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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 200415-0113]**

**RIN 0648-BI09**

**Atlantic Highly Migratory Species; Proposed Rule to Modify North Atlantic Swordfish and Shark Retention Limits for Certain Permit Holders and Add Inseason Adjustment Authorization Criteria**

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

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

**SUMMARY:** NMFS is proposing to adjust the current regulations for North Atlantic swordfish and shark retention limits for certain permit holders in U.S. Atlantic and Caribbean waters. This action considers modifying swordfish retention limits for highly migratory species (HMS) Commercial Caribbean Small Boat permit holders, Swordfish General Commercial permit holders, and HMS Charter/Headboat permit holders with a commercial endorsement on a non-for hire (*i.e.*, commercial) trip and modifying shark retention limits for HMS Commercial Caribbean Small Boat permit holders. The action also considers adding regulatory criteria for inseason adjustment of swordfish and shark retention limits for the HMS Commercial Caribbean Small Boat permit. This proposed action would better align swordfish management measures established for HMS

Commercial Caribbean Small Boat permit holders under Amendment 4 with those established in Amendment 8 to the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) for Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial sale endorsement on a commercial trip. A commercial trip in this document is defined as HMS Charter/Headboat permit holders with a commercial sale endorsement on a non-for hire trip catching swordfish with the intent to sell their catch.

**DATES:** Written comments must be received by [*insert date 60 days after date of publication in the Federal Register*]. NMFS will hold 3 public hearings via conference calls and webinars for this proposed rule on May 19, 2020, May 27, 2020 and June 10, 2020, from 1:00 p.m. to 3:00 p.m. For specific locations, dates and times, see the

**SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2020-0057, 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-2020-0057](http://www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2020-0057), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *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 generally will 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).

NMFS will hold three public hearings via conference call/webinars on this proposed rule. For specific locations, dates and times, see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the supporting documents, including the draft Environmental Assessment (EA), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the 2006 Consolidated Atlantic HMS FMP and amendments are available from the HMS website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Nicolas Alvarado 727-824-5399.

**FOR FURTHER INFORMATION, CONTACT:** Nicolas Alvarado or Rick Pearson by phone at 727-824-5399, or Delisse Ortiz at 240-681-9037.

**SUPPLEMENTARY INFORMATION:** Atlantic HMS are managed under the dual authorities of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). NMFS published in the **Federal Register** (71 FR 59058, October 2, 2006) final regulations, effective November 1, 2006, implementing the 2006 Consolidated Atlantic HMS FMP, which details management measures for Atlantic HMS fisheries. The implementing regulations for the 2006 Consolidated Atlantic HMS FMP and its amendments are at 50 CFR part 635. This proposed rule considers management actions that would streamline

the regulations to align the retention limits for commercial swordfish permits established for HMS Commercial Caribbean Small Boat permit holders under Amendment 4 with those established in Amendment 8 to the 2006 Consolidated Atlantic HMS FMP for Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial sale endorsement on a non-for hire commercial trip.

### **Background**

A brief summary of the background of this proposed action is provided below. Additional information regarding Atlantic HMS management can be found in the Draft EA for this proposed action and the 2006 Consolidated Atlantic HMS FMP and its amendments, found online (see **ADDRESSES**).

Sharks have been managed by NMFS as delegated by the Secretary of Commerce since 1993 under the authority of the Magnuson-Stevens Act. NMFS implemented the FMP for Sharks of the Atlantic Ocean, which established three management complexes: large coastal sharks, small coastal sharks, and pelagic sharks (NMFS, 1993). This 1993 FMP implemented commercial quotas for large coastal sharks and pelagic sharks and established recreational retention limits for all sharks, consistent with the large coastal sharks rebuilding program. As a result of the 1996 amendments to the Magnuson-Stevens Act, NMFS implemented an FMP in 1999 that revised much of the management of Atlantic sharks, including establishing new commercial quotas, a commercial size limit, a new rebuilding plan for large coastal sharks, and a limited access fishing permit program for the commercial fishery. Between 1999 and 2008, NMFS changed many of the shark management measures, which included revising quotas, eliminating the

commercial minimum size, adjusting the recreational retention and size limits, establishing a time/area closure off the coast of North Carolina, establishing a mechanism for changing the species on the prohibited species list, requiring shark dealers to attend shark identification workshops, and requiring gillnet, bottom longline, and pelagic longline fishermen to attend workshops on the safe handling and release of protected resources and prohibited sharks.

The final rule for Amendment 2 to the 2006 Consolidated Atlantic HMS FMP (Amendment 2) (73 FR 35778, June 24, 2008; corrected 73 FR 40657, July 15, 2008) implemented management measures that included, but were not limited to, establishing rebuilding plans for porbeagle, dusky, and sandbar sharks consistent with stock assessments; implementing commercial quotas and retention limits consistent with stock assessment recommendations to prevent overfishing and rebuild overfished stocks; modifying recreational measures to reduce fishing mortality of overfished/overfishing stocks; modifying reporting requirements; requiring that all Atlantic sharks be offloaded with fins naturally attached; collecting shark life history information via the implementation of a shark research program; and implementing time/area closures recommended by the South Atlantic Fishery Management Council.

The final rule for Amendment 3 to the 2006 Consolidated Atlantic HMS FMP (Amendment 3) (75 FR 30483, June 1, 2010; corrected 75 FR 50715, August 17, 2010; updated effective date of Atlantic Smoothhound Shark Fishery Management Measures 76 FR 70064, November 10, 2011) implemented management measures that included, but were not limited to, rebuilding blacknose sharks and ending overfishing of blacknose and

shortfin mako shark. This amendment also added smoothhound sharks (smooth dogfish (*Mustelus canis*) and Florida smoothhound (*Mustelus norrisi*)) under NMFS management; created an open access commercial smoothhound permit and commercial smoothhound quota (715.5 metric tons (mt) dressed weight (dw)); required smoothhound sharks to be landed with fins naturally attached; required commercial smoothhound permit holders to sell their catch to a federally-permitted shark dealer; and delayed the smoothhound shark management measures until such time as the agency could implement the new permit, incorporate provisions of the Shark Conservation Act, and implement the findings of the Biological Opinion.

The final rule for Amendment 4 to the 2006 Consolidated Atlantic HMS FMP (Amendment 4) (77 FR 59842, October 1, 2012) implemented management measures that included, but were not limited to, creating the HMS Commercial Caribbean Small Boat permit for the traditional small-scale commercial handgear fishing fleet in the U.S. Caribbean region. This permit currently has a swordfish retention limit of two swordfish per trip (50 CFR 635.24(b)(3)). Current regulations do not allow for inseason modifications to this retention limit. In addition to implementing a swordfish retention limit, a shark retention limit was set at zero sharks per vessel per trip. Similar to the swordfish retention limit, the shark retention limit established by Amendment 4 can only be modified through framework regulatory procedures, see 50 CFR 635.34(b), which requires carrying out a rulemaking for a framework adjustment to adjust the limit.

The final rule for Amendment 6 to the 2006 Consolidated Atlantic HMS FMP (Amendment 6) (80 FR 50073, August 18, 2015) implemented management measures

that included, but were not limited to, establishing regional and sub-regional quotas for large coastal and small coastal sharks in the Atlantic and Gulf of Mexico, removing vessel upgrading restrictions for shark limited access permit holders, and increasing the large coastal shark retention limit for shark directed limited access permit holders to a maximum of 55 large coastal sharks other than sandbar sharks per trip with a default of 45 large coastal sharks other than sandbar sharks per trip.

The final rule for Amendment 8 to the 2006 Consolidated Atlantic HMS FMP (Amendment 8) (78 FR 52011, August 21, 2013) implemented management measures that included, but were not limited to, establishing additional opportunities for U.S. fishermen to harvest swordfish. Specifically, Amendment 8 established an open access Swordfish General Commercial permit with default retention limits set at two swordfish per vessel per trip for the U.S. Caribbean region, three swordfish per vessel per trip for the Northwest Atlantic and Gulf of Mexico regions, and zero swordfish per vessel per trip in the Florida Swordfish Management Area. These retention limits also apply to permit holders who hold an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non-for-hire trip). Amendment 8 also implemented regulations allowing NMFS to adjust these retention limits on an inseason basis between zero and six swordfish per vessel per trip (50 CFR 635.24(b)(4)(iv)). These retention limits also apply to permit holders who hold an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip). In order to provide additional opportunities for fishermen to catch the U.S. North Atlantic swordfish quota, and after considering the specified regulatory criteria, NMFS has consistently adjusted the

retention limits for the Swordfish General Commercial permit and the HMS Charter/Headboat permit when on a commercial trip upward from the default limits (two or three fish) to the maximum of six fish per vessel per trip in each of the past five years that the permit has been in existence in all areas except the Florida Swordfish Management Area, where the retention limit has remained at zero fish per vessel per trip.

The final rule for Amendment 9 to the 2006 Consolidated Atlantic HMS FMP (Amendment 9) (80 FR 73128, November 24, 2015) implemented management measures that included, but were not limited to, establishing an effective date for previously-adopted smoothhound shark management measures finalized in Amendment 3; adjusting the commercial quota for the smoothhound shark fishery based on recent stock assessments; implementing the smooth dogfish-specific provisions of the Shark Conservation Act (*i.e.*, all sharks landed from Federal waters in the United States must be landed with their fins naturally attached to the carcass, with limited exception for smooth dogfish); implementing the 2012 Shark Biological Opinion; and implementing Atlantic shark gillnet vessel monitoring system requirements. In March 2015, the Southeast Data, Assessment, and Review (SEDAR) 39 stock assessments for smoothhound sharks were completed. Notice of stock status determinations of no overfishing and not overfished for Atlantic smooth dogfish and Gulf of Mexico smoothhound sharks published on June 29, 2015 (80 FR 36974). These stock assessments provided information that could allow NMFS to establish scientifically-based quotas, and the final rule for Amendment 9 considered that new information and resulting quotas. Amendment 9 implemented a commercial quota for the smoothhound shark fishery in the Atlantic Region, and in the

Gulf of Mexico region, with no size or retention limit restrictions for smoothhound sharks.

In 2017, International Commission for the Conservation of Atlantic Tunas (ICCAT) Standing Committee on Research and Statistics (SCRS) reassessed North Atlantic swordfish and found that the stock remained not overfished and that overfishing was not occurring. SCRS also indicated that the North Atlantic swordfish stock has been rebuilt since at least 2013 (78 FR 12273, February 2, 2013). The United States has not fully harvested its swordfish quota in several years; therefore, there is a need to continue to provide additional opportunities for fishermen to catch the U.S. quota. NMFS has received comments from HMS Advisory Panel (AP) members at three HMS AP meetings (September 2017, March 2018, and September 2019) requesting that NMFS increase the current swordfish and shark retention limits for the HMS Commercial Caribbean Small Boat permit. Specifically, AP members have requested that NMFS increase the retention limit of the HMS Commercial Caribbean Small Boat permit from two to six swordfish per vessel per trip, similar to the current upper swordfish retention limit for the Swordfish General Commercial permit and HMS Charter/Headboat permit with a commercial sale endorsement, and allow for an increase in the shark retention limit of the HMS Commercial Caribbean Small Boat permit from zero to three sharks per vessel per trip, in order to retain sharks for personal consumption or to sell at the local market or restaurant. Furthermore, additional outreach with the Caribbean Fishery Management Council, the territorial governments, and general discussions with commercial and recreational fishermen have shown interest in increasing the current shark retention limits for the

HMS Commercial Caribbean Small Boat permit from zero to three sharks per vessel per trip.

As described above, based on the rebuilt status of North Atlantic swordfish and shark stocks, increased interest in participating in the swordfish and shark fisheries, and the need to more fully utilize the U.S. ICCAT-recommended swordfish quota allocation, NMFS is proposing management changes to the swordfish retention limits of the HMS Commercial Caribbean Small Boat, Swordfish General Commercial, and HMS Charter/Headboat commercial permits, and to the shark retention limits of the HMS Commercial Caribbean Small Boat permit. This rule proposes to update and revise existing HMS regulations to increase the flexibility of, and provide consistency between, the North Atlantic swordfish and shark retention limits for vessel owners issued the HMS Commercial Caribbean Small Boat permit, the Swordfish General Commercial permit, and the HMS Charter/Headboat permit with a commercial sale endorsement, all of whom fish with similar handgears within U.S. Atlantic and Caribbean waters. Furthermore, this proposed action would increase administrative efficiencies by managing these permits similarly (*i.e.*, using inseason adjustment authority) with the goal of more fully utilizing the available U.S. swordfish quota, while also avoiding quota overharvests.

NMFS prepared a draft EA, RIR, and an IRFA, which present and analyze the anticipated environmental, social, and economic impacts of each alternative considered for this proposed rule. The complete list of alternatives and related analyses are provided in the draft EA/RIR/IRFA and are not repeated here in its entirety. A copy of the draft

EA/RIR/IRFA prepared for this proposed rulemaking is available from NMFS (see **ADDRESSES**).

NMFS considered three alternatives (Alternatives A1 – A3) to modify the mechanism to adjust swordfish and shark retention limits for vessels issued the HMS Commercial Caribbean Small Boat permit. NMFS considered four alternatives (Alternatives B1-B4) for modifying the swordfish retention limits for the Swordfish General Commercial permit, the HMS Commercial Caribbean Small Boat permit, and for HMS Charter/Headboat permit holders with a commercial sale endorsement on a non-for hire (*i.e.*, commercial) trip. NMFS also considered three alternatives (Alternatives C1 – C3) for modifying the shark retention limits for the HMS Commercial Caribbean Small Boat permit.

Currently, adjusting the swordfish and shark retention limit for the HMS Commercial Caribbean Small Boat permit requires conducting a rulemaking to make a framework adjustment, while the retention limits for the Swordfish General Commercial and HMS Charter/Headboat permit holders with a commercial sale endorsement can be changed through an inseason adjustment. This means that NMFS currently has to take two separate regulatory actions to adjust the swordfish retention limits for the three swordfish commercial permits. Specifically, in the U.S. Caribbean region, adjusting swordfish retention limits through two different regulatory procedures with different time frames has caused confusion among fishermen.

Under Alternative A1 (No Action), NMFS would maintain the current ability to adjust the regional swordfish retention limit for vessels issued the HMS Commercial

Caribbean Small Boat permit only through framework adjustment procedures (see 50 CFR 635.34(b)).

Under Alternative A2 (Preferred Alternative), NMFS would implement the Swordfish General Commercial Permit inseason adjustment authorization criteria codified at 50 CFR 635.24(b)(4)(iv) to adjust the regional swordfish retention limit for the HMS Commercial Caribbean Small Boat permit. Before making any inseason adjustments to the Commercial Caribbean Small Boat permit retention limit, NMFS would consider the following criteria and other relevant factors:

- A. The usefulness of information obtained from biological sampling and monitoring of the North Atlantic swordfish stock;
- B. The estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year;
- C. The estimated amounts by which quotas for other categories of the fishery might be exceeded;
- D. Effects of the adjustment on accomplishing the objectives of the FMP and its amendments;
- E. Variations in seasonal distribution, abundance, or migration patterns of swordfish;
- F. Effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota; and;

- G. Review of dealer reports, landing trends, and the availability of swordfish on the fishing grounds.

Under Alternative A3 (Preferred Alternative), NMFS would implement the shark inseason trip limit adjustment authorization criteria codified at 50 CFR 635.24(a)(8) to adjust the regional shark retention limit for the HMS Commercial Caribbean Small Boat permit. Before making any inseason adjustments to the Commercial Caribbean Small Boat permit retention limit, NMFS would consider the following criteria and other relevant factors:

- A. The amount of remaining shark quota in the relevant area or region, to date, based on dealer reports;
- B. The catch rates of the relevant shark species/complexes in the region, to date, based on dealer reports;
- C. Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates;
- D. Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments;
- E. Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge, and/or;
- F. Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the relevant quota.

Regarding the alternatives considered to adjust the retention limits, Alternative B1 (No Action) would maintain the existing range of zero to six swordfish per vessel per trip within all regions for Swordfish General Commercial permit holders and for HMS Charter/Headboat permit holders with a commercial sale endorsement. The default retention limits established for these permits would remain at: 1) Northwest Atlantic region – three swordfish per vessel per trip; 2) Gulf of Mexico region – three swordfish per vessel per trip; 3) U.S. Caribbean region – two swordfish per vessel per trip; and, 4) Florida Swordfish Management Area – zero swordfish per vessel per trip. NMFS would also maintain the current retention limit of two swordfish per vessel per trip for vessels issued an HMS Commercial Caribbean Small Boat permit.

Alternative B2 (Preferred Alternative) would maintain the default swordfish retention limit of zero swordfish per vessel per trip for the Florida Swordfish Management Area and establish a default swordfish retention limit of six swordfish per vessel per trip for all other regions and for HMS Commercial Caribbean Small Boat and Swordfish General Commercial permit holders, and HMS Charter/Headboat permit holders with a commercial sale endorsement. Additionally, for the HMS Commercial Caribbean Small Boat permit, NMFS would establish a retention limit range of zero to six swordfish per vessel per trip, with a default retention limit of six swordfish per vessel per trip.

Similar to Alternative B2, Alternative B3 would change the retention limit range for all three permits and the default retention limits for all three permits in all areas, except the Florida Swordfish Management Area, which would remain with a default limit

of zero swordfish per vessel per trip. Specifically, the retention limit range would change to zero to 18 swordfish per vessel per trip for all permits. The default retention limits established for these permits would be changed to 18 swordfish per vessel per trip in the Northwest Atlantic and Gulf of Mexico regions and to six swordfish per vessel per trip in the U.S. Caribbean.

Alternative B4 is similar to Alternative B3, except it would change the default retention limit for all permits and all areas to 18 swordfish per vessel per trip, except for the Florida Swordfish Management Area, which would remain with a default limit of zero swordfish per vessel per trip. Accordingly, the retention limit range would change to zero to 18 swordfish per vessel per trip for all permits.

Alternative C1 (No Action) would maintain the current shark retention limit for HMS Commercial Caribbean Small Boat permit holders of zero sharks per vessel per trip.

Alternative C2 (Preferred Alternative) would establish a default retention limit of three smoothhound and/or tiger sharks (combined) per vessel per trip for HMS Commercial Caribbean Small Boat permit holders. The retention limit range would be zero to three smoothhounds and/or tiger sharks (combined) per vessel per trip. The retention of any other shark species would not be allowed under this alternative.

Alternative C3 would establish a default retention limit of six non-prohibited large coastal, small coastal, pelagic, and/or smoothhound sharks (combined) per vessel per trip for HMS Commercial Caribbean Small Boat permit holders. The retention limit range would be zero to six non-prohibited large coastal, small coastal, pelagic, and/or smoothhound sharks (combined) per vessel per trip.

## **Preferred Alternatives**

Preferred Alternatives A2 and A3, in combination with Preferred Alternatives B2 and C2 would establish inseason adjustment authority for the swordfish and shark retention limits under the HMS Commercial Caribbean Small Boat permit in the U.S. Caribbean. The ability to adjust the retention limit between zero and six for all three permits and all regions for swordfish, and adjust the retention limit between zero and three smoothhound and/or tiger sharks (combined) for the HMS Commercial Caribbean Small Boat permit holders would result in NMFS being more flexible and able to respond in a more timely manner when adjusting the swordfish and shark retention limits. This flexibility would also provide consistency for swordfish management across the permits and regions. This flexibility could allow NMFS to lower the retention limit throughout the year, if necessary, to prevent exceeding the North Atlantic swordfish quota. Thus, Alternatives A2 and A3 would likely have neutral direct and indirect, short- and long-term, ecological impacts. Because these alternatives would increase flexibility in managing the swordfish and shark fisheries as needed, while still preventing overharvest of the North Atlantic swordfish and shark quotas, NMFS prefers these alternatives at this time.

Under Alternative B2 (Preferred Alternative), the default retention limit for all three permits in all regions (other than the Florida Swordfish Management Area which would remain at zero fish per vessel per trip) would change to six swordfish per vessel per trip. Currently, the maximum swordfish retention limit for Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a

commercial sale endorsement is six swordfish per vessel per trip with a default limit of three swordfish per vessel per trip in the Northwest Atlantic and Gulf of Mexico regions and two swordfish per vessel per trip in the U.S. Caribbean region. NMFS has increased these swordfish retention limits to six every year for each of the past six years that the Swordfish General Commercial permit has been in existence, in order to provide additional fishing opportunities to harvest the U.S. swordfish quota, which is currently underharvested. Because the fishermen with a Swordfish General Commercial permit and the HMS Charter/Headboat permit with a commercial sale endorsement already fish under the default retention limit preferred here, NMFS does not anticipate any changes to current fishing practices or bycatch mortality rates not previously analyzed in Amendment 8. Thus, Alternative B2, would have neutral direct and indirect ecological impacts on the U.S. swordfish stock in the short- and long-term for Swordfish General Commercial permit holders and the HMS Charter/Headboat permit holders with a commercial sale endorsement. Because the per trip and annual revenue for these permit holders would essentially remain the same as under Alternative B1, this alternative would also result in neutral direct socioeconomic impacts to Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial sale endorsement in the short- and long-term. The current HMS Commercial Caribbean Small Boat permit swordfish retention limit is two swordfish per vessel per trip. If NMFS were to increase the retention limit to six swordfish per vessel per trip, it is likely that this alternative will have neutral direct ecological impacts on the U.S. swordfish stock in the short-and long-term as this action would not affect or alter the science-based

quotas for the North Atlantic swordfish, and the swordfish stock can support higher removal levels within established quotas without jeopardizing the sustainability of the stock. In addition, because authorized gear under the HMS Commercial Caribbean Small Boat permit has low bycatch and bycatch mortality, NMFS anticipates Alternative B2 to have neutral indirect ecological impact in the short- and long- term. Affected fishermen could realize higher trip revenues since they would have more swordfish to sell, assuming a vessel is able to retain the maximum trip limit. This minor increase in per trip, and annual, revenue would result in neutral direct socioeconomic impacts in the short- and long-term to HMS Commercial Caribbean Small Boat permit holders as any increase in annual ex-vessel revenue would be relatively minor.

Under Alternative C2 (Preferred Alternative), the default shark retention limit would change to three smoothhound and/or tiger sharks (combined) for HMS Commercial Caribbean Small Boat permit holders, with a retention limit range of zero to three smoothhounds and/or tiger sharks (combined) per vessel per trip. The retention of any other shark species would not be allowed under this alternative. Currently, the default shark retention limit for HMS Commercial Caribbean Small boat permit holders is zero sharks per vessel per trip. Preferred Alternative C2 would not likely adversely affect shark populations for several reasons. First, this range is a conservative limit that is analogous to the lowest retention limit of the existing HMS permits. Second, the smoothhound shark stock is healthy, not overfished, and with no overfishing occurring. And while the non-prohibited large coastal shark stock status is unknown (the tiger shark stock is part of the non-prohibited aggregated large coastal shark stocks), tiger shark

landings have been below the allocated shark quotas for the non-prohibited large coastal shark management group. Moreover, the non-prohibited large coastal shark quotas have not been fully harvested in recent years and NMFS is not expecting increased landings of tiger sharks to adversely affect the stocks. Third, both of these shark species can withstand higher removals within the established quotas and the proposed retention limits without jeopardizing the sustainability of the stocks. Fourth, the quotas for smoothhound and non-prohibited large coastal sharks are not being modified in this rulemaking and fishermen would continue to be limited to the total amount of sharks that can be harvested, as well as by seasonal closures when the shark quotas have reached or are projected to reach 80 percent of the relevant quota or are projected to reach 100 percent of the relevant quota by the end of the fishing season (*see* § 635.28(b)(2)). Fifth, both of these species have unique physical features that make them easy to distinguish from other shark species. Thus, alternative C2 is anticipated to have neutral direct ecological impacts to shark stocks in the short- and long-term. This alternative would also have neutral indirect ecological impacts. While other bycatch species may be caught during fishing activities targeting smoothhounds and/or tiger sharks, the use of handgears in the small-scale fishery as authorized by the HMS Commercial Caribbean Small Boat permit would allow for a quick release of bycatch species, maximizing their post-release survival rate. It is anticipated that fishermen using handgear would have no adverse impacts on ESA-listed species, including marine mammals and sea turtles, beyond the impacts analyzed in the 2004 and 2012 Biological Opinions which concluded that the HMS handgear fishery will not jeopardize any ESA-listed species, including the Central and Southwest Distinct Population Segment of the scalloped hammerhead shark. Under alternative C2,

permitted HMS Commercial Caribbean Small Boat permit holders would be able to land and sell smoothhound and tiger sharks. If NMFS increases the retention limit to three sharks per vessel per trip, fishermen would potentially realize higher per trip and annual revenues since they would have sharks to sell. This minor increase in per trip and annual revenue would result in neutral direct socioeconomic impacts in the short- and long-term to the HMS Commercial Caribbean Small Boat permit holders because any potential increase would be relatively minor.

As described above, NMFS also considered five other alternatives on retention limits – three other alternatives regarding the swordfish retention limits (Alternatives B1, B3, and B4) and two other alternatives regarding shark retention limits (Alternatives C1, and C3) – and one other alternative regarding the mechanism to adjust retention limits for the HMS Commercial Caribbean Small Boat permit (Alternative A1). At this time, NMFS does not prefer Alternatives A1 (No Action), B1 (No Action), and C1 (No Action) because these alternatives do not meet the objectives of the rule: providing additional fishing opportunities to fishermen when other factors, such as availability of fish on the grounds and available quota, support such an increase. NMFS does not prefer Alternative B3, B4, or C3 at this time. With regard to Alternatives B3 and B4, it is not yet clear that Swordfish General Commercial permit holders or HMS Commercial Caribbean Small Boat permit holders would achieve the full benefits of, a retention limit of up to 18 swordfish from a retention limit range of zero to 18 swordfish per vessel per trip or if a default retention limit of six to 18 swordfish per trip is most appropriate for the U.S. Caribbean region, given prior landings and the current make-up of the HMS

Commercial Caribbean Small Boat fleet. With regard to Alternative C3, it is also not clear if HMS Commercial Caribbean Small Boat permit holders would achieve the full benefits of a retention limit of up to six shark per vessel per trip (non-prohibited large coastal, small coastal, pelagic, and smoothhound sharks, combined) or if a default retention limit of six sharks per vessel per trip is most appropriate for the U.S. Caribbean region, given prior landings and the current make-up of the HMS Commercial Caribbean Small Boat fleet. NMFS specifically requests comments on the HMS Commercial Caribbean Small Boat permit, Swordfish General Commercial permit, and HMS Charter/Headboat permit swordfish and shark retention limits.

*Specific Requests for Comments:* NMFS requests comments from the public on the proposed action and this document. In particular, NMFS would like the following questions considered and is specifically requesting comments from the public.

1. NMFS specifically requests comments on whether vessels, having a Swordfish General Commercial permit, can support the extra weight of additional swordfish.
2. NMFS specifically requests comments on whether vessels, having an HMS Commercial Caribbean Small Boat permit, can support the extra weight of additional swordfish.
3. NMFS specifically requests comments on the ability of the small-scale fleet to hold and market the proposed, increased retention limit for sharks.

4. NMFS specifically requests comments on the six-shark retention limit alternative, and the ability for the fleet to hold six sharks, and to transport them safely back to their homeport.
5. NMFS specifically requests comments on the swordfish retention limits of the HMS Commercial Caribbean Small Boat permit, Swordfish General Commercial permit, and HMS Charter/Headboat permit when a vessel is on a commercial trip, and the shark retention limits of the HMS Commercial Caribbean Small Boat permit.
6. NMFS specifically requests comments on price data for swordfish and non-prohibited large coastal, small coastal, pelagic, and smoothhound sharks in the U.S. Caribbean.

### **Public Hearing**

Comments on this proposed rule may be submitted via <http://www.regulations.gov> or at a public conference call/webinar. NMFS solicits comments on this proposed rule through [*insert date 60 days after the date of publication in the Federal Register*]. During the comment period, NMFS will hold three conference calls/webinars for this proposed rule. Requests for sign language interpretation or other auxiliary aids should be directed to Nicolas Alvarado or Delisse Ortiz at 727-824-5399/240-681-9037, at least 7 days prior to the meeting.

The webinar/conference calls will take place on May 19, 2020, May 27, 2020, and June 10, 2020. Information for registering and accessing the webinars can be found at

<https://www.fisheries.noaa.gov/action/modifications-some-north-atlantic-swordfish-and-shark-retention-limits-and-inseason>.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of the conference call, the moderator will explain how the conference call will be conducted and how and when attendees can provide comments. The NMFS representative will attempt to structure the meeting so that all the attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do they may not be allowed to speak during the conference call.

### **Classification**

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

This proposed rule is expected to be an Executive Order 13771 deregulatory action. The proposed rule would increase flexibility for, and reduce the burden to, fishermen by modifying the North Atlantic swordfish and shark retention limit in U.S. Atlantic and Caribbean waters and allowing those retention limits to be increased within a certain range if warranted, which would result in the ability for fishermen to catch and

retain more fish. This proposed action would also streamline the regulations by aligning the different swordfish retention limits between different commercial swordfish permits that use similar gears.

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

Section 603(b)(1) of the Regulatory Flexibility Act requires Agencies to describe reasons why the action is being considered. The purpose of this proposed action is to consider modifications to the swordfish retention limits for vessels issued HMS Commercial Caribbean Small Boat permits, Swordfish General Commercial permits, and HMS Charter/Headboat permits with a commercial endorsement (applicable only when on a non-for hire trip), and shark retention limits for vessels issued an HMS Commercial Caribbean Small Boat permit, and adding regulatory criteria for inseason adjustment to the retention limits of the HMS Commercial Caribbean Small Boat permit retention limits while avoiding under- and overharvest.

Section 603(b)(2) requires Agencies to describe the objectives of the proposed rule. NMFS has identified the following objectives, which are consistent with existing statutes such as the Magnuson-Stevens Act and its objectives, with regard to this proposed action:

- Maintain optimum yield for the swordfish fishery;

- Management measures shall, where practicable, minimize costs and avoid unnecessary duplication; and

- Take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities.

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 fish harvesters. Provision is made under the 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**, which NMFS did on December 29, 2015 (80 FR 81194). In that 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 permit holders to be small entities because they all had average annual receipts of less than \$11 million for commercial fishing.

The proposed rule would apply to the approximately 35 HMS Commercial Caribbean Small Boat permits, 667 Swordfish General Commercial permits, and 3,769 HMS Charter/Headboat permit holders, based on an analysis of permit holders as of December 2019. Of those 667 Swordfish General Commercial permit holders, 24, or 3.6 percent of permit holders, landed swordfish in 2019. Of the 35 HMS Commercial Caribbean Small Boat permit holders, 5, or 14.2 percent of permit holders, landed swordfish in 2019. Of the 3,769 HMS Charter/Headboat vessels only 23, or 0.6 percent of permit holders, landed swordfish in 2019. NMFS has determined that the proposed rule would not likely affect any small governmental jurisdictions.

Section 603(b)(4) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements. The alternatives considered would review and potentially modify the swordfish retention limits for existing swordfish commercial permits, modify shark retention limits for HMS Commercial Caribbean Small Boat permits and add regulatory criteria for inseason adjustment of the HMS Commercial Caribbean Small Boat permit retention limits.

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and fishery management measures. These include the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National

Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed rule has been determined not to duplicate, overlap, or conflict with any Federal rules.

One of the requirements of an IRFA is to describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impacts of the proposed rule on small entities. These impacts are discussed below. Additionally, the RFA (5 U.S.C. 603 (c)(1)-(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) Use of performance rather than design standards; and (4) Exemptions from coverage of the rule, or any part thereof, for small entities.

NMFS examined each of these categories of alternatives. Regarding the first, second, and fourth categories, NMFS cannot establish differing compliance requirements for small entities or exempt small entities from coverage of the rule or parts of it because all of the businesses impacted by this rule are considered small entities and thus the requirements are already designed for small entities. 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. As described below, NMFS analyzed several different alternatives in this proposed

rulemaking and provides rationales for identifying the preferred alternatives to achieve the desired objectives.

The alternatives considered and analyzed are described below. The IRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

Alternative A1 would maintain the current ability to adjust the regional swordfish retention limits for vessels possessing the HMS Commercial Caribbean Small Boat permit only through framework adjustment procedures (see 50 CFR 635.34(b)). Under this alternative, NMFS does not anticipate any change in economic impacts, as this would maintain NMFS' ability to modify swordfish retention limits using the existing current framework adjustment procedures. As such, this alternative would have neutral economic impacts on HMS permit holders. However, this alternative would have additional administrative burden and time costs associated with continuing to be required to do a framework action to change the trip limit for the HMS Commercial Caribbean Small Boat permit.

Alternatives A2 and A3 would implement inseason adjustment authority for swordfish and sharks, similar to those codified at 50 CFR 635.24(b)(4)(iv) and 50 CFR 635.24(a)(8), respectively, in order to modify the retention limit for the HMS Commercial Caribbean Small Boat within a range, as described in Alternatives B2 to B4 and Alternatives C2 to C3, respectively. NMFS already has the ability to adjust the swordfish retention limits under the Swordfish General Commercial and HMS Charter/Headboat permits, and the shark retention limits under the Shark Limited Access

permits. Under these alternatives (A2 and A3), inseason adjustment authority would provide NMFS with more flexibility in the regulations to be more responsive to the changes needed in the swordfish and shark fisheries within the fishing season. The alternatives would provide for a new regulatory process that would not change the actual retention limits. Therefore, the alternatives would have neutral socioeconomic impacts to HMS permit holders.

Alternative B1, the No Action alternative, would maintain the zero to six swordfish per vessel per trip retention limit range within all Swordfish General Commercial permit management regions, and maintain the existing default swordfish retention trip limit of two swordfish per vessel per trip for Swordfish General Commercial permit holders in the U.S. Caribbean and three swordfish per vessel per trip for Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial sale endorsement within the Gulf of Mexico and Northwest Atlantic regions. The default swordfish retention trip limit for the Florida Swordfish Management Area would remain at zero. For the HMS Commercial Caribbean Small Boat permit, the swordfish retention trip limit of two swordfish per vessel per trip would be maintained.

A single swordfish is estimated to be worth \$331 (ex-vessel), on average, whereas six swordfish are estimated to be worth \$1,987 (ex-vessel). Under the No Action alternative, the potential gross revenue per trip for each HMS Commercial Caribbean Small Boat vessel landing the trip limit would remain at approximately \$662 based on the average ex-vessel price of swordfish, with gross revenue from swordfish ranging from

\$662 under a two fish limit to \$1,987 under a six swordfish limit. Similarly, the potential gross revenue per trip for vessels possessing a Swordfish General Commercial permit or a HMS Charter/Headboat permit with a commercial sale endorsement fishing in either the U.S. Caribbean, Northwest Atlantic or Gulf of Mexico and landing the full trip limit would remain at \$1,987, with gross revenue from swordfish ranging from either \$662 under a two fish limit or \$993 under a three swordfish limit to \$1,987 under a six swordfish limit. Alternative B1 would likely result in neutral economic impacts since there would be no change in the management structure of the swordfish fishery.

Alternative B2 (Preferred Alternative), would maintain the zero to six swordfish retention limit range, but would increase the default limit to the highest swordfish retention limit of six swordfish per vessel per trip for most of the swordfish management regions (NW Atlantic, Gulf of Mexico, U.S. Caribbean) for vessels possessing an HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial permit, or vessels with an HMS Charter/Headboat permit with a commercial sale endorsement. The default swordfish retention trip limit for the Florida Swordfish Management Area would remain at zero. Under this alternative, the potential gross revenue per trip for each vessel that has landed the maximum allowed trip limit under either of the three swordfish commercial swordfish permits and within the U.S. Caribbean, Northwest Atlantic, and Gulf of Mexico would be \$1,987 per vessel per trip. For example, for a vessel making ten trips per year and retaining the maximum allowable limit each trip, annual gross revenue derived from swordfish would generate up to \$19,870 under a six swordfish limit. *See* Table 4.2 in draft EA/IRFA (summarizing average number of trips per year

under the different permits). By having a higher default trip limit for swordfish, this alternative would continue to provide a seasonal, or secondary, fishery for most participants as well as provide new socioeconomic benefits to some fishermen, fishing tackle manufacturers and suppliers, bait suppliers, fuel providers, and swordfish dealers. Alternative B2 would likely result in neutral economic impacts in the short- and long-term. Because NMFS has increased the swordfish retention limit in the Northwest Atlantic and Gulf of Mexico, and the U.S Caribbean regions to six every year for each of the past six years since the implementation of the Swordfish General Commercial permit, any economic impact would be neutral for Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial sale endorsement. For the HMS Commercial Caribbean Small Boat permit, fishermen would realize higher trip revenues since they could sell up to four additional swordfish per trip than the current two swordfish per vessel per trip limit. However, this alternative would result in neutral direct socioeconomic impacts to the HMS Commercial Caribbean Small Boat permit holders in the short-and long- term as any increase in annual ex-vessel revenue would be relatively minor.

Alternative B3 would modify the existing swordfish retention limit range by increasing it from a zero to six swordfish per vessel per trip to zero to 18 swordfish per vessel per trip for all swordfish management regions. Similar to Alternative B2, this alternative would establish a default swordfish retention limit of six swordfish per vessel per trip for the HMS Commercial Caribbean Small Boat permit within the U.S. Caribbean region. However, unlike Alternative B2, this alternative would increase the

default swordfish retention limit from six swordfish per vessel per trip to 18 swordfish per vessel per trip for vessels possessing a Swordfish General Commercial permit, or vessels with an HMS Charter/Headboat permit with a commercial sale endorsement within the Northwest Atlantic, Gulf of Mexico, and the U.S. Caribbean swordfish management regions. The default swordfish retention trip limit for the Florida Swordfish Management Area would remain at zero. Under this alternative, the potential gross revenue from swordfish for each vessel with an HMS Commercial Caribbean Small Boat permit within the U.S. Caribbean region would range from \$1,987 per trip under a six swordfish limit to \$5,961 per trip under an 18 swordfish limit. Fishermen would realize higher trip revenues since they would have more swordfish to sell, assuming a vessel is able to retain the maximum trip limit, and more fishermen may conduct a greater number of trips or longer trips. If all of the five active HMS Commercial Caribbean Small Boat vessels in 2019 landed the six-swordfish default trip limit and take an average of four trips per year they could realize an increase in annual revenue of up to \$39,740. *See* Table 4.2 in draft EA/IRFA (summarizing average of trips per year under the different permits). Alternative B3 would likely result in minor beneficial direct impacts on HMS Commercial Caribbean Small Boat permit holders in the short- and long-term. Similarly, the potential gross revenue per trip for vessels possessing a Swordfish General Commercial permit or vessels with an HMS Charter/Headboat permit and a commercial sale endorsement fishing in either the U.S. Caribbean, Northwest Atlantic or Gulf of Mexico swordfish management regions retaining the maximum 18-swordfish limit on each trip would be \$5,961. For example, for a vessel making ten trips per year and

retaining the maximum allowable limit each trip, annual gross revenue derived from swordfish would generate up to \$59,616 under an 18 fish limit. Alternative B3 would likely result in minor beneficial direct economic impacts on Swordfish General Commercial permit holders or HMS Charter/Headboat permit holders with a commercial sale endorsement in the short- and long-term since the default retention limit would be set higher than the current default limit for all swordfish management region, resulting in fishermen potentially realizing higher trip revenues since fishermen would have more swordfish to sell.

Alternative B4 would modify the existing default swordfish retention limit range by increasing it from a zero to six swordfish per vessel per trip to a zero to 18 swordfish per vessel per trip for all swordfish management regions, with the default swordfish retention limit set at the maximum trip limit of 18 swordfish per vessel per trip everywhere except the Florida Swordfish Management Area, which would remain at zero. As noted above, Alternative B3 would make the same modifications, but with a lower (six swordfish) default retention limit for the HMS Commercial Caribbean Small Boat permit within the U.S. Caribbean region. Similar to Alternative B3, under Alternative B4, the potential gross revenue per trip for each vessel with an HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial permit, or a vessel with an HMS Charter/Headboat permit and commercial sale endorsement fishing in either the U.S. Caribbean, the Northwest Atlantic or the Gulf of Mexico swordfish management regions retaining the maximum allowed limit on each trip would be \$5,961. For example, for a vessel making ten trips per year and retaining the maximum allowable

limit (*i.e.*, an 18 swordfish retention limit) each trip, the annual gross revenue derived from swordfish would generate up to \$59,616. In increasing the retention limit above the default limit for all swordfish management regions, fishermen would realize higher trip revenues since they would have more swordfish to sell. Consequently, the outcome of Alternative B4 would likely result in minor beneficial direct economic impacts on the HMS Commercial Caribbean Small Boat permit holders, Swordfish General Commercial permit holders, and HMS Charter/Headboat permit holders with a commercial sale endorsements in the short- and long-term.

Alternative C1, the No Action alternative, would maintain the current range of zero to three sharks per vessel per trip for the HMS Commercial Caribbean Small Boat permit, with a default shark retention limit of zero sharks per vessel per trip. Thus, if the retention limit remains the same there would likely be neutral direct economic impacts to HMS Commercial Caribbean Small Boat permit holders in the short- and long-term. However, the No Action alternative would not provide NMFS with flexibility to address multiple requests by commercial shark fishermen to land a limited number of sharks, when factors, such as availability of fish on the grounds and available quota, support such an increase.

Alternative C2 (Preferred Alternative) would establish a retention limit range of zero to three smoothhounds and/or tiger sharks (combined) per vessel per trip, with a default shark retention limit of three smoothhound and/or tiger sharks (combined) per vessel per trip. The retention of any other shark species would not be allowed under this alternative. The retention limit could be raised or lowered in the region in season within

the zero to three shark per vessel per trip range. Under this alternative, the potential annual gross revenue for each vessel that has landed the maximum allowed trip limit of three smoothhounds and/or tiger sharks (combined) per vessel per trip would be as follow: a) if only tiger sharks were caught, and the vessel takes two trips per month (24 trips per year), then the annual revenue per vessel associated with this activity would be \$4,455; and b) if only smoothhound sharks were caught, and the vessel conducted two trips per month (24 trips per year), then the annual revenue per vessel would be \$733. See Table 3.9 in draft EA/IRFA (summarizing number of trips landing sharks per year under the different permits). Because NMFS would have the authority to adjust the shark retention limit from zero to three, the annual ex-vessel revenue estimates could vary from \$0 (under a zero fish limit) to as much as \$733 to \$4,455, depending on the species composition of the catch. This minor increase in per trip, and annual revenue would result in neutral direct economic impacts in the short- and long-term to the HMS Commercial Caribbean Small Boat permit holders because any potential increase would be relatively minor.

Under Alternative C3, NMFS would establish a retention limit range of zero to six non-prohibited large coastal, small coastal, pelagic, and smoothhound sharks (combined) per vessel per trip, with a default retention limit of six non-prohibited large coastal, small coastal, pelagic, and smoothhound sharks (combined) per vessel per trip for HMS Commercial Caribbean Small Boat permit holders. Under this alternative, the potential annual gross revenue for each vessel that has landed the maximum allowed trip limit of six non-prohibited large coastal, small coastal, pelagic, and smoothhound sharks per

vessel per trip would vary depending on the composition of the catch. If only large coastal sharks were caught, and the vessel takes two trips per month (24 trips per year), then the annual revenue per vessel associated with this activity would be \$8,910. Assuming a successful trip and two trips per month, the annual revenue per vessel associated with a vessel landing the full trip limit of either small coastal, pelagic or smoothhound sharks would be \$5,110, \$11,269, and \$1,468, respectively. Because NMFS would have the authority to adjust the shark retention limit from zero to six, the annual ex-vessel revenue estimates could vary from \$0 (under a zero fish limit) to as much as \$1,468 to \$11,269, depending on the species composition of the catch. This minor increase in per trip, and annual, revenue would result in neutral economic impacts to the HMS Commercial Caribbean Small Boat permit holders in the short- and long-term because any potential increase would be relatively minor.

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

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

Dated: April 16, 2020.

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the 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. Amend § 635.24 by:

- a. Revising paragraph (a)(4)(iv);
- b. Revising paragraph (b)(3);
- c. Revising the introductory text of paragraph (b)(4);
- d. Revising paragraph (b)(4)(iii);
- e. Removing paragraph (b)(4)(iv); and
- f. Adding paragraph (b)(5).

The revisions and addition read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \*

(iv) A person who owns or operates a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may retain, possess, land, or sell only smoothhound sharks and tiger sharks, subject to the current shark trip limit. The shark trip limit for persons aboard a vessel issued an HMS Commercial Caribbean Small Boat permit will range between zero to three smoothhound and/or tiger sharks, combined, per

vessel per trip. At the start of each fishing year, the default shark trip limit will apply. During the fishing year, NMFS may adjust the default shark trip limit per the inseason trip limit adjustment criteria listed in paragraph (a)(8) of this section. The default shark trip limit for the HMS Commercial Caribbean Small Boat permit is three smoothhound and/or tiger sharks, combined, per vessel per trip.

\* \* \*

(b) \* \* \*

(3) Persons aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit are subject to the HMS Commercial Caribbean Small Boat permit retention limit. The swordfish retention limit for persons aboard a vessel issued an HMS Commercial Caribbean Small Boat permit will range between zero to six swordfish per vessel per trip. At the start of each fishing year, the default retention limit will apply. During the fishing year, NMFS may adjust the default retention limit per the inseason regional retention limit adjustment criteria listed in § 635.24(b)(5). The default retention limit for the HMS Commercial Caribbean Small Boat permit is six swordfish per vessel per trip.

(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) of this section, which may be adjusted during the fishing year based upon the inseason regional retention limit adjustment criteria listed in § 635.24(b)(5).

\* \* \*

(iii) *Regional retention limits.* The swordfish regional retention limits for each region will range between zero to six swordfish per vessel per trip. At the start of each fishing year, the default regional retention limits will apply. During the fishing year, NMFS may adjust the default retention limits per the inseason regional retention limit adjustment criteria listed in § 635.24(b)(5). The default retention limits for the regions set forth under paragraph (b)(4)(i) of this section are:

(A) Zero swordfish per vessel per trip for the Florida Swordfish Management Area.

(B) Six swordfish per vessel per trip for the Caribbean region.

(C) Six swordfish per vessel per trip for the Northwest Atlantic region.

(D) Six swordfish per vessel per trip for the Gulf of Mexico region.

\* \* \* \* \*

(5) NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustments to the default swordfish retention limits specified at § 635.24(b)(3) and (b)(4)(iii). Before making any inseason adjustments to swordfish retention limits, NMFS will consider the following criteria and other relevant factors:

(i) The usefulness of information obtained from biological sampling and monitoring of the North Atlantic swordfish stock;

(ii) The estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year;

(iii) The estimated amounts by which quotas for other categories of the fishery might be exceeded;

(iv) Effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments;

(v) Variations in seasonal distribution, abundance, or migration patterns of swordfish;

(vi) Effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota; and

(vii) Review of dealer reports, landing trends, and the availability of swordfish on the fishing grounds.

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