labor effort to the normal HMS Charter/Headboat permit process. Those vessels issued an HMS Charter/Headboat permit with a “commercial sale” endorsement would be categorized as a commercial vessel for the purposes of USCG commercial fishing vessel safety requirement.

Identification of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict with the Proposed Rule

This proposed rule has been determined not to duplicate, overlap, or conflict with any Federal rules. This rule is being proposed to address changes in USCG commercial fishing vessel safety policies and regulatory interpretation that would result in an increased compliance burden for HMS Charter/Headboat permit holders due to the Coast Guard’s broader definition of commercial fishing vessels. This proposed rule would clarify which HMS charter/headboat vessels are truly operating as commercial fishing vessels versus those that neither sell, nor intend to sell, their catch, which includes the majority of charter/headboat vessels.

Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of the Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

NMFS considered four different alternatives to separate the commercial sale provision from the HMS Charter/Headboat permit, and thus relieve some HMS Charter/Headboat permit holders from the changes in USCG commercial fishing vessel safety requirements. Alternative 1, the status quo/no action alternative, would make no changes to current HMS regulations. Alternative 2, the preferred alternative, would create an endorsement for the HMS Charter/Headboat permit that allows commercial sale of Atlantic tunas and swordfish. Alternative 3 would remove the commercial sale provision of the HMS Charter/Headboat permit. Alternative 4 would create two separate HMS Charter/Headboat permits; one that allows commercial sale of Atlantic tunas and swordfish, and one that does not.

Under the “no action” Alternative 1, NMFS would maintain the current regulations regarding the Atlantic HMS Charter/Headboat permit. Under current regulations at 635.4(b), permit holders taking fee-paying passengers to fish for HMS (i.e. charter boats or headboats) must obtain the HMS Charter/Headboat permit. Since HMS Charter/Headboat permits allow the commercial sale of Atlantic tunas and swordfish, the vessels would now be subject to USCG commercial fishing vessel safety requirements, regardless of whether the permit holder intends to sell HMS. However, without a change to the HMS Charter/Headboat permit regulations, USCG will consider all HMS charter/headboat vessels as commercial fishing vessels that must adhere to the to USCG commercial fishing vessel safety requirements. HMS Charter/Headboat permitted vessels were previously subject to the USCG safety regulations for uninspected passenger

vessels of less than 100 gross tons and carrying six or less passengers, which are less extensive and less costly.

Under the USCG commercial fishing vessel safety requirements, many Atlantic HMS charter/headboats would have to comply with four rule requirements for survival craft, record keeping, examinations and certificates of compliance, and classing of vessels.

The survival craft requirement establishes that all fishing industry vessels operating beyond 3 nautical miles must carry survival craft that will meet a new performance standard for primary lifesaving equipment. The use of “lifeboats or liferafts” are required for commercial vessels, whereas strictly for-hire vessels are only required to have “a survival craft that ensures that no part of an individual is immersed in water.” This means that lifefloats and buoyant apparatus will no longer be accepted as survival craft on any commercial fishing vessel operating beyond 3 nautical miles once the most recent USCG guidance is fully enforced. Some HMS Charter/Headboat permitted vessels would incorrectly be identified as commercial vessels, subject to the more stringent lifeboat/liferaft requirements. USCG estimates that the maximum initial cost of this requirement per vessel will be \$1,740 and have a recurring annual cost of \$300. The records provision requires the individual in charge of a vessel operating beyond 3 nautical miles to maintain a record of lifesaving and fire equipment maintenance. It will be incumbent upon the master/individual in charge of the vessel to maintain these records onboard. The USCG estimates this record keeping requirement will cost \$18 annually per vessel. The examinations and certificates of compliance provision requires a dockside safety examination at least once every 5 years for vessels, such as HMS charter/headboats that engage in commercial fishing, operating beyond 3 nautical miles with the first exam statutorily required by October 15, 2015. A “certificate of compliance” will be issued to a vessel successfully

completing the exam. Voluntary exams will continue to be promoted for vessels operating inside 3 nautical miles. USCG estimates that the maximum initial cost of this requirement per vessel will be \$600 and have a recurring cost of \$600.

The classing of vessels provision requires the survey and classification of a fishing vessel that is at least 50 feet overall in length, was built after July 1, 2013, and operates beyond 3 nautical miles. It is unlikely that this requirement will impact many Atlantic HMS charter/headboat vessels because the vessels are typically less than 50 feet overall in length.

In sum, all 3,594 Atlantic HMS Charter/Headboat permit holders would face an initial per vessel cost of \$2,358. The annual cost savings per vessel in subsequent years would be approximately \$300 for the survival craft, \$18 for record keeping, and \$120 (\$600/5 yrs) for examinations and certificates of completion. The total annual recurring cost saving per vessel would be \$438 for these three requirements. These costs could be higher for some individual vessels that are too small or have too little storage space for the survival craft requirement because those vessels might require extensive modifications to accommodate the storage space for the gear.

Under Alternative 2, the preferred alternative, NMFS would modify the regulations so that the HMS Charter/Headboat permit alone does not allow commercial sale and would also create an endorsement for the HMS Charter/Headboat permit that allows commercial sale of Atlantic tunas and swordfish. Currently, charter/headboat vessels are able, though not obligated, to sell swordfish and tunas with an HMS Charter/Headboat permit. Consequently, vessels that hold an HMS Charter/Headboat permit are categorized as commercial fishing vessels subject to USCG commercial vessel fishing safety requirements if they also possess a state commercial sale permit, regardless of whether the permit holder engages or intends to sell HMS. Under

Alternative 2, NMFS would create a “commercial sale” endorsement for the HMS Charter/Headboat permit. Under the proposed action, HMS Charter/Headboat permit holders would be prohibited from selling any catch of HMS unless they apply for a commercial sale endorsement to be added to their permit. The commercial sale endorsement could be added to the Charter/Headboat permit at the time of the permit application or renewal. Only charter/headboat vessels with the endorsement would be permitted to sell HMS although they would not be obligated to sell any HMS. Those vessels holding an HMS Charter/Headboat permit without a commercial sale endorsement would not be categorized as a commercial fishing vessel and would not be subject to the USCG commercial safety gear requirements. Those vessels that hold an HMS Charter/Headboat permit with a “commercial sale” endorsement would be categorized as a commercial vessel for the purposes of USCG commercial fishing safety requirements.

The cost savings associated with implementing a commercial endorsement option for Atlantic HMS Charter/Headboat permits would be that approximately 93 percent of the permit holders would not have to comply with the costs associated with the USCG commercial fishing vessel safety requirements, since Atlantic HMS Charter/Headboat permit holders would not be considered commercial fishing vessels unless they were issued the commercial endorsement. The reduced costs per vessel initially would be approximately \$1,740 for the survival craft, \$18 for record keeping, and \$600 for examinations and certificates of completion. The total initial costs saved per vessel would be \$2,358. The annual cost savings per vessel in subsequent years would be approximately \$300 for the survival craft, \$18 for record keeping, and \$120 (\$600/5 yrs) for examinations and certificates of completion. The total annual recurring cost saving per vessel would be \$438 for these three requirements. In addition to the reduced costs associated

with complying with the USCG commercial fishing vessel safety requirements for those HMS Charter/Headboat permit holders that do not intend to obtain the endorsement to fish commercially, most Atlantic HMS Charter/Headboat permit holders would have to do nothing different when obtaining their permit unless they want to commercially sell tunas or swordfish.

For the approximately 7 percent of Atlantic Charter/Headboat permit holders that want to obtain a commercial endorsement to continue selling tunas and swordfish in addition to complying with the USCG commercial fishing vessel safety requirements, they would need to obtain an endorsement for the commercial sale of Atlantic tunas and swordfish. HMS charter/headboat permit holders issued the commercial sale endorsement selling sharks must obtain a commercial shark permit in addition to an HMS Charter/Headboat permit. This would likely only add a minute or so to the time it takes to obtain the Atlantic HMS Charter/Headboat permit and it would not add to the cost of obtaining the permit. NMFS would incur some costs associated with altering the online permit application to accommodate the endorsement, along with some customer service changes.

Under Alternative 3, NMFS would remove the commercial sale provision of the HMS Charter/Headboat permit. Currently, charter/headboat vessels are able, though not obligated, to sell swordfish and tunas as a condition of the HMS Charter/Headboat permit and may sell sharks if they also have a commercial shark permit. Consequently, vessels that hold an HMS Charter/Headboat permit currently are being categorized by USCG as commercial fishing vessels and subject to USCG commercial fishing vessel safety requirements if they also hold a state commercial sale permit, regardless of whether the permit holder engages or intends to sell HMS. Under Alternative 3, NMFS would remove the provision that allows commercial sales under the HMS Charter/Headboat permit. Thus, holding an HMS Charter/Headboat permit would no

longer categorize a vessel as a commercial fishing vessel. charter/headboat vessel owners or operators that wish to engage in commercial sale of tunas and swordfish would instead need to obtain an Atlantic tunas General category and/or Swordfish General Commercial permit. The Atlantic Tunas General category and Swordfish General Commercial permits could be held in conjunction with the HMS Charter/Headboat permit. Those vessels with an HMS Charter/Headboat permit that do not intend to sell HMS and do not obtain an Atlantic Tunas General category, Swordfish General Commercial, or commercial shark permit would not be subject to USCG commercial fishing vessel safety requirements.

The benefits of Alternative 3 versus the No Action alternative would be identical to Alternative 2. Approximately 93 percent of the permit holders would not have to face the costs associated with the USCG commercial fishing safety requirements, since Atlantic HMS Charter/Headboat permit holders would not be considered commercial fishing. The reduced costs for the fleet would be approximately \$7880,436 initially, and then \$3,067,956 annually thereafter. The 7 percent that wish to engage in commercial sale of tunas and swordfish would instead need to obtain an Atlantic tunas General category and/or Swordfish General Commercial permit. This would cost them \$20 to obtain either the Atlantic Tunas General category permit or the Swordfish General Commercial permit. For the approximately 252 vessel owners that might obtain these \$20 permits, the total cost would be \$5,040 to \$10,080 annually depending on whether they obtain one or both permits. In addition, vessel owners may need to expend a bit more time to complete the application for these additional permits. NMFS would incur costs associated with the substantial permits site and customer service changes that would be required for this change. NMFS prefers Alternative 2 over Alternative 3 because a commercial sale endorsement requirement more closely matches current fishing practices and would minimize

disruptions. Currently, HMS Charter/Headboat permit holders can sell some HMS and Alternative 2 would allow them to continue by simply obtaining an endorsement on their Charter/Headboat permit. Alternative 3 would be more disruptive since it would require fishermen to obtain additional permits.

Under Alternative 4, NMFS would create two separate Atlantic HMS Charter/Headboat permits; one that allows commercial sale of Atlantic tunas and swordfish, and one that does not. Currently, charter/headboat vessels are able, though not obligated, to sell swordfish and tunas as a condition of the HMS Charter/Headboat permit. Consequently, vessels that hold an HMS Charter/Headboat permit could be categorized as commercial fishing vessels and subject to USCG commercial fishing vessel safety requirements, regardless of whether the permit holder engages or intends to sell HMS. Under Alternative 4, NMFS would create two separate HMS Charter/Headboat permits; one that would allow commercial sale of HMS, and one that would not. Those vessels holding an HMS Charter/Headboat permit that does not allow commercial sale would not be categorized as a commercial fishing vessel and would not be subject to the USCG commercial fishing vessel safety requirements. Those vessels that hold an HMS Charter/Headboat permit that allows commercial sale would be categorized as commercial vessels for the purposes of USCG commercial fishing vessel safety requirements.

The benefits of Alternative 4 versus the No Action alternative would be identical to those provided by Alternative 2. Approximately 93 percent of the permit holders would not have to face the costs associated with the USCG commercial fishing safety requirements, since Atlantic HMS Charter/Headboat permit holders would not be considered commercial fishing. The reduced costs for the fleet would be approximately \$7,880,436 initially, and then \$3,067,956 annually thereafter. Under this alternative, each of the 3,594 Atlantic HMS Charter/Headboat

permit holders would have to determine which type of Charter/Headboat permit they wish to obtain for the year, and all of charter/headboat vessel owners would have to learn the new permit process. Unlike Alternative 3, there would be no additional costs associated with obtaining a commercial permit, because under this alternative each would pick either the no-sale HMS Charter/Headboat permit or the commercial sale Charter/Headboat permit. NMFS would incur costs associated with the substantial permits site and customer service changes that would be required for this change. NMFS would need to develop new regulatory text to describe these two new permits and fishery participants would have to learn and adapt to these changes.

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

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

Dated: October 20, 2017.

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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, 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 § 635.2, add a new definition for “Charter/headboat commercial sale endorsement”

in alphabetical order to read as follows:

**§ 635.2 Definitions.**

\* \* \* \* \*

*Charter/headboat commercial sale endorsement* means an authorization added to an HMS Charter/Headboat permit that is required for vessels that sell or intend to sell Atlantic tunas, sharks, and swordfish, provided that all other requirements in this part are also met.

\* \* \* \* \*

3. In § 635.4,

(a) Revise paragraphs (a)(5), (d)(1), (d)(2), introductory text for paragraph (f), and paragraphs (f)(1), (f)(2), and (m)(2) and

(b) Add paragraph (b)(3).

The additions and revisions read as follows:

**§635.4 Permits and fees.**

\* \* \* \* \*

(a) \* \* \*

(5) *Display upon offloading.* Upon offloading of Atlantic HMS for sale, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat

permit with a commercial sale endorsement; 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).

\* \* \* \* \*

(b) \* \* \*

(3) The owner of a charter boat or headboat that intends to sell Atlantic tunas or swordfish must obtain a commercial sale endorsement for the vessel's HMS Charter/Headboat permit. The owner of a charter boat or headboat that intends to sell Atlantic sharks must obtain a commercial sale endorsement for the vessel's HMS Charter/Headboat permit and must also obtain any applicable Atlantic commercial shark permits. A vessel owner that has obtained an HMS Charter/Headboat permit without a commercial sale endorsement is prohibited from selling any Atlantic HMS.

\* \* \* \* \*

(d) \* \* \*

(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 with a commercial sale endorsement 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 permit with a commercial sale endorsement, or an HMS Commercial Caribbean Small Boat permit.

\* \* \* \* \*

(f) *Swordfish vessel permits.*

(1) Except as specified in paragraphs (n) and (o) of this section, the owner of a vessel of the United States used to fish for or take swordfish commercially from the management unit, or on which swordfish from the management unit are retained or possessed with an intention to sell, or sold must obtain, an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, or one of the following swordfish permits: A swordfish directed limited access permit, swordfish incidental limited access permit, swordfish handgear limited access permit, or a Swordfish General Commercial permit. These permits cannot be held in combination with each other on the same vessel, except that an HMS Charter/Headboat permit with a commercial sale endorsement may be held in combination with a swordfish handgear limited access permit on the same vessel. 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 the HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section (and only when on a non for-hire trip), the Swordfish General Commercial permit issued

under paragraph (f) of this section, a swordfish limited access permit issued consistent with paragraphs (l) and (m) of this section, or permits issued under paragraphs (n) and (o) of this section.

\* \* \* \* \*

(m) \* \* \*

(2) *Shark and swordfish permits.* A vessel owner must obtain the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section and/or a Federal commercial smoothhound permit issued under paragraph (e) of this section; or an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, if: The vessel is used to fish for or take sharks commercially from the management unit; sharks from the management unit are retained or possessed on the vessel with an intention to sell; or sharks from the management unit are sold from the vessel. A vessel owner must obtain the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, a Swordfish General Commercial permit issued under paragraph (f) of this section, an Incidental HMS Squid Trawl permit issued under paragraph (n) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, which authorizes a Charter/Headboat to fish commercially for swordfish on a non-for-hire trip subject to the retention limits at §635.24(b)(4) if: The vessel is used to fish for or take swordfish commercially from the management unit; swordfish from the management unit are retained or possessed on the vessel with an intention to sell; or swordfish from the management unit are sold from the vessel. The commercial retention and sale of swordfish from vessels issued an HMS Charter/Headboat permit with a commercial sale endorsement is

permissible only when the vessel is on a non for-hire trip. 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.

\* \* \* \* \*

4. In § 635.19, paragraph (d)(4) was revised at 82 FR 16506, April 4, 2017, effective January 1, 2018, and is further revised to read as follows:

**§ 635.19 Authorized gears.**

\* \* \* \* \*

(d) \* \* \*

(4) Persons on a vessel issued a permit with a shark endorsement under § 635.4 may possess a shark only if the shark was taken by rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit with a commercial sale endorsement (with or without a shark endorsement) and a Federal Atlantic commercial shark permit may possess sharks taken by rod and reel, handline, bandit gear, longline, or gillnet if the vessel is engaged in a non for-hire fishing trip and the commercial shark fishery is open pursuant to § 635.28(b).

\* \* \* \* \*

5. In § 635.22, revise the introductory text in paragraph (f), and paragraphs (f)(1) and (f)(2) to read as follows:

**§ 635.22 Recreational retention limits.**

\* \* \* \* \*

(f) *North Atlantic swordfish.* The recreational retention limits for North Atlantic swordfish apply to persons who fish in any manner, except to persons aboard a vessel that has

been issued an HMS Charter/Headboat permit with a commercial sale endorsement under § 635.4(b) and only when on a non for-hire trip, a directed, incidental or handgear limited access swordfish permit under § 635.4(e) and (f), a Swordfish General Commercial permit under § 635.4(f), an Incidental HMS Squid Trawl permit under § 635.4(n), or an HMS Commercial Caribbean Small boat permit under §635.4(o).

(1) When on a for-hire trip as defined at §635.2, vessels issued an HMS Charter/Headboat permit under §635.4(b), that are charter boats as defined under §600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to six North Atlantic swordfish per vessel per trip. When such vessels have been issued a commercial sale endorsement and are on a non for-hire trip, they must comply with the commercial retention limits for swordfish specified at § 635.24(b)(4).

(2) When on a for-hire trip as defined at §635.2, vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are headboats as defined under §600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to 15 North Atlantic swordfish per vessel per trip. When such vessels have been issued a commercial sale endorsement and are on a non for-hire trip, they may land no more than the commercial retention limits for swordfish specified at § 635.24(b)(4).

\* \* \* \* \*

6. In § 635.23, revise paragraph (c)(3) to read as follows:

**§ 635.23 Retention limits for bluefin tuna.**

\* \* \* \* \*

(c) \* \* \*

(3) When fishing other than in the Gulf of Mexico and when the fishery under the General category has not been closed under §635.28, a person aboard a vessel that has been issued an HMS Charter/Headboat permit with a commercial sale endorsement may fish under either the retention limits applicable to the General category specified in paragraphs (a)(2) and (a)(3) of this section or the retention limits applicable to the Angling category specified in paragraphs (b)(2) and (b)(3) of this section. The size category of the first BFT retained will determine the fishing category applicable to the vessel that day. A person aboard a vessel that has been issued an HMS Charter/Headboat without a commercial sale endorsement permit may fish only under the retention limits applicable to the Angling category.

\* \* \* \* \*

7. In § 635.24, revise the introductory text of paragraph (b)(4), and paragraph (b)(4)(ii) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(4) Persons aboard a vessel that has been issued a Swordfish General Commercial permit or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip) are subject to the regional swordfish retention limits specified at paragraph (b)(4)(iii), which may be adjusted during the fishing year based upon the inseason regional retention limit adjustment criteria identified in paragraph (b)(4)(iv) below.

\* \* \* \* \*

(ii) *Possession, retention, and landing restrictions.* Vessels that have been issued a Swordfish General Commercial permit or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip), as a condition of these permits, may not possess, retain, or land any more swordfish than is specified for the region in which the vessel is located.

\* \* \* \* \*

8. In § 635.27, revise paragraphs (a)(1)(i), (c)(1)(i)(A), and (c)(1)(i)(B) to read as follows:

**§ 635.27 Quotas.**

(a) \* \* \*

(1) \* \* \*

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit with a commercial sale endorsement has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold under the General category quota is 466.7 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

\* \* \* \* \*

(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 swordfish limited access permit, a swordfish handgear limited access permit, a HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial open access permit, or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip) has been issued or is required to have been 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 under harvests, 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 periods: one for January 1 through June 30, and the other for July 1 through December 31.

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental swordfish limited access permit, an incidental HMS Squid Trawl permit, an HMS Angling permit, or an HMS Charter/Headboat permit (and only when on a for-hire trip) has been issued, or a swordfish from the North Atlantic stock caught after the effective date of a closure of the directed fishery from a vessel for which a swordfish directed limited access permit, a swordfish handgear limited access permit, a HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial open access permit, or an HMS Charter/Headboat permit with a commercial sale endorsement (when on a non for-hire trip) has been issued, is counted against the incidental category quota. The annual incidental category quota is 300 mt dw for each fishing year.

\* \* \* \* \*

9. In § 635.31, revise paragraphs (a)(1) and (c)(6) 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 with a commercial sale endorsement; 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 and the appropriate category has not been closed, as specified at §635.28(a). However, no person may sell a bluefin tuna smaller than the large medium size class. Also, no large medium or giant bluefin tuna 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.

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

(6) A dealer issued a permit under this part may not first receive silky sharks, oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from an owner or operator of a fishing vessel with pelagic longline gear on board, or from the owner of a fishing vessel issued

both a HMS Charter/Headboat permit with a commercial sale endorsement and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

\* \* \* \* \*

10. In § 635.71, revise paragraph (a) and add paragraph (a)(62) to read as follows:

**§635.71 Prohibitions.**

(a) \* \* \*

(2) Fish for, catch, possess, retain, land, or sell Atlantic HMS without the appropriate valid vessel permit, LAP, EFP, scientific research permit, display permit, chartering permit, or shark research permit on board the vessel, as specified in §§635.4 and 635.32.

\* \* \* \* \*

(62) A vessel owner that has obtained an HMS Charter/Headboat permit without a commercial sale endorsement is prohibited from selling any Atlantic HMS.

\* \* \* \* \*

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