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Dated: June 22, 2011.

**Samuel D. Rauch III,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 110208116–1315–01]

RIN 0648–BA75

#### Atlantic Highly Migratory Species; Electronic Dealer Reporting Requirements

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

**ACTION:** Proposed rule; request for comments; notice of public hearings.

**SUMMARY:** This proposed rule would require that Federal Atlantic swordfish, shark, and tunas dealers report commercially harvested Atlantic sharks, swordfish, and bigeye, albacore, yellowfin, and skipjack (BAYS) tunas to NMFS through an electronic reporting system. At this time, Atlantic Highly Migratory Species (HMS) dealers would not be required to report bluefin tuna through this electronic reporting system, as a separate reporting system is currently in place for this species. This rulemaking also proposes that a dealer would only be authorized to receive commercially harvested Atlantic sharks, swordfish, and BAYS tunas if the dealer's previous reports have been submitted by the dealer and received by NMFS in a timely manner. Any delinquent reports would need to be submitted by the dealer and received by NMFS before a dealer could receive commercially harvested Atlantic sharks, swordfish, and BAYS tunas from a Federally permitted U.S. vessel. Finally, this rulemaking proposes that all first receivers of commercially harvested Atlantic sharks, swordfish, and BAYS tunas by Federally permitted U.S. vessels must obtain a corresponding

Federal Atlantic swordfish, shark, and/or tunas dealer permit. First receivers must report the associated catch to NMFS through the electronic reporting system. These measures are necessary to ensure timely and accurate reporting, which is critical for quota monitoring and management of these species.

**DATES:** Written comments must be received on or before August 12, 2011. NMFS will hold eight public hearings on this proposed rule in July 2011. For specific dates and times, see the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** The public hearings will be held in Massachusetts, New York, New Jersey, North Carolina, Florida, and Louisiana. For specific locations see the **SUPPLEMENTARY INFORMATION** section of this document.

You may submit comments, identified by “0648–BA75,” by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>. Please do not submit electronic comments via e-mail, as doing so is likely to delay the timely review and consideration of submitted comments.
- **Fax:** 301–713–1917, Attn: Karyl Brewster-Geisz.
- **Mail:** National Marine Fisheries Service, c/o HMS Management Division, SF/1, 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope “Comments on Proposed Rule for Electronic Dealer Reporting.”

• **Instructions:** All comments received are part of the public record and generally will be posted to Portal <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive information.

NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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 Delisse Ortiz with the Atlantic Highly Migratory Species Management Division and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202–395–7285.

#### FOR FURTHER INFORMATION CONTACT:

Jackie Wilson at 240–338–3936, or Karyl Brewster-Geisz or Delisse Ortiz at 301–713–2347.

Copies of this proposed rule and related documents, including a Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), for this action are available online at the HMS Management Division Web site: <http://www.nmfs.noaa.gov/sfa/hms/>.

#### SUPPLEMENTARY INFORMATION:

##### Background

Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Under the MSA, NMFS must ensure consistency with the National Standards and manage fisheries to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under the ATCA, the Secretary of Commerce is required to promulgate regulations, as may be necessary and appropriate, to implement the recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under MSA and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). The implementing regulations for Atlantic HMS are at 50 CFR part 635.

##### Atlantic HMS Dealer Reporting

On December 13, 1991 (56 FR 65007), and October 18, 1994 (59 FR 52453), NMFS published in the **Federal Register** final regulations, effective December 10, 1991, and January 1, 1995, respectively, requiring dealers who receive swordfish and sharks to obtain an annual Federal dealer permit and report to NMFS every two weeks. These reports were either “positive” reports, where dealers reported the amount and species bought from fishermen, or “negative” reports, where dealers indicated no transactions for the reporting period. Swordfish and shark dealers reported voluntarily to NMFS until a rulemaking on August 31, 1990 (55 FR 35643), which required swordfish dealers to report monthly to NMFS as of October 1, 1990. Dealers were first required to report sharks to NMFS on a bi-weekly basis according to the October 18, 1994, rule.

On August 15, 2001 (66 FR 42801), NMFS required dealers to submit bi-weekly reports of BAYS tunas to NMFS. Prior to this rule, which became effective on September 14, 2001, NMFS required dealers to report BAYS only

when received together with sharks and swordfish pursuant to the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. Otherwise, dealers voluntarily reported BAYS to NMFS.

To date, such reporting by Federally-permitted dealers has depended on the location of the dealer. For dealers located south of Virginia, reports have been submitted in a paper format to the Southeast Fisheries Science Center (SEFSC). These dealers have been required to provide dressed weight, price per pound, and vessel information compiled over a two-week reporting period. If no purchases of HMS products are made during a reporting period, the dealer is required to submit a "negative" report to NMFS indicating that no purchases were made. Dealer reports are scanned, and data are entered into the Pelagic Dealer Compliance (PDC) database housed within the SEFSC. As of July 24, 2008 (June 24, 2008, 73 FR 35778; corrected on July 15, 2008, 73 FR 40658), Federal Atlantic HMS dealers have been required to submit reports of Atlantic tunas, swordfish, and/or sharks received from the 1st through the 15th of each month, and have them received by NMFS not later than the 25th of that month. Reports of Atlantic tunas, swordfish, and/or sharks received on the 16th through the last day of each month must be received by NMFS not later than the 10th of the following month. As a result, assuming timely reporting by dealers, there currently is a delay of 10 to 25 days before the Federal HMS dealer data are available in the PDC database.

For dealers located north of North Carolina, prior to 2004, Federal HMS dealer reports were collected either directly from dealers through Federal field agents during dockside interviews or through a state's trip ticket program, contingent upon the data collection method of the state. In May 2004, the Northeast Regional Office (NERO) of NMFS launched the Standard Atlantic Fisheries Information System (SAFIS) for Federally-permitted seafood dealers. SAFIS is an online application that allows seafood dealers in the Northeast region to enter landings statistics. The partners of the Atlantic Coastal Cooperative Statistics Program (ACCSP) created SAFIS to meet the increasing need for real-time commercial landings data. On May 1, 2004, NERO required dealers issued a Federal dealer permit by NERO to submit all their landings data for each trip through SAFIS. Any dealer that has been issued a permit for a NERO-managed species/species complex (e.g., scallop, bluefish, multispecies, etc.) is required to report

all their purchases electronically through SAFIS. This includes dealers in states that are physically located in the Southeast region. The only exceptions are those dealers that possess only Atlantic tunas dealer permits or American Lobster dealer permits. SAFIS is available to those tuna dealers who also hold a NERO-managed species/species complex dealer permit. Atlantic bluefin tuna, in all cases, are reported to NMFS through separate reporting mechanisms. Additionally, a swordfish or shark dealer that is located in the Northeast, and does not have a dealer permit issued by NERO (swordfish and shark dealer permits are issued by SERO while tuna dealer permits are issued by NERO), continues to follow the reporting mechanisms that were in place before 2004.

These separate reporting mechanisms in the Southeast and Northeast regions have led to duplicative data submissions in both the Northeast and Southeast systems as well as delays in the receipt of landing data received through dealer reports. As the commercial harvest of HMS is monitored through data received from dealer reports, timely receipt of dealer data is critical for quota monitoring and management of these species. Thus, in this proposed rule, NMFS would require Federal Atlantic HMS dealers to report commercially-harvested Atlantic sharks, swordfish, and BAYS tunas to NMFS through one centralized HMS electronic reporting system which utilizes existing state and Federal electronic reporting programs in the different regions for dealer data entry. The HMS electronic reporting system would be housed in the existing state and Federal electronic reporting programs (e.g., SAFIS and Bluefin Data LLC) to allow dealers to report all landings in one place and to reduce the reporting burden on dealers. In addition, this HMS electronic reporting system would allow dealers to submit Atlantic sharks, swordfish, and BAYS tunas data on a closer to real-time basis and in a more streamlined fashion that would reduce duplicative data submissions from different regions.

#### *Late Dealer Reports*

In addition to duplicative reporting, there have also been issues of late reporting by Federal Atlantic HMS dealers. This non-compliance has particularly been an issue for a small number of the Atlantic shark dealers. Over time, this pattern of late reporting has resulted in NMFS having to contact dealers regarding late reports via phone calls and certified correspondence regarding their late reports, and, in some cases, necessitated visits by local port

agents and/or agents with the National Oceanic and Atmospheric Administration (NOAA) Office of Law Enforcement. These efforts to follow up on late dealer reports negatively affect timely quota monitoring and drain scarce staff resources. To ensure more timely reporting by all Atlantic HMS dealers, this rulemaking is proposing that a Federal Atlantic HMS dealer would only be authorized to receive commercially-harvested Atlantic swordfish, sharks, and BAYS tunas if the dealer has submitted all required reports to NMFS. Any delinquent reports would need to be submitted by the dealer and received by NMFS before a Federal Atlantic HMS dealer could receive commercially-harvested Atlantic swordfish, sharks, and BAYS tunas from a Federally-permitted U.S. vessel. Although submission of delinquent reports would allow a dealer to receive commercially-harvested Atlantic swordfish, sharks, and BAYS tunas from a Federally-permitted U.S. vessel, late reporting is still a violation of the regulations. The electronic dealer reporting system would track the timing and submissions of Federal Atlantic HMS dealer reports and automatically notify dealers and NMFS (the HMS Management Division and NMFS Office of Law Enforcement) via e-mail if reports are delinquent.

#### *First Receiver*

Per 50 CFR 635.4(g), any person that receives, purchases, trades for, or barter for Atlantic HMS for a commercial purpose from a Federally-permitted U.S. vessel must possess a valid Atlantic HMS dealer permit. As mentioned above, Federal Atlantic HMS dealers are required to report any Atlantic tunas, swordfish, and/or sharks that they receive from Federally-permitted U.S. vessels to NMFS on a bi-weekly basis (50 CFR 635.5(b)). Per § 635.4(g)(2), the first receiver of Atlantic shark product harvested by a Federally-permitted U.S. vessel must obtain a Federal Atlantic shark dealer permit, and s/he, or a suitable proxy, must have a current valid Atlantic shark identification workshop certificate per 50 CFR 635.8. For reasons articulated in detail below, the proposed rule would require any person who first receives and processes sharks (e.g., offloading them from the vessels and packing them on ice and in containers for shipment) to obtain a Federal Atlantic HMS dealer permit and to provide species-specific information via dealer reports to NMFS.

In practice, Federal Atlantic shark dealers who purchase Atlantic sharks from Federally-permitted U.S. vessels are not always the first receiver of

sharks. For instance, independent contractors may pack up shark product from a vessel and transport the product to a dealer location; however, these individuals are currently not required to report to NMFS. In addition, in some instances, Federally-permitted dealers with access to a fishing dock may pack product for shipment for a small fee and pass product to other Federally-permitted dealers without access to a dock, who in turn report to NMFS. Subsequently, it is difficult for a dealer to reliably report species-specific information to NMFS based upon product that has already been packed for shipment. This practice also occurs in the swordfish and tunas fisheries but, due to the fact that there are fewer species and price differences between those species are greater, species-specific reporting is more easily achieved. However, in all these cases, if the dealer is not the first receiver, the dealer often does not have the vessel-specific information that NMFS requires in order to properly and accurately manage HMS fisheries. Thus, in order to ensure accurate fish condition (e.g., fins naturally attached to sharks), species-specific and vessel-specific reporting of Atlantic swordfish, sharks, and BAYS tunas, NMFS is proposing to require Federal Atlantic swordfish, shark, and tunas dealer permits for all first receivers of Atlantic sharks, swordfish, and BAYS tunas. This requirement would include those that transport Atlantic swordfish, shark, and BAYS tuna product. First receivers would be required to report all Atlantic sharks, swordfish, and BAYS tunas offloaded from Federally-permitted U.S. fishing vessels to NMFS through the electronic reporting system.

While NMFS is proposing the above approach for this action, NMFS is also considering alternate scenarios regarding who should obtain a Federal HMS dealer permit in order to ensure accurate species-specific reporting. One such scenario would keep the current definition of "first receiver" and apply it to all entities that first receive Atlantic swordfish and BAYS tunas, meaning that all first receivers of Atlantic swordfish and BAYS tunas would need to obtain the appropriate Federal HMS dealer permit(s) unless they first receive Atlantic swordfish and BAYS tunas solely for the purpose of transport. NMFS has not preferred this in the proposed action because, as mentioned above, it is difficult for any Federal Atlantic shark dealer to reliably report species-specific information to NMFS based upon product that has already been packed for shipment.

The second scenario would be to modify the definition for first receiver as proposed and require first receivers as well as entities that purchase product from U.S. fishing vessels (*i.e.*, entities who are currently required to obtain a dealer permit) to obtain the appropriate Federal HMS dealer permits. In some cases this would result in duplicative reporting by both the first receiver and the Federally-permitted HMS dealer. However, it would ensure that the person(s) who first receives the product from a U.S. fishing vessel and packs the product would also report to NMFS. Below NMFS asks for specific feedback on these alternate scenarios and the proposed approach.

In summary, this rulemaking proposes that all commercially-harvested Atlantic swordfish, sharks, and BAYS tunas from a Federally-permitted U.S. fishing vessel be offloaded to a Federal Atlantic HMS dealer. All Federal Atlantic sharks, swordfish, and BAYS tunas dealers would be required to report commercially-harvested Atlantic swordfish, sharks, and BAYS tunas in a timely manner to NMFS through an electronic dealer reporting system, and Atlantic HMS dealers would only be able to receive commercially-harvested Atlantic swordfish, sharks, and BAYS tunas if the dealer has submitted timely reports to NMFS. This action is required for more timely, efficient, and accurate dealer reporting and subsequent quota monitoring of Atlantic swordfish, sharks, and BAYS tunas. Economic analyses are provided in the draft RIR and IRFA and are not repeated here in their entirety. A copy of the draft RIR and IRFA is available from NMFS (see **ADDRESSES**).

#### **Electronic Dealer Reporting System for Atlantic HMS Dealers**

The harvest of sharks, tunas, and swordfish tabulated from Federal Atlantic HMS dealer reports are used to monitor commercial quotas and fishing seasons for these species. However, as outlined above, the current regulations and infrastructure of the Atlantic HMS quota-monitoring systems do not deliver data in a sufficiently timely and efficient manner to allow effective management and monitoring of small Atlantic HMS quotas and short seasons. For more effective management and monitoring of Atlantic HMS quotas, NMFS is in need of a more streamlined system where dealers can submit Atlantic HMS data in real time and include additional information regarding Atlantic HMS catch. The system must also be flexible enough to quickly adapt to any future changes in

regulations in the Atlantic HMS fisheries.

NMFS is currently developing an electronic dealer reporting system consisting of a Web site-based data entry portal embedded within SAFIS to preclude Northeast dealers from having to report through an additional reporting system. To avoid creating multiple dealer reporting systems in the Southeast, NMFS would also implement the HMS dealer reporting requirements within the new electronic dealer reporting system being implemented in the Southeast. The electronic reporting requirements would be effective on February 1, 2012, in order to allow constituents additional time to learn about the new reporting system.

When the HMS electronic reporting system is implemented in 2012, Atlantic HMS dealers would be required to electronically report any shark, swordfish, or BAYS tunas offloaded from a Federally-permitted U.S. fishing vessel to a Federal Atlantic HMS dealer or to any extensions of a Federal Atlantic HMS dealer's place of business (*e.g.*, trucks or other conveyances). This proposed rule would not apply to Atlantic bluefin tuna reporting, and Atlantic bluefin tuna dealers would continue to follow the current reporting requirements for commercially-harvested Atlantic bluefin tuna.

To better facilitate timely quota monitoring, NMFS is also proposing to increase the frequency of both positive and negative dealer reporting for Atlantic sharks, swordfish, and BAYS tunas. The reporting frequency would be flexible and could be adjusted depending on the available quota, length of fishing season, and species/species complexes, when certain triggers are met by the different fisheries, as described below. As proposed, NMFS would establish a weekly base reporting frequency. Under the proposed rule, for swordfish, an increase in reporting from a weekly to daily basis would occur when 80 percent of the directed fishery's quota is attained. For BAYS tunas, bigeye, yellowfin, and skipjack fisheries are currently not managed under quotas, and the United States has not attained the U.S. allocated albacore tuna quota, which is currently not codified. If such quotas are codified in the future, NMFS proposes to increase the required dealer reporting from a weekly to daily basis when 80 percent of the respective quotas are attained. Additionally, because shark quotas are the smallest of all HMS quotas, NMFS is proposing to require Federal Atlantic shark dealers to report sharks within 24 hours while the fishing seasons for non-sandbar large

coastal sharks (LCS), blacknose sharks, and non-blacknose small coastal sharks (SCS) are open. The quotas for these shark complexes/species are the smallest of all the shark quotas, and their associated fishing seasons have been the shortest in the past. When the fishing seasons for these shark species/complexes are all closed, Federal Atlantic shark dealers would be required to report sharks on a weekly basis unless otherwise notified. In addition, individual Atlantic shark fisheries currently close when the respective quotas reach 80 percent (with the exception of the blacknose shark and non-blacknose shark fisheries, where both fisheries close when either quota reaches 80 percent). NMFS would consider changing this percentage in a future rulemaking, as appropriate, based on the timeliness of electronic reporting by dealers through this new electronic reporting system.

As proposed, NMFS would announce any change in reporting frequency for HMS species by filing an adjustment of the reporting frequency with the Office of the Federal Register for publication. In no case would such an adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register. The public would also be informed simultaneously via the HMS Web site and e-mail notice listserve as well as through e-mail notifications to Federal HMS dealers via e-mail to an e-mail address provided to NMFS by dealers (and individual employees of dealers reporting in the electronic reporting system). NMFS anticipates that this flexibility to adjust the reporting frequency would be most critical for sharks due to small shark quotas.

#### Late Dealer Reports

In addition, because Federal Atlantic HMS dealer reports for some fisheries and some specific dealers are often late, which ultimately affects timely quota monitoring and usually requires staff resources to pursue resolutions, this rulemaking is proposing procedures to ensure that Federal Atlantic HMS dealers submit timely reports to NMFS. NMFS is proposing that Federal Atlantic HMS dealers would only be authorized to receive commercially-harvested Atlantic swordfish, sharks and BAYS tunas if the Federal Atlantic HMS dealer has submitted all required reports to NMFS. Accordingly, NMFS would require all delinquent reports to be submitted by dealers and received by NMFS before a dealer could receive commercially-harvested Atlantic swordfish, sharks, and BAYS tunas. Timely submission of reports to NMFS

would allow dealers to be eligible to purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas without interruption. The electronic dealer reporting system would track the timing and submissions of Federal Atlantic HMS dealer reports and automatically notify dealers (and individual employees of dealers reporting in the electronic reporting system) and NMFS (the HMS Management Division and NMFS Office of Law Enforcement) via e-mail if reports are delinquent. Federal Atlantic HMS dealers who fail to submit reports to NMFS in a timely manner would be in violation and subject to enforcement action, as would those who are offloading, receiving, and/or purchasing HMS product without having submitted all required reports to NMFS.

#### First Receiver

Finally, in order to ensure accurate species- and vessel-specific reporting, this rulemaking proposes that all first receivers of commercially-harvested Atlantic swordfish, sharks, and BAYS tunas by Federally-permitted U.S. vessels must obtain a Federal Atlantic HMS dealer permit. Under existing regulations, in order to obtain a Federal Atlantic shark dealer permit, the first receiver of shark products, or suitable proxy, is required to have a current and valid Atlantic shark identification workshop certificate per 50 CFR 635.8(b). Existing regulations also require that dealers, not the first receivers of Atlantic swordfish and BAYS tunas, report to NMFS on a bi-weekly basis. In the proposed action, first receivers of Atlantic sharks, swordfish, and BAYS tunas, including those that transport products to dealers, would be responsible for electronic reporting of all Atlantic sharks, swordfish, and BAYS tunas product first received from U.S. fishing vessels. NMFS is also considering alternate scenarios regarding who should obtain a Federal HMS dealer permit in order to ensure accurate species-specific reporting, as described above.

#### Request for Comments

NMFS is requesting comments on any of the proposed actions in the proposed rule, RIR and IRFA. NMFS is also requesting comments on specific items related to the proposed action to clarify certain sections of the regulatory text or to help in analyzing potential impacts of the proposed actions. Specifically, NMFS requests comments on:

(1) Changes in who must obtain a Federal HMS dealer permit. NMFS is seeking information on the number of entities that would be affected by the

proposed changes to the first receiver definition and the requirement that all first receivers of Atlantic swordfish, sharks, and BAYS tunas must obtain a Federal HMS dealer permit. Specifically, how common is the practice that a transporter, currently exempted under the regulations from having to obtain a dealer permit, is the first receiver of Atlantic swordfish, sharks, and BAYS tunas? Would the other first receiver alternatives described above be preferable (*i.e.*, who should have to obtain a Federal HMS dealer permit)?

(2) The amount of time proposed to provide notice of changes in the required reporting frequency. NMFS is proposing to change the required reporting frequency based on the available quota, length of fishing season, and species/species complexes, when certain triggers are met by the different fisheries. NMFS has proposed that Federal HMS dealers would be notified of changes to the required reporting frequency via e-mail to an e-mail address provided to NMFS by dealers. In addition, NMFS would announce any change to the required reporting frequency for HMS species by filing an adjustment of the reporting frequency with the Office of the Federal Register for publication. In no case would such an adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register. Is that an adequate amount of time for dealers to receive notice? Would a longer timeframe (*e.g.*, five days from date of filing, similar to the notice given for closures in the Atlantic shark fisheries) be more appropriate?

Comments on this proposed rule may be submitted online via <http://www.regulations.gov>, by mail, or by fax (see **DATES** and **ADDRESSES**). Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). NMFS solicits comments on this proposed rule by August 12, 2011.

#### Public Hearings and Special Accommodations

NMFS will hold eight public hearings as listed in the table below for fishery participants and other members of the public regarding this proposed rule. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jackie Wilson at (240) 338-3936 or Delisse Ortiz at (301) 713-2347 at least 7 days prior to the hearing date. The public is reminded that NMFS expects participants at the public hearings to conduct themselves

appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (*e.g.*, alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each

attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless

of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

TABLE 1—LOCATIONS AND DATES FOR PUBLIC HEARINGS

| Location                | Date               | Time           | Address  |
|-------------------------|--------------------|----------------|--|
| Manteo, NC .....        | July 11, 2011 .... | 5–7 p.m. ....  | Manteo Town Hall, 407 Budleigh St., Manteo, NC 27954.  |
| Kenner, LA .....        | July 13, 2011 .... | 2–5 p.m. ....  | Hilton New Orleans Airport, 901 Airline Drive, Kenner, LA 70062.                             |
| Panama City, FL .....   | July 18, 2011 .... | 5–7 p.m. ....  | Bay County Public Library, 898 West 11th Street, Panama City, FL 32401.                      |
| Orlando, FL .....       | July 19, 2011 .... | 5:30–7:30 p.m. | Jean Rhein Central Branch Library, 215 N. Oxford Road, Casselberry, FL 32707.                |
| Miami, FL .....         | July 20, 2011 .... | 2:30–4:30 p.m. | Miami-Dade Public Library, 101 West Flagler Street, Miami, FL 33130.                         |
| Peabody, MA .....       | July 26, 2011 .... | 1–3 p.m. ....  | Peabody Institute-West Branch, 603 Lowell Street, Peabody, MA 01960.                         |
| Bronx, NY .....         | July 27, 2011 .... | 5:30–7:30 p.m. | Parkchester Library, 1985 Westchester Avenue (at Pugsley Ave.), Bronx, NY 10462.             |
| Atlantic City, NJ ..... | July 28, 2011 .... | 3:30–6:30 p.m. | Atlantic County Library System, Brigantine Branch, 201 15th St. South, Brigantine, NJ 08203. |

### Classification

The NMFS Assistant Administrator has determined that this proposed action is consistent with the Magnuson-Stevens Act, 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule would modify a collection-of-information requirement associated with dealer reporting for Atlantic HMS dealers subject to the Paperwork Reduction Act (PRA) which has been approved by the Office of Management and Budget (OMB) under control number 0648–0040. The proposed modifications are subject to review and approval by OMB under the PRA. This requirement has been submitted to OMB for approval. The public reporting burden associated with Atlantic HMS dealers having to report Atlantic swordfish, sharks, and BAYS tunas to NMFS electronically (15 minutes per positive report and 5 minutes per negative report) depends on the species/species complex, which fisheries are open, available quota, and amount of time left in the fishing season. NMFS would establish a weekly base reporting frequency and would have the flexibility to increase the reporting frequency from weekly to daily for any HMS species if more frequent reporting is deemed necessary to monitor the available quota. NMFS does not expect to use this flexibility in the near future for BAYS tunas or swordfish, but may need to for sharks. Additionally, as shark quotas are the smallest of any HMS quotas, and their associated fishing seasons have been the shortest in the past, NMFS is proposing to require Federal Atlantic shark dealers

to report sharks within 24 hours while the fishing seasons for non-sandbar LCS, blacknose sharks, and non-blacknose SCS are open. When the fishing seasons for these shark species/complexes are all closed, Federal Atlantic shark dealers would be required to report sharks on a weekly basis.

Public reporting burden for Atlantic swordfish and BAYS tunas would be one hour per month (15 minutes per report each week  $\times$  4 weeks) or 12 hours per year. Based on the number of Atlantic swordfish and tunas dealer permits (that deal with BAYS tunas) in 2010 (or 711 total permits), this would result in an estimated total annual burden of 8,532 hours.

Atlantic shark dealers would spend approximately 7.5 hours/month reporting to NMFS (15 minutes per report each day  $\times$  30 days) while the non-sandbar LCS, blacknose sharks, and non-blacknose SCS fishing seasons were open, and approximately 1 hour per month when the fishing seasons for these fisheries were closed. In 2010, the non-sandbar LCS, blacknose, or non-blacknose SCS fisheries were open for 33 weeks. Similar season lengths in subsequent years would result in 57.75 hours of reporting by the Federal shark dealer to NMFS while these fisheries were open. However, the non-sandbar LCS, blacknose, or non-blacknose SCS fisheries were closed for 20 weeks during 2010, which would result in 5 hours of reporting by the Federal shark dealer to NMFS under similar fishing seasons. Based on the number of Atlantic shark dealer permits in 2010 (or 175 total permits), this rule change would result in an estimated total annual burden to all the affected entities of 10,981.25 hours and assumes that

dealers would report Atlantic sharks, swordfish, and/or BAYS tunas during each reporting period. Negative reports would require less of a reporting burden as negative reports are estimated to only take 5 minutes to complete and send to NMFS. Finally, all 886 permit holders affected by this proposed rule would be considered respondents.

Public comment is sought regarding the estimated burden hours (*i.e.*, 15 minutes per report) associated with electronic reporting for Atlantic HMS dealers. Send comments on this or any other aspects of the collection-of-information to Delisse Ortiz with the Highly Migratory Species Management Division, at the **ADDRESSES** above, and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395–7285. Comments submitted in response to this proposed modification to an existing information collection will be summarized and/or included in the request for OMB approval of this information collection and will also be included in the public record.

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.

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

In addition, NMFS has determined that this proposed rule would not affect the coastal zone of any state, and a negative determination pursuant to 15 CFR 930.35 is not required, therefore, pursuant to 15 CFR 930.33(a)(2), coordination with appropriate state

agencies under section 307 of the CZMA is not required.

Ecological impacts, outside of those that have been previously analyzed for Atlantic shark dealer reporting requirements in Amendment 2 to the 2006 Consolidated HMS FMP and categorically excluded for Atlantic swordfish and BAYS tunas, are not expected as a result of this proposed rule. This action would not directly affect fishing effort, quotas, fishing gear, authorized species, interactions with threatened or endangered species, or other relevant parameters. This proposed rule is exempt from the requirement to prepare an Environmental Assessment in accordance with NAO 216–6 because it would not have significant, additional impacts on the human environment, or any environmental consequences that have not been previously analyzed or are categorically excluded in accordance with Sections 5.05b and Section 6.03.c.3(i) of NOAA's Administrative Order (NAO) 216–6. However, social and economic impacts are expected as a result of this proposed action.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

In compliance with § 603(b)(1) of the RFA, the purpose of this proposed rulemaking is consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to consider changes to the current regulations and infrastructure of the Atlantic HMS quota-monitoring system by requiring: all Federally-permitted Atlantic HMS dealers to report commercially-harvested Atlantic swordfish, sharks, and BAYS tunas to NMFS through an electronic dealer reporting system; delinquent reports be submitted by dealers and received by NMFS before a dealer could receive commercially-harvested Atlantic swordfish, sharks, and BAYS tunas; and all commercially harvested Atlantic swordfish, sharks, and BAYS tunas by Federally-permitted fishermen be offloaded to Federally-permitted HMS dealers, who must report the associated catch to NMFS. These actions are necessary to ensure timely and accurate reporting, which is critical for quota

monitoring and management of these species.

In compliance with § 603(b)(2) of the RFA, the objectives of this proposed rulemaking are to achieve domestic management objectives under the MSA, and to implement the 2006 Consolidated HMS FMP and its amendments. These objectives include the goals in the Consolidated HMS FMP to monitor and control all components of fishing mortality, both directed and incidental, so as to ensure the long-term sustainability of HMS stocks, and to provide the data necessary for assessing HMS fish stocks and managing HMS, including addressing inadequacies in current data collection and the ongoing collection of social and economic data in Atlantic HMS fisheries.

Under § 603(b)(3) of the RFA, Federal agencies are required to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than \$4.0 million for fish-harvesting, average annual receipts less than \$6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in the fishing industry. NMFS estimates that this proposed rule would affect all Federal Atlantic HMS dealers who first receive Atlantic swordfish, sharks, and BAYS tunas from Federally-permitted commercial fishing vessels in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. All of these are considered small entities. As of 2010, there were 886 Federal Atlantic HMS dealer permit holders, of which 175 had Atlantic shark, 330 were Atlantic swordfish, and 381 were Atlantic tunas (bigeye, albacore, yellowfin, and skipjack) dealer permits.

This proposed rule would modify existing reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603(b)(4)). If adopted, the rule would require Federal Atlantic HMS dealers to report commercially-harvested Atlantic sharks, swordfish, and BAYS tunas to NMFS through an electronic reporting system; increase HMS dealer reporting frequency to NMFS, as needed (*i.e.*, daily—weekly reporting); and require a corresponding Federal HMS dealer permit for all first receivers of Atlantic sharks, swordfish, and BAYS tunas offloaded from Federally-permitted U.S. vessels. The HMS dealer permit would require the same application and fees (*i.e.*, \$50 to \$75) that are currently

required for an HMS dealer permit. The information collected through the electronic dealer system would include additional data fields, including vessel and location of catch information; however, many new fields would be auto-populated or selected from data fields in a drop down menu in the electronic system. In addition, under the proposed rule, a dealer would only be authorized to receive commercially-harvested HMS if the dealer had submitted all reports to NMFS within the required timeframe. Failure to report Atlantic sharks, swordfish, and BAYS tunas to NMFS within the required reporting frequency would result in dealers being ineligible to first receive Atlantic sharks, swordfish, and BAYS tunas. This proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the MSA, the ATCA, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, and the Paperwork Reduction Act. NMFS does not believe that the new regulations proposed to be implemented would duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. 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 for small entities.

In order to meet the objectives of this proposed rule, consistent with the MSA, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all of the participants in Atlantic HMS fisheries are considered small entities. All Federally-permitted HMS dealers must

currently submit bi-weekly reports of all commercially-harvested HMS. Similarly, the application process for the dealer permit would be the same as the process that is required under the current regulations. The majority of the information required to report in the new reporting system would be the same as what is currently required. However, the proposed rule would require Federally-permitted dealers to report information about commercially-harvested Atlantic sharks, swordfish, and BAYS tunas to NMFS in an electronic format rather than paper on a more frequent basis than bi-weekly and for all first receivers of Atlantic sharks, swordfish, and BAYS tunas to have a dealer permit and report the associated catch to NMFS.

NMFS considered and analyzed four alternatives to ensure more timely, efficient, and accurate dealer reporting and subsequent quota monitoring of Atlantic HMS. NMFS considered the following alternatives: Alternative A1—Status quo; Alternative A2—Establish new flexible reporting requirements for all Federally-permitted HMS dealers effective 30 days after publication of the final rule; Alternative A3—Establish new flexible reporting requirements for all Federally-permitted HMS dealers and delay implementation; and Alternative A4—Establish new weekly reporting requirements for all Federally-permitted HMS dealers and delay implementation.

Alternative A1, the No Action alternative, would maintain existing regulations specifying bi-weekly dealer reporting requirements from Federal Atlantic shark, tunas, and swordfish dealers. This alternative would not result in any additional impacts to small entities. Federal HMS dealers are currently required to report any Atlantic tunas, swordfish, and/or sharks that they receive from U.S. vessels to NMFS on a bi-weekly basis. Federal dealers submit their reports in paper format to NMFS by the 10th and 25th of each month and indicate the amount of product received over a two week period, including submission of a “negative” report to NMFS indicating no purchases were made during a reporting period. The reports are mailed or faxed to the SEFSC for dealers located south of Virginia. Northeast Atlantic HMS dealers (Virginia through Maine) report HMS to the NEFSC through SAFIS or, to a lesser extent, through a manual system involving the NERO port offices with the exception of bluefin tuna, which is reported through other reporting mechanisms. Under the current regulations, a dealer permit may be revoked, suspended, or modified,

and a permit application denied if recordkeeping and reporting requirements for HMS are not met. Current regulations also require any person that receives, purchases, trades for, or barter for Atlantic HMS from a U.S. vessel to possess a valid Atlantic HMS dealer permit. As mentioned above, Federal dealers are required to report any Atlantic tunas, swordfish, and/or sharks that they receive from U.S. vessels to NMFS on a bi-weekly basis. In the shark fishery, the first receiver of Atlantic shark product harvested by Federally-permitted fishermen must also obtain a Federal shark dealer permit and report the associated catch to NMFS. Under the current regulations, dealer reporting is estimated to require individual dealers to spend approximately 15 minutes to complete each report if HMS are purchased or received during the reporting period, and only about 5 minutes to complete a negative report if no HMS were purchased or received. Currently, bi-weekly reports to NMFS are sent in pre-paid NMFS envelopes. Therefore, on an annual basis, reporting HMS product has no associated mailing costs per dealer. The current dealer reporting mechanisms make it difficult to monitor small quotas, and in some cases, results in the fishery closing before the entire quota has been harvested, as is the case for Atlantic shark fisheries. Thus, receiving HMS dealer data on a more frequent basis would allow NMFS to better manage these fisheries, which could ultimately benefit fishermen.

To obtain a dealer permit, NMFS charges an administrative fee of \$50 for issuing a dealer permit for the first fishery and \$12.50 for each additional fishery, for a total a cost of \$75 per dealer for all HMS fisheries. NMFS also requires all Federal Atlantic shark dealer permit holders to complete an Atlantic shark identification workshop every three years. Although there is no associated cost to participate in the dealer workshop certification, participation in the workshop is a time burden of approximately 4 hours per workshop for each shark dealer.

Alternative A2 proposes that all Federally-permitted Atlantic HMS dealers must report commercially-harvested Atlantic sharks, swordfish, and BAYS tunas to NMFS through an electronic reporting system, including submission of a “negative” report to NMFS indicating no purchases were made in a given reporting period. To better facilitate timely quota monitoring, NMFS is also proposing to increase the frequency of both positive and negative dealer reporting for Atlantic sharks,

swordfish, and BAYS tunas. The reporting frequency would be flexible and could be adjusted depending on the available quota, length of fishing season, and species/species complexes, when certain triggers are met by the different fisheries, as described below. As proposed, NMFS would establish a weekly base reporting frequency. Under the proposed rule, for swordfish, an increase in reporting from a weekly to daily basis would occur when 80 percent of the directed fishery’s quota is attained. For BAYS tunas, bigeye, yellowfin, and skipjack fisheries are not managed under quotas, and the United States has not attained the U.S. allocated albacore tuna quota, which is currently not codified. If such quotas are codified in the future, NMFS proposes to increase the required dealer reporting from a weekly to daily basis when 80 percent of the respective quotas are attained. Additionally, because shark quotas are the smallest of all HMS quotas, NMFS is proposing to require Federal Atlantic shark dealers to report sharks within 24 hours while the fishing seasons for non-sandbar LCS, blacknose sharks, and non-blacknose SCS are open. The quotas for these shark complexes/species are the smallest of all the shark quotas, and their associated fishing seasons have been the shortest in the past. When the fishing seasons for these shark species/complexes are all closed, Federal Atlantic shark dealers would be required to report sharks on a weekly basis unless otherwise notified.

As proposed, NMFS would announce any change in reporting frequency for HMS species by filing an adjustment of the reporting frequency with the Office of the Federal Register for publication. In no case would such an adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register. The public would also be informed simultaneously via the HMS Web site and e-mail notice listserve as well as through e-mail notifications to Federal HMS dealers to an e-mail address provided to NMFS by dealers (and individual employees of dealers reporting in the electronic reporting system). NMFS anticipates that this flexibility to adjust the reporting frequency would be most critical for sharks due to small shark quotas.

A dealer would be authorized to receive commercially-harvested Atlantic sharks, swordfish, and BAYS tunas only if the permitted dealer has submitted all required reports to NMFS. Under this alternative, NMFS would also require Federal HMS dealer permits for all first receivers of Atlantic sharks, swordfish, and BAYS tunas. The first receivers/



Federal dealers of Atlantic sharks, swordfish, and BAYS tunas would be required to report all HMS product harvested by U.S. fishing vessels to NMFS. Implementation of these regulations would be effective 30 days after the publication of the final rule.

There may be minor social and economic impacts expected from this alternative as a result of HMS dealers having to purchase computer and Internet services in order to report the associated catch through NMFS' electronic dealer reporting system. According to the SBA, in 2010, approximately 94 percent of businesses have at least one computer. Of businesses with computers, 95 percent have Internet service. Thus, most dealers are assumed to already have a computer and Internet access as part of their regular business operations. The most inexpensive computer that would support the new system may have an average, one-time cost of \$615. Internet service rates may vary depending on a variety of factors. A recent report by the SBA Office of Advocacy (2010) indicated that businesses pay an average of \$110 per month for Internet service, with most paying between \$50 and \$99 per month. Therefore, if a dealer needed to purchase a computer it would be a one-time cost of \$615. The average annual cost would be \$600 for Internet services (assuming dealers would need the most basic Internet connection to support NMFS's electronic reporting system at a cost of \$50 per month for Internet service; \$50\*12 months=\$600/year). As such, during the first year, it would cost dealers \$1,215 (\$615 for computer + \$600 for Internet service) for a computer and Internet services, assuming the dealer does not already have a computer and Internet access as part of his/her regular business operations. After the first year, it would cost \$600 a year for Internet service. Under this alternative, NMFS would also revise the current dealer reporting requirements as explained above. NMFS estimates that it would take dealers the same amount of time to fill out and submit an individual electronic report as it does for the current report in a paper format (*i.e.*, 15 minutes per report).

At this time, NMFS cannot determine the number of additional individuals that would need to obtain HMS dealer permits due to the first receiver requirement in this proposed action. However, NMFS is seeking specific public comment regarding the universe that would be affected by this action. NMFS did investigate the percent change in the number of Atlantic shark dealer permits from 2007 to 2008 as first

receivers of Atlantic shark products were required to obtain a Federal shark dealer permit in 2008. Federal Atlantic shark dealer permit data indicate that there was a decrease in the number of permitted shark dealer facilities from 2007 to 2008. However, because several management measures were also implemented in 2008 (*i.e.*, implementation of shark dealer workshops and the prohibition of sandbar sharks outside of a research fishery) that could have impacted the number of Atlantic shark dealers during this time, it is unclear if changes in the number of permitted shark dealers were the result of the first receiver requirement or other new regulations in the shark fishery. If individuals need to obtain an HMS dealer permit and were to purchase all three HMS dealer permits, it would cost \$75 on an annual basis. If those dealers also have to purchase a computer, it would be a one-time cost of \$615. The annual cost of maintaining Internet service would be \$600 (as outlined above). As such, during the first year, if the dealer had to purchase permits, a computer, and Internet service, it would cost \$1,290 (\$75 for dealer permits + \$1,215 for computer and Internet). After the first year, it would cost \$675 for permits and Internet service. However, since most current HMS dealers have a computer and Internet service as part of their business practices, the cost associated with A2 would be the extra time required for reporting on a more frequent basis as explained above. Those entities currently exempt from having to obtain an HMS dealer permit under the transport only exemption may need to purchase dealer permits, a computer, and Internet service. Comment is sought on the number of such entities that would be impacted by this proposed action. Under alternative A2 the proposed regulations would be effective within 30 days after publication of the final rule.

Alternative A3, the preferred alternative, proposes the same requirements as alternative A2; however, alternative A3 would delay implementation of the new regulations until February 2012. NMFS anticipates publishing the final rule for this action in November 2011. This delay would allow dealers an additional three months to learn about the new regulations, purchase a new computer and obtain Internet services, if necessary, and become familiar with the new electronic dealer reporting system before it is required for all HMS dealers in February 2012. Because the proposed action under alternative A3 would allow

NMFS time to conduct outreach to HMS dealers regarding the new reporting system and its requirement, and it would allow HMS dealers additional time to learn about and prepare for the new electronic dealer reporting system, NMFS prefers this alternative at this time.

Alternative A4 proposes the same requirements as alternative A3; however, alternative A4 would have weekly dealer reporting requirements for all Atlantic swordfish, shark, and BAYS tunas dealers. Atlantic shark dealers would report on a weekly basis regardless of which shark fishery was open to simplify reporting requirements across all HMS dealers and would reduce the reporting burden on shark dealers by requiring less frequent reporting. While this proposed alternative may simplify dealer reporting, it would not allow for real time data collection of shark landings when shark fisheries with the smallest quotas (*i.e.*, non-sandbar LCS, blacknose sharks, and non-blacknose sharks) were open. This could jeopardize effective management and quota monitoring in the Atlantic shark fishery, which is critical given these fisheries typically have short seasons.

This action does not contain regulatory provisions with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132.

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

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

Dated: June 22, 2011.

**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, the definition for "First receive" is added in alphabetical order and "First receiver" is revised to read as follows:

##### § 635.2 Definitions.

\* \* \* \* \*

*First receive* means to take immediate possession for commercial purposes of any fish or any part thereof by



acquiring, purchasing, trading or bartering for it as it is offloaded from a fishing vessel of the United States, as defined under § 600.10 of this chapter, whose owner or operator has been issued, or should have been issued, a valid permit under this part. For this definition, possession includes, but is not limited to, handling, receiving, transporting, disposing of, packing, or storing fish offloaded from a vessel.

*First receiver* means any entity, person, or company that first receives fish, or any part thereof, as defined in this part.

\* \* \* \* \*

3. In § 635.4, paragraphs (g)(1)(i) and (ii) are added and paragraph (g)(3) is revised to read as follows:

**§ 635.4 Permit and fees.**

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(i) A person that receives, purchases, trades for, or barter for Atlantic bluefin tuna from a fishing vessel of the United States, as defined under § 600.10 of this chapter, must possess a valid Federal Atlantic tunas dealer permit.

(ii) A first receiver, as defined in § 635.2, of Atlantic bigeye, albacore, yellowfin, or skipjack tunas must possess a valid Federal Atlantic tunas dealer permit.

\* \* \* \* \*

(3) *Swordfish*. A first receiver, as defined in § 635.2, of Atlantic swordfish must possess a valid Federal Atlantic swordfish dealer permit.

\* \* \* \* \*

4. In § 635.5, paragraphs (b)(1)(i) through (iv) are revised and paragraph (b)(1)(v) is added to read as follows:

**§ 635.5 Recordkeeping and reporting.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Dealers that have been issued or should have been issued a Federal Atlantic tunas, swordfish, and/or shark dealer permit under § 635.4 must submit to NMFS all reports required under this section within the timeframe specified under paragraphs (b)(1)(ii) and (b)(1)(iii). Atlantic bigeye, albacore, yellowfin, or skipjack tunas, swordfish, and sharks commercially-harvested by a U.S. vessel can only be first received by dealers that have been issued or should have been issued an Atlantic tunas, swordfish, and/or sharks dealer permit under § 635.4. All reports must be species-specific and must include the required information about all Atlantic bigeye, albacore, yellowfin, or skipjack tunas, swordfish, and sharks received by

the dealer, including the required vessel information, regardless of where harvested or whether the harvesting vessel is permitted under § 635.4. For sharks, each report must specify the total weight of the carcass(es) without the fins for each species, and the total fin weight by grade for all sharks combined. Dealers are also required to submit “negative” reports, reports which indicate no receipt of Atlantic bigeye, albacore, yellowfin, and skipjack tunas, swordfish, and/or sharks, within the timeframe specified under paragraphs (b)(1)(ii) and (b)(1)(iii). As stated in § 635.4(a)(6), failure to comply with these recordkeeping and reporting requirements may result in existing dealer permit(s) being revoked, suspended, or modified, and in the denial of any permit applications.

(ii) *Atlantic tunas and swordfish*. As of February 1, 2012, reports of any Atlantic bigeye, albacore, yellowfin, and skipjack tunas, and/or swordfish first received by dealers from U.S. vessels, as defined under § 600.10 of this chapter, must be submitted electronically by the dealer and received by NMFS no later than 11:30 p.m., local time, on Monday of each week through the HMS electronic dealer reporting system unless the dealer is otherwise notified by NMFS. NMFS will adjust the reporting from a weekly to daily basis for HMS swordfish dealers when 80 percent of the directed fishery’s quota is attained. If quotas for Atlantic bigeye, albacore, yellowfin, and skipjack tunas are codified in the future, NMFS will adjust the required dealer reporting from a weekly to daily basis when 80 percent of the respective quotas are attained. If NMFS determines that the required reporting frequency should be changed, NMFS will file for publication with the Office of the Federal Register an adjustment of the reporting frequency. In no case shall such an adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register. Atlantic tunas and swordfish dealers will also be notified by e-mail at the e-mail address provided to NMFS through the HMS electronic dealer reporting system of any changes in the required reporting frequency. Atlantic tunas and swordfish dealers must submit electronic negative reports, reports stating that no Atlantic bigeye, albacore, yellowfin, and skipjack tunas and/or swordfish were first received during a reporting period, as specified in this section or as modified by NMFS in accordance with this section. Reporting requirements for bluefin tuna are specified in paragraph (b)(2) of this

section. The negative reporting requirement does not apply for bluefin tuna.

(iii) *Atlantic sharks*. As of February 1, 2012, reports of any Atlantic sharks first received by Atlantic shark dealers from U.S. vessels, as defined under § 600.10 of this chapter, must be submitted electronically by the dealer and received by NMFS, through the HMS electronic dealer reporting system, no later than 11:30 pm, local time, each day of the week (*i.e.*, every 24 hours) while the non-sandbar LCS, non-blacknose SCS, or blacknose shark fisheries remain open. When those fisheries are closed, reports of any Atlantic sharks offloaded to Atlantic shark dealers from U.S. vessels must be electronically submitted by the dealer and received by NMFS, through the HMS electronic dealer reporting system, no later than 11:30 p.m., local time, on Monday of each week unless the dealer is otherwise notified by NMFS. NMFS may adjust the required reporting frequency from weekly to daily for Atlantic sharks based on the available quota and amount of time left in the fishing season for any species other than non-sandbar LCS, non-blacknose SCS, or blacknose shark. If NMFS determines that the required reporting frequency should be changed, NMFS will file for publication with the Office of the Federal Register an adjustment of the reporting frequency. In no case shall such an adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register. Atlantic shark dealers will also be notified by e-mail at the e-mail address provided to NMFS through the HMS electronic dealer reporting system of any changes in the required reporting frequency for Atlantic sharks. Atlantic shark dealers must submit electronic negative reports, reports stating that no Atlantic sharks were first received during a reporting period, as specified in this section or as modified by NMFS in accordance with this section.

(iv) As of February 1, 2012, Atlantic tunas, swordfish, and shark dealers must submit and have NMFS receive reports of all Atlantic bigeye, albacore, yellowfin, and skipjack tunas and swordfish offloaded to a dealer or extensions of a dealer’s place of business, through the HMS electronic reporting system in accordance with the reporting frequency specified in paragraphs (b)(1)(ii) and (iii) of this section. For the purposes of this part, trucks or other conveyances of a dealer’s place of business are considered to be extensions of a dealer’s place of business.

(v) Atlantic HMS dealers are not authorized to first receive Atlantic swordfish, sharks, and/or Atlantic bigeye, albacore, yellowfin, and skipjack tunas if the required reports have not been submitted and received by NMFS according to reporting requirements under this section. Delinquent reports automatically result in an Atlantic HMS dealer becoming ineligible to first receive Atlantic swordfish, sharks, and/or Atlantic bigeye, albacore, yellowfin, and skipjack tunas regardless of any notification to dealers by NMFS. Atlantic HMS dealers who become ineligible to first receive Atlantic swordfish, sharks, and/or Atlantic bigeye, albacore, yellowfin, and skipjack tunas due to delinquent reports are authorized to first receive Atlantic swordfish, sharks, and/or Atlantic bigeye, albacore, yellowfin, and skipjack tunas only once all required and delinquent reports have been submitted and received by NMFS according to reporting requirements under this section.

\* \* \* \* \*

5. In § 635.8, paragraphs (b)(4) through (b)(6), and (c)(4) are revised to read as follows:

#### § 635.8 Workshops.

\* \* \* \* \*

(b) \* \* \*

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

(5) An Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for inspection a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy

at each place of business listed on the dealer permit which first receives Atlantic sharks. For the purposes of this part, trucks or other conveyances of a dealer's place of business are considered to be extensions of a dealer's place of business and must possess a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to a place of business covered by the dealer permit. A copy of a valid Atlantic shark identification workshop certificate must be included in the dealer's application package to obtain or renew an Atlantic shark dealer permit. If multiple businesses are authorized to first receive Atlantic sharks under the Atlantic shark dealer's permit, a copy of the Atlantic shark identification workshop certificate for each place of business listed on the Atlantic shark dealer permit which first receives Atlantic sharks must be included in the Atlantic shark dealer permit renewal application package.

(6) Persons holding an expired Atlantic shark dealer permit and persons who intend to apply for a new Atlantic shark dealer permit will be issued a participant certificate in their name upon successful completion of the Atlantic shark identification workshop. A participant certificate issued to such persons may be used only to apply for an Atlantic shark dealer permit. Pursuant to § 635.8(c)(4), an Atlantic shark dealer may not first receive Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. After an Atlantic shark dealer permit is issued to a person using an Atlantic shark identification workshop participant certificate, such person may obtain an Atlantic shark identification workshop dealer certificate for each location which first receives Atlantic sharks by contacting NMFS at an address designated by NMFS.

(c) \* \* \*

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

and opts to send a proxy or proxies to a workshop, the dealer must submit a copy of a valid proxy certificate for each place of business listed on the dealer permit which first receives Atlantic sharks.

\* \* \* \* \*

6. In § 635.27, paragraph (b)(1)(iv)(C) is revised to read as follows:

#### § 635.27 Quotas.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) \* \* \*

(C) Except for non-sandbar LCS landed by vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported as harvested in the Florida Keys areas or in the Gulf of Mexico will be counted against the non-sandbar LCS Gulf of Mexico regional quota. Except for non-sandbar LCS landed by vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported as harvested in the Atlantic region will be counted against the non-sandbar LCS Atlantic regional quota. Non-sandbar LCS landed by a vessel issued a valid shark research permit with a NMFS-approved observer onboard will be counted against the non-sandbar LCS research fishery quota using scientific observer reports.

\* \* \* \* \*

7. In § 635.28, paragraph (b)(4) is revised to read as follows:

#### § 635.28 Closures.

\* \* \* \* \*

(b) \* \* \*

(4) When the fishery for a shark species group and/or region is closed, a fishing vessel, issued a Federal Atlantic commercial shark permit pursuant to § 635.4, may not possess or sell a shark of that species group and/or region, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is on board. During the closure period, an Atlantic shark dealer, issued a permit pursuant to § 635.4, may not first receive a shark of that species group and/or region from a vessel issued a Federal Atlantic commercial shark permit, except that a permitted Atlantic shark dealer or processor may possess sharks that were harvested, offloaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under a closure for a shark species group, an Atlantic shark dealer, issued a permit pursuant to § 635.4 may, in accordance with State regulations, first receive a shark of that

species group if the sharks were harvested, offloaded, and sold, traded, or bartered from a vessel that fishes only in State waters and that has not been issued a Federal Atlantic commercial shark permit, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4. Additionally, under a closure for a shark species group and/or regional closure, an Atlantic shark dealer, issued a permit pursuant to § 635.4, may first receive a shark of that species group if the sharks were harvested, offloaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per § 635.32) that had a NMFS-approved observer on board during the trip sharks were collected.

\* \* \* \* \*

8. In § 635.31, paragraphs (a)(1)(i), (a)(2)(i), and (a)(2)(ii) are added, paragraph (a)(1)(ii) is added and reserved, and paragraphs (c)(2), (c)(4), (c)(5), (d)(1), and (d)(2) are revised to read as follows:

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

\* \* \* \* \*

(a) \* \* \*  
(1) \* \* \*

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

(ii) [Reserved]

(2) \* \* \*

(i) Dealers may purchase Atlantic bluefin tuna only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category.

(ii) Dealers may first receive Atlantic bigeye, albacore, yellowfin and skipjack tunas only if they have submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii) and only from a vessel that has a valid

Federal commercial permit for Atlantic tunas issued under this part in the appropriate category.

\* \* \* \* \*

(c) \* \* \*

(2) Persons that own or operate a vessel for which a valid Federal Atlantic commercial shark permit has been issued and on which a shark from the management unit is possessed, may offload such shark only to a dealer that has a valid permit for shark issued under this part.

\* \* \* \* \*

(4) Only dealers that have a valid a Federal Atlantic shark dealer permit and who have submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(iii) may first receive a shark from an owner or operator of a U.S. fishing vessel who has a valid Federal Atlantic commercial shark permit issued under this part, except that Atlantic shark dealers may first receive a shark from an owner or operator of a vessel that does not have a Federal Atlantic commercial shark permit if that vessel fishes exclusively in state waters. Atlantic shark dealers may first receive a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer on board the vessel for the trip in which the sandbar shark was collected. Atlantic shark dealers may first receive a shark from an owner or operator of a fishing vessel that has a permit issued under this part only when the fishery for that species group and/or region has not been closed, as specified in § 635.28(b).

(5) An Atlantic shark dealer issued a permit under this part may first receive shark fins from an owner or operator of a fishing vessel only if the shark fins were harvested in accordance with the regulations found at part 600, subpart N, of this chapter and in § 635.30(c).

(d) *Swordfish*. (1) Persons that own or operate a vessel on which a swordfish is in or from the Atlantic Ocean is possessed may sell such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may offload such swordfish only to a dealer who has a valid permit for swordfish issued under this part.

(2) Atlantic swordfish dealers may first receive a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part and only if the dealer has submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii).

9. In § 635.71, paragraphs (a)(3)(i), (a)(3)(ii), (a)(3)(iii), (a)(4)(i), (a)(4)(ii), (a)(55), and (a)(56) are added and paragraphs (d)(11), (d)(14), (d)(16) and (e)(1) are revised to read as follows:

**§ 635.71 Prohibitions.**

(a) \* \* \*

(3) \* \* \*

(i) Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, Atlantic bluefin tuna landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer Atlantic bluefin tuna without the appropriate valid Federal Atlantic tunas dealer permit issued under § 635.4.

(ii) First receive, or attempt to first receive, Atlantic bigeye, albacore, yellowfin, and skipjack tunas, swordfish, and sharks landed by owners of vessels not permitted to do so under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(iii) First receive, or attempt to first receive, Atlantic bigeye, albacore, yellowfin, and skipjack tunas, swordfish, or sharks without the appropriate valid Federal Atlantic HMS dealer permit issued under § 635.4 or submission of reports by dealers to NMFS according to reporting requirements of § 635.5(b)(1)(ii) and § 635.5(b)(1)(iii). This prohibition does not apply to a shark harvested by a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(4) \* \* \*

(i) Sell or transfer or attempt to sell or transfer, for commercial purposes, an Atlantic bluefin tuna other than to a dealer that has a valid Federal Atlantic tunas dealer permit issued under § 635.4.

(ii) Offload an Atlantic bigeye, albacore, yellowfin, or skipjack tuna, swordfish, or shark other than to a dealer that has a valid Federal Atlantic HMS dealer permit issued under § 635.4, except that this does not apply to a shark harvested by a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

\* \* \* \* \*

(55) Fail to submit a dealer report if issued, or required to have obtained, a Federal Atlantic HMS dealer permit pursuant § 635.4 according to reporting

requirements of § 635.5(b)(1)(ii) and § 635.5(b)(1)(iii).

(56) Fail to electronically submit an Atlantic HMS dealer report through the HMS electronic dealer reporting system to report Atlantic bigeye, albacore, yellowfin, and skipjack tunas, swordfish, and sharks to NMFS in accordance with § 635.5(b)(1)(iv), if issued, or required to have obtained, a Federal Atlantic HMS dealer permit pursuant to § 635.4

\* \* \* \* \*

(d) \* \* \*

(11) First receive or attempt to first receive Atlantic sharks without a valid Federal Atlantic shark dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

\* \* \* \* \*

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

\* \* \* \* \*

(16) First receive or attempt to first receive a shark or sharks or part of a shark or sharks landed in excess of the retention limits specified in § 635.24(a).

\* \* \* \* \*

(e) \* \* \*

(1) First receive or attempt to first receive Atlantic swordfish from the north or south Atlantic swordfish stock without a Federal Atlantic swordfish dealer permit as specified in § 635.4(g).

\* \* \* \* \*

[FR Doc. 2011-16208 Filed 6-27-11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 110606318-1319-01]

RIN 0648-BA68

#### Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment 13 to the Coastal Pelagic Species Fishery Management Plan; Annual Catch Limits

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

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

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 13 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). This proposed rule will implement parts of proposed Amendment 13 to the CPS FMP, which is intended to ensure the FMP is consistent with advisory guidelines published in Federal regulations. Amendment 13 revises the framework process currently in place to set and adjust fishery specifications and management measures and modifies this framework to include the specification new reference points such as annual catch limit (ACL).

**DATES:** Comments must be received by July 28, 2011.

**ADDRESSES:** You may submit comments, identified by 0648-BA68, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- *Mail:* Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- *Fax:* (562) 980-4047, Attn: Joshua Lindsay.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you prefer to remain anonymous). You may submit

attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the CPS FMP as Amended through Amendment 13 and the Environmental Assessment/Regulatory Impact Review for Amendment 13, are available from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384 or the Southwest Regional Office (see **ADDRESSES**).

#### FOR FURTHER INFORMATION CONTACT:

Joshua B. Lindsay, Sustainable Fisheries Division, NMFS, at 562-980-4034 or Mike Burner, Pacific Fishery Management Council, at 503-820-2280.

**SUPPLEMENTARY INFORMATION:** The CPS fishery in the U.S. exclusive economic zone (EEZ) off the West Coast is managed under the CPS FMP, which was developed by the Pacific Fishery Management Council (Council) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Species managed under the CPS FMP include Pacific sardine, Pacific mackerel, jack mackerel, northern anchovy, market squid and krill. The CPS FMP was approved by the Secretary of Commerce and was implemented by regulations that can be found at 50 CFR part 660, subpart I.

The MSA was amended in 2007 to include new requirements for ACLs and accountability measures (AMs) and other provisions regarding preventing and ending overfishing and rebuilding fisheries. On January 16, 2009, NMFS revised its guidelines implementing MSA National Standard 1 (74 FR 3178) in response to these changes in the MSA. The revised guidelines explain NOAA's interpretation of the new statutory requirements for specifying ACLs at such levels that overfishing does not occur and that measures be taken to ensure accountability with these limits. The purpose of Amendment 13 is to amend the CPS FMP to ensure that it is consistent with these revised advisory guidelines and to comply with the statute. Specifically, Amendment 13 would revise the framework process to set and adjust fishery specification and management measures, and would establish a framework for specifying new reference points such as ACLs and AMs, as well as other provisions for preventing overfishing such as the potential setting of annual catch targets (ACTs).

Additionally, Amendment 13 would amend the FMP through the following measures that are designed to better