

well as perhaps the CAS Disclosure Statement, will be significant.

10. *Comment:* A respondent observed that the (b)(14) overseas exemption has not been identified as a cause for overseas subcontracting challenges in recent testimonies. On June 29, 2010, Stuart W. Bowen, Jr., Special Inspector General for Iraq Reconstruction, testified before the House Subcommittee on National Security and Foreign Affairs, and identified many subcontracting issues. However, he did not mention the (b)(14) overseas exemption from CAS as a cause for any of the issues, nor did he recommend the imposition of CAS coverage on foreign concern subcontracts as a potential solution. In the July 26, 2010 hearing on war zone subcontracting before the Commission on Wartime Contracting (CWC), none of the witnesses cited the (b)(14) overseas exemption from CAS as contributing to the subcontracting challenges identified during the hearings, nor did any witness recommend the imposition of CAS coverage as a solution to overseas subcontracting problems. None of the CWC commissioners spoke of, or inquired about, subcontractor CAS coverage or CAS compliance during opening statements or witness testimony.

Response: The CAS Board does not accept this reasoning for retaining the (b)(14) overseas exemption.

D. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35, subchapter I) does not apply to this rulemaking, because this rule imposes no additional paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The records required by this final rule are those normally maintained by contractors and subcontractors who claim reimbursement of costs under government contracts.

E. Executive Order 12866, the Congressional Review Act, and the Regulatory Flexibility Act

Because the affected contractors and subcontractors are those who are already subject to CAS but for the (b)(14) overseas exemption, and those who are subject to only CAS 401 and 402 under the (b)(4) foreign concern exemption, the economic impact of this final rule on contractors and subcontractors is expected to be minor. As a result, the CAS Board has determined that this final rule will not result in the promulgation of an “economically significant rule” under

the provisions of Executive Order 12866, and that a regulatory impact analysis is not required. For the same reason, the Administrator of the Office of Information and Regulatory Affairs has determined that this final rule is not a “major rule” under the Congressional Review Act, 5 U.S.C. chapter 8. Finally, this rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this final rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980, 5 U.S.C. chapter 6.

F. List of Subjects in 48 CFR 9903

Government procurement, Cost accounting standards.

Daniel I. Gordon,

Chair, Cost Accounting Standards Board.

For the reasons set forth in this preamble, Chapter 99 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 9903—COST ACCOUNTING STANDARDS

■ 1. The authority citation for Part 9903 is amended to read as follows:

Authority: Public Law 111–350, 124 Stat. 3677, 41 U.S.C. 1502.

9903.201–1 [Amended]

■ 2. Section 9903.201–1 is amended by removing and reserving paragraph (b)(14).

[FR Doc. 2011–20212 Filed 8–9–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110112022–1262–02]

RIN 0648–BA45

Atlantic Highly Migratory Species; Modification of the Retention of Incidentally-Caught Highly Migratory Species in Atlantic Trawl Fisheries

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

ACTION: Final rule.

SUMMARY: This final rule modifies the permitting requirements and retention limits for Atlantic highly migratory

species (HMS) that are incidentally-caught in Atlantic trawl fisheries. This action will reduce regulatory dead discards of incidentally-caught Atlantic swordfish in the *Illex* squid trawl fishery by establishing a new Incidental HMS Squid Trawl permit for all valid *Illex* squid moratorium permit holders. The Incidental HMS Squid Trawl permit will allow up to 15 swordfish per trip to be retained. The final rule also establishes a retention limit for smoothhound sharks in all Atlantic trawl fisheries. These actions are necessary to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to implement the 2006 Consolidated HMS Fishery Management Plan (Consolidated HMS FMP), including objectives in the 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 economic and bycatch data in Atlantic HMS fisheries.

DATES: Effective *August 10, 2011*, except for the amendments to § 635.21(e)(3)(i), § 635.24(a)(7), and § 635.71(d)(18), which are delayed indefinitely. NMFS will publish a document in the **Federal Register** announcing the effective dates for this amendments.

ADDRESSES: Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the supporting documents—including the Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), small entity compliance guide, and the 2006 Consolidated Atlantic HMSFMP—are available from the HMS Web site at <http://www.nmfs.noaa.gov/sfa/hms/>. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the HMS Management Division (see above) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Rick Pearson at (727) 824–5399, Steve Durkee at (202) 670–6637, or Delisse Ortiz at (301) 427–8503.

SUPPLEMENTARY INFORMATION: North Atlantic swordfish and smoothhound shark species are managed under the

authority of the Magnuson-Stevens Act. Swordfish are also managed under the authority of the Atlantic Tunas Convention Act (ATCA), which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the FMP for Atlantic Tunas, Swordfish, and Sharks. On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries. The implementing regulations for the Consolidated HMS FMP and its amendments for Atlantic HMS are at 50 CFR part 635.

Background

On March 18, 2011, NMFS published a proposed rule (76 FR 14884) in the **Federal Register** to modify the permitting requirements and retention limits for incidentally-caught HMS in Atlantic trawl fisheries. The proposed rule addressed two separate, but related, issues: (1) The retention of incidentally-caught swordfish in the *Illex* squid trawl fishery; and, (2) the retention of incidentally-caught species in the smoothhound shark complex (including smooth dogfish and Florida smoothhound (genus *Mustelus*)) in all Atlantic trawl fisheries. This rule finalizes the proposed management measures in the March 18, 2011, proposed rule. These final actions are necessary to achieve domestic management objectives under the Magnuson-Stevens Act and ATCA, and to implement the Consolidated HMS FMP and its amendments. This includes objectives in the 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 economic and bycatch data in Atlantic HMS fisheries. NMFS will be issuing the new Incidental HMS Squid Trawl permit out of its Northeast Regional Permit Office pursuant to this

final rule and other applicable provisions of 50 CFR part 635. Application procedures will be similar to those used for the *Illex* squid moratorium permit.

NMFS considered four alternatives to address the retention of incidentally-caught swordfish in squid trawl fisheries (Issue A), and three alternatives to address the retention of incidentally-caught smoothhound sharks in trawl fisheries (Issue B).

Alternative A1, the status quo, would maintain existing HMS permit requirements and incidental swordfish retention limits in squid trawl fisheries. The second alternative (A2), the selected final action, would implement a new permit (referred to as the Incidental HMS Squid Trawl permit) for *Illex* squid moratorium permit holders to retain up to 15 swordfish per trip, the current squid trawl limit. The third alternative (A3) would exempt *Illex* squid moratorium permit holders from current HMS permit requirements (*i.e.*, the “HMS permit triple-pack”) and allow them to retain up to 15 swordfish when fishing for squid. Finally, the fourth alternative (A4) would establish either a new Incidental HMS Squid Trawl permit available to all vessel owners currently issued a *Loligo* squid moratorium permit, or establish an exemption from the need for *Loligo* squid trawl vessels to be issued the “HMS permit triple-pack” to retain swordfish.

Currently, there are no management measures in effect for smoothhound sharks, thus trawl vessels may retain unlimited amounts of this species. All smoothhound shark management measures, including a commercial permit requirement and a commercial quota, will be implemented in the future when smoothhound sharks are fully incorporated into the HMS management unit, and upon completion of regulations implementing the Shark Conservation Act of 2010. Consistent with the stated intent of Amendment 3 to minimize changes to the fishery, trawl gear is not authorized as an HMS gear, but NMFS indicated that vessels with trawl gear could harvest smoothhound shark species at incidental levels, similar to swordfish. Thus, without the action being considered in this rulemaking, the retention of trawl-caught smoothhound sharks would be prohibited in the future because the gear is not authorized. Accordingly, all of the alternatives for Issue B are analyzed relative to the time when smoothhound shark measures are in effect. For Issue B, under the no action alternative (B1), when smoothhound sharks are fully

incorporated into the HMS management unit, their retention would be prohibited by trawl vessels. Alternative B2, the final action, would allow for the retention of smoothhound sharks caught incidentally in trawl gear in an amount not to exceed 25 percent of the total catch, by weight, when smoothhound sharks are fully incorporated into the HMS management unit. Finally, Alternative B3 would allow for the retention of smoothhound sharks caught incidentally in trawl gear, in an amount not to exceed 50 percent of the total catch, by weight.

The proposed rule contained additional details regarding the impacts of the alternatives considered and a brief summary of the recent management history. Those details are not repeated here.

Response to Comments

During the proposed rule stage, NMFS received seven written comments from non-governmental organizations, fishermen, dealers, and other interested parties. NMFS also heard numerous comments from constituents in attendance at the five public hearings. A summary of the major comments received on the proposed rule during the public comment period is shown below with NMFS’ responses. All written comments submitted during the comment period can be found at <http://www.regulations.gov/by> searching for RIN 0648–BA45.

Issue A—Squid Trawl/Swordfish Comments

Comment 1: NMFS should implement preferred Alternative A2 because it will improve data collection. Regulatory dead discards of swordfish contribute to scientific uncertainty. Swordfish are incidentally-caught in the *Illex* squid trawl fishery, so those fish should be counted. NMFS will gain ecological benefits associated with obtaining more reliable data.

Response: NMFS agrees. NMFS is implementing preferred Alternative A2 to improve data collection. Swordfish discard estimates are currently required to be reported in the Northeast Fishing Vessel Trip Report (VTR). Allowing for the limited retention of swordfish by all vessels issued *Illex* squid moratorium permits will require that those fish be sold to a permitted swordfish dealer who must submit bi-weekly dealer reports. Bi-weekly swordfish dealer reports will provide more precise landing weights than those currently obtained from VTR discard estimates. Also, establishing a new Incidental HMS Squid Trawl Permit will enable NMFS to place observers on those

vessels to obtain additional catch and effort data specific to HMS in the future, if necessary.

Comment 2: NMFS should implement preferred Alternative A2 because it will provide economic benefits by reducing dead discards of swordfish and converting them into landings. It is painful for so many *Illex* squid trawl vessels to discard incidentally-caught dead swordfish just because they do not have the correct HMS permits. The swordfish stock is fully rebuilt, so there is potential for more landings. The positive economic impacts to an individual vessel would be helpful. Preferred Alternative A2 would also be a great benefit to New Jersey ports, especially Cape May, where many *Illex* vessels unload.

Response: NMFS agrees. Alternative A2, the final action, is estimated to result in moderate economic benefits ranging from \$3,849–\$4,145 annually for individual active *Illex* squid trawl vessels. These estimates are based upon historical observer data that indicates an average of 1.2–3.3 swordfish discards per *Illex* trip. For trips that land the maximum of 15 swordfish, the additional ex-vessel revenue associated with those landings could be approximately \$4,441 per *Illex* trip. However, because *Illex* fishery encounters with swordfish are primarily concentrated in July and August and relatively few vessels actively participate in the fishery, NMFS does not anticipate that a large number of squid trawl trips will land the maximum allowable limit. This final rule will lessen economic waste by allowing swordfish that are incidentally-caught while trawling for *Illex* squid to be retained and sold, rather than discarded dead. Fishing ports in Rhode Island and New Jersey are expected to be positively impacted by this rule because these states historically account for more than 90 percent of *Illex* squid landings.

Comment 3: NMFS should not implement Alternatives A2–A4 because the squid trawl fishery could become a directed swordfish fishery in the future due to the value of swordfish. Allowing all *Illex* squid trawl vessels to retain up to 15 swordfish per trip will create an incentive for those vessels to target swordfish.

Response: NMFS disagrees. The current HMS regulations specify that a vessel is considered to be in the squid trawl fishery when squid constitutes not less than 75 percent of the total fish on board and when trawl gear is the only gear on board. This means that a vessel would have to catch at least 5,000 lb. of squid to retain approximately 15

average-sized (112 lb.) swordfish. Given that the *Illex* quota has held steady since 2000 at 24,000 mt for the entire fishery, during which landings have been averaging about 11,800 mt annually, individual vessel landings of 5,000 lb do not always occur. NMFS intends to monitor the fishery to ensure that the 15-fish retention limit is appropriate and consistent with the goal of maintaining the incidental nature of swordfish catches by squid trawl vessels.

Comment 4: Due to a variety of economic factors like fuel costs, effort in many trawl fisheries has declined. If squid trawl fisheries are allowed to retain swordfish, fishing trips could become more profitable, which could encourage fishermen, who are not currently fishing, to fish. Because of the likelihood of increased trawl fishing effort, NMFS has incorrectly determined that “the action will not be reasonably expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH)” and “that the action will not reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species.” Therefore, the draft Finding of No Significant Impact (FONSI) is incorrect. There will be a significant impact from this action and NMFS should prepare both an Environmental Impact Statement (EIS) and a Biological Opinion (BiOp).

Response: NMFS disagrees. The *Illex* squid fishery is managed by the Mid-Atlantic Fishery Management Council (MAFMC) under the Atlantic Mackerel, Squids, and Butterfish Fishery Management Plan (MSB FMP). The MAFMC annually recommends an Acceptable Biological Catch (ABC) and a Domestic Annual Harvest (DAH) level. NMFS is required to close the directed *Illex* squid fishery when 95 percent of the DAH is achieved. Therefore, *Illex* squid fishing effort is effectively capped at a scientifically-determined upper quota limit. Because an EIS has been prepared for the MSB FMP, a BiOp has been developed for the fishery, and the MSB FMP has been determined to comply with the Magnuson-Stevens Act and its National Standards, any level of legal *Illex* squid fishing effort below 95 percent of the DAH has already been analyzed. The *Illex* squid fishery has been landing an average of 59 percent (range: 38–77 percent) of the ABC since 2005, so it is possible that squid trawl fishing effort could increase. However, an increase would not be solely because of this final HMS rule. Squid trawl vessels tend to be specialized and are designed to capture small pelagic

species such as squid, mackerel, and butterfish. The primary factors influencing effort in this fishery are ex-vessel prices of those species, seasonal availability, and the amount of fixed gear in the water column from other fisheries. Although landings by value per individual moratorium-permitted vessel have fluctuated from 2002 to 2006, the vast majority of *Illex* landings (96 percent) during this period came from only 22 distinct vessels. The additional revenue associated with the sale of incidentally-caught swordfish for a period of approximately 2–3 months (\$3,849–\$4,145 annually per vessel) is not expected to offset the startup costs associated with this fishery or provide sufficient incentive for large numbers of currently inactive *Illex* squid vessels to reactivate. If some squid vessels do reactivate or increase their fishing effort, the fishery as a whole would continue to be limited by the ABC and DAH specified annually under the MSB FMP.

Comment 5: NMFS should implement Alternative A4, which would establish either a new permit or an exemption for *Loligo* squid moratorium permit holders to retain swordfish. NMFS should allow for the retention of swordfish by both *Illex* and *Loligo* squid moratorium permit holders.

Response: As explained in the Environmental Assessment, swordfish discards are much higher in the *Illex* squid trawl fishery than in the *Loligo* fishery. Based upon Northeast Fisheries Science Center (NEFSC) observer data, the average number of swordfish discards per *Illex* tow equals 0.11 (105 total discards/976 total tows = 0.11 discards/tow), and the average number of swordfish discards per tow in the *Loligo* fishery equals 0.01 (36 total discards/4,697 total tows = 0.01). In other words, swordfish discards are approximately 10 times higher in the *Illex* squid trawl fishery. This is because the *Loligo* fishery primarily operates inshore during summer months whereas the *Illex* fishery operates in the offshore Mid-Atlantic canyons during the summer where swordfish are more prevalent. Also, 75 out of 76 *Illex* squid moratorium permit holders have been issued a *Loligo* squid moratorium permit, so some of the swordfish discards in the *Loligo* fishery could be from these vessels. The data clearly indicate that the highest level of swordfish discards occur in the *Illex* squid fishery. Therefore, this final rule implements Alternative A2, which establishes a new HMS permit for *Illex* squid moratorium permit holders to retain up to 15 incidentally-caught swordfish per trip.

Comment 6: NMFS should not have any restrictions on the number of swordfish allowed to be kept by squid trawl vessels, provided that all of the fish are accurately counted. Squid trawl vessels should be allowed to keep everything they catch, especially if the United States is not catching its ICCAT-recommended swordfish quota. A 15-fish limit could be restrictive. There may be instances when that limit is exceeded. There is also the potential for “high-grading” under a 15-fish limit, where fishermen discard all but the largest fish. Large freezer boats would especially benefit from a higher incidental swordfish trip limit. If the 15-fish limit is too restrictive and dead discards still occur, there should be a regulatory mechanism to quickly increase the limit.

Response: NMFS disagrees. The incidental swordfish retention limit for squid trawl vessels was increased from five to 15 swordfish in 2007 (72 FR 31688, June 7, 2007). Based upon logbook analysis and public comment, it was determined that 15 swordfish was an appropriate limit for the vast majority of squid trawl trips. Since the limit was increased in 2007, NMFS has not received any comments from active squid trawl vessel operators indicating that the current limit is too restrictive, and additional analysis prepared for this rulemaking indicates an average range of 1.2–3.3 swordfish discards per *Illex* squid trip, with some trips catching more and others less. The purpose of this rulemaking is to modify the permitting requirements for squid trawl vessels and not to reconsider the current squid trawl incidental retention limit. Should the limit need to be revised, either lower or higher due to targeted fishing or continued discards, respectively, NMFS might reconsider the issue in a future rulemaking.

Comment 7: NMFS should authorize trawl gear for swordfish.

Response: Trawl gear is not authorized for the retention of any HMS. Because swordfish have historically been captured incidentally while trawling for squid, NMFS created a small allowance for some HMS-permitted squid trawl vessels to retain swordfish. However, many squid trawl vessel owners did not qualify for, or obtain, the required HMS permits. This final rule creates a new Incidental HMS Squid Trawl permit, which will be available to all *Illex* squid moratorium permit holders to retain incidentally-caught swordfish, provided that squid constitute not less than 75 percent of the catch on board and trawl is the only commercial fishing gear on board. Authorizing trawl gear for all HMS,

beyond allowing for limited incidental capture, is beyond the scope of this rulemaking and would require an Amendment to the HMS FMP and significant additional analysis.

Comment 8: NMFS should clarify whether the permit proposed in Alternative A2 will be available to all *Illex* permitted vessels or only to active *Illex* vessels, and whether there will be any other qualification criteria for obtaining the permit.

Response: As indicated in the response to Comment 7, the new Incidental HMS Squid Trawl permit will be available to all vessels issued a valid *Illex* squid moratorium permit, provided that all other requisite permit qualification criteria are met (reporting requirements, complete application, etc.).

Comment 9: NMFS should clarify whether squid trawl vessels will need to have at least 75 percent *Illex* squid on board, or just squid, to be considered in the squid trawl fishery.

Response: A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel. The squid do not have to be exclusively *Illex* squid.

Comment 10: NMFS should clarify whether the HMS “permit triple pack” will be required for *Loligo* squid moratorium permit holders to retain swordfish if Alternative A2 is implemented.

Response: The HMS “permit triple pack” will no longer be applicable for vessels that are participating in the squid trawl fishery upon the effective date of this final rule. After that date, the only permit that will allow any squid trawl vessel, *Illex* or *Loligo*, to retain swordfish will be the Incidental HMS Squid Trawl permit, which is available only to vessels issued a valid *Illex* squid moratorium permit.

Comment 11: NMFS should clarify whether *Illex* squid moratorium permit holders will have to surrender their HMS “permit triple pack” if a new Incidental HMS Squid Trawl permit is implemented under Alternative A2.

Response: As described in the response to Comment 10, the only permit that will allow for the retention of swordfish by squid trawl vessels will be the Incidental HMS Squid Trawl permit upon the effective date of this final rule. NMFS has determined that approximately five squid trawl vessels are currently issued the HMS “permit triple-pack.” These permit holders may either transfer their HMS “permit triple pack” to another vessel, or let their

swordfish and shark permits expire and then terminate 1 year after the expiration date. Atlantic Tunas Longline permits do not terminate 1 year after the expiration date. Vessel owners also have the option of maintaining their HMS “permit triple pack” through annual renewal. The permits do not have to be surrendered.

Comment 12: NMFS should allow incidental squid permit holders to retain swordfish rather than just *Illex* squid moratorium permit holders.

Response: NMFS disagrees. The vast majority of *Illex* squid landings come from vessels issued an *Illex* squid moratorium permit (99 percent, on average, from 2002–2006). Most swordfish discards occur during *Illex* squid fishing. Thus, *Illex* squid moratorium permit holders are more likely to capture swordfish than incidental squid permit holders, and NMFS is restricting qualification for the Incidental HMS Squid Trawl permit to *Illex* moratorium vessels.

Comment 13: NMFS should clarify whether *Illex* squid moratorium permit holders issued an Incidental HMS squid trawl permit will have to report their swordfish separately in the HMS logbook or whether they could report their swordfish in the Northeast Vessel Trip Report (VTR) logbook.

Response: *Illex* squid moratorium permit holders issued an Incidental HMS Squid Trawl permit will be required to report their swordfish in the Northeast VTR logbook. NMFS could also select Incidental HMS Squid Trawl permit holders to report their catch in the HMS logbook, but that is not being considered at this time. If NMFS decides to require those permit holders to report in the HMS logbook, NMFS would notify individuals of that requirement and provide instructions on how to comply with the requirement. NMFS reminds fishermen that swordfish may only be sold to dealers issued a valid Swordfish Dealer permit.

Comment 14: NMFS should carefully monitor the swordfish fishery if Alternative A2 is implemented to make sure its assumption of no expected changes in fishing effort is correct.

Response: NMFS agrees. The Agency intends to monitor the squid trawl fishery and periodically report on it in the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Report. The information may include, but is not limited to, the number of squid trawl vessels landing swordfish and the amount of swordfish being landed by squid trawl vessels.

Comment 15: NMFS should clarify whether squid trawl vessels will continue to be allowed to fish in the

pelagic longline (PLL) closed areas if Alternative A2 is implemented.

Response: Squid trawl vessels issued an Incidental HMS Squid Trawl permit will continue to be allowed to fish in the PLL closed areas. However, the *Illex* squid trawl fishery generally does not occur in PLL closed areas, including the East Florida Coast, DeSoto Canyon, and Charleston Bump PLL closed areas. There could potentially be some overlap with the one-month Northeastern U.S. PLL closure, but the incidental catch of BFT and other HMS by squid trawl vessels is very low and retention is prohibited.

Issue B—Smoothhound Shark Trawl Comments

Comment 16: NMFS should allow Atlantic trawl fishermen to retain smoothhound sharks to reduce regulatory discards.

Response: NMFS agrees. NMFS intends to allow trawl fishermen to retain incidentally-caught smoothhound sharks to reduce regulatory discards of these species and to maintain the historic nature of the Atlantic trawl fishery. Based on catch and landings data over the past 10 years, trawl fishermen rarely target smoothhound sharks. Those that are retained are typically caught incidentally while fishing for other species such as *Loligo* squid, summer flounder, scup, and whiting. Consistent with the intent of Amendment 3 to the 2006 Consolidated HMS FMP to minimize changes to the smoothhound shark fishery, Alternative B2 is NMFS's preferred alternative to address the retention of smoothhound sharks caught incidentally in trawl gear.

Comment 17: A smoothhound shark retention limit of 25 percent of the total catch, by weight, is too restrictive and will not effectively reduce regulatory discards.

Response: NMFS disagrees. Implementing any retention limit could potentially create regulatory discards. However, a retention limit of 25 percent smoothhound sharks, by weight, was specifically chosen to minimize regulatory discards while ensuring that the trawl fishery for smoothhound sharks remains incidental. This limit incorporates 89 percent of the trips that have occurred over the last 10 years, and precludes only 11 percent of trips with high smoothhound shark retained catch. Because the retention limit incorporates a very large proportion of historical trips (89 percent), NMFS believes the alternative is appropriate. It achieves a balance between minimizing changes to the smoothhound shark fishery while preserving the incidental nature of the trawl fishery.

Comment 18: A smoothhound shark retention limit equivalent to 25 percent of the total catch, by weight, is too high and will encourage directed trawl fishing effort on smoothhound sharks.

Response: NMFS disagrees. Although a 25-percent retention limit incorporates the vast majority of historical trawl trips, it is not high enough to encourage a directed fishery. Smoothhound sharks have been unregulated since the fishery developed in the mid-1990s. Catch and landings data from the past 10 years indicate that, even when unmanaged, a directed trawl fishery for smoothhound sharks has not developed. NMFS does not believe that implementing a retention limit for smoothhound sharks caught in trawl gear will encourage a directed fishery.

Comment 19: The proposed smoothhound shark retention limit could alter commercial trawl fishing effort or behavior.

Response: NMFS disagrees. Even while the fishery has been unregulated, trawl fishermen have rarely targeted smoothhound sharks. Because smoothhound sharks are caught and retained incidentally when fishing for other species, it is not likely that trawl fishermen will change their fishing effort or behavior to catch smoothhound sharks solely because of the implementation of a retention limit.

Comment 20: Implementing a percentage-based retention limit will be difficult to comply with since it will require that both the smoothhound shark portion of the catch and the total catch be weighed. Obtaining at-sea weights is very difficult, so it will be difficult to definitively calculate the percent of catch while at sea. Enforcement action could only occur at the dock. Many comments recommended that a single total allowable weight of smoothhound sharks should be used as the retention limit. The Mid-Atlantic Fishery Management Council encouraged NMFS to explore a 5,000 lb trip limit as an alternative to the 25-percent retention limit.

Response: This comment was expressed by several constituents. Although NMFS did not include an alternative for an absolute weight retention limit in the proposed rule, the Agency did perform additional analyses pursuant to this comment for the final rule to determine the feasibility of this recommendation. The analysis was based upon the preferred alternative (*i.e.*, a 25-percent smoothhound shark retention limit relative to total catch). The next step was to determine an absolute weight that is equivalent to the 25-percent retention limit. To calculate

an absolute weight equivalent, NMFS analyzed VTR data from trawl trips that caught smoothhound sharks between 2000 and 2009. As expected, the vast majority of trawl trips had a very low total weight of smoothhound sharks, which is indicative of an incidental fishery. However, there was very little correlation between percent catch and weight. This is likely due to the wide range in hold capacities of vessels that retain smoothhound sharks caught in trawl gear. Once the smoothhound trawl trips were plotted, NMFS investigated several options to find an equivalent weight, including the use of "best fit" trend lines and finding a retention weight that incorporates the same proportion of trips as the preferred alternative (89 percent of trips). Due to the wide range of weights, NMFS was not able to determine a useable and robust retention limit equivalent to 25 percent catch. Furthermore, the two methods found equivalent retention limits that ranged from 145 lbs–900 lbs; both of which are substantially lower than the MAFMC's suggestion, and too low and variable to maintain the historical nature of the trawl fishery. Through this analysis, NMFS determined that an absolute weight retention limit would not prevent directed effort by smaller trawl boats with low catch levels and could be overly restrictive for larger vessels. Thus, NMFS is implementing Alternative B2, which provides a "sliding scale" in the form of a percentage and allows trawl vessels of all sizes to retain incidentally-caught smoothhound sharks while also preventing all trawl vessels from directing effort on smoothhound sharks. This approach is consistent with other HMS incidental trawl retention limits, including swordfish. With regards to compliance, trawl fishermen are encouraged to maintain an ongoing tally during fishing operations to ensure that their smoothhound shark catch is not excessive. Because trawls are being managed as an incidental gear, trawl fishermen are discouraged from actively targeting smoothhound sharks. NMFS agrees that at-sea enforcement of the 25-percent retention limit will be difficult in some cases but disagrees that it is impossible in all cases. As the commenter notes, the retention limit may also be enforced dockside during offloading.

Comment 21: Trawl gear, like gillnet gear, should be an authorized gear in the smoothhound shark fishery and fishermen should be allowed to direct effort on the species.

Response: As discussed in the response to Comment 7, trawl gear is

not authorized for any HMS. However, because smoothhound sharks have historically been captured incidentally while trawling for squid, summer flounder, scup, whiting, and other species, NMFS is implementing a small allowance for all trawl vessels to retain incidentally-caught smoothhound sharks similar to the small allowance allowed for swordfish by squid trawl vessels. This allowance is intended to maintain the historical nature of incidental catches of smoothhound sharks in Atlantic trawl fisheries.

Comment 22: A smoothhound shark stock assessment should be a priority due to the unknown status of these species.

Response: A stock assessment is fundamental to ensure the effective management of a fishery. However, stock assessments require a variety of data inputs, including landings and discard data reported by fishermen. At this time, much of the data on smoothhound sharks are incomplete. One of the objectives of Amendment 3 is to collect data that can be used to inform future stock assessments.

Comment 23: NMFS received a comment requesting that trawl fishermen that catch smoothhound sharks not be required to fill out a separate logbook.

Response: Under Alternative B2, the final action, trawl fishermen who retain incidentally-caught smoothhound sharks will be required to obtain an open-access commercial smoothhound shark permit. Currently, there is no reporting requirement associated with the permit. In the future, NMFS may decide that logbooks or other reporting mechanisms are appropriate. However, NMFS will not pursue this unless existing reporting methods prove to be inadequate, until NMFS understands the universe of permitted smoothhound shark fishermen, and until NMFS can determine the most appropriate mechanism for reporting while minimizing duplication with current reporting requirements.

Comment 24: Smoothhound shark trawl landings should be deducted from the overall smoothhound shark quota and there should be no specific gear quota allocations.

Response: NMFS agrees. The smoothhound shark quota was developed in Amendment 3 to the Consolidated HMS FMP and will be implemented when other management measures for smoothhound sharks become effective. All smoothhound shark landings will be counted against the quota, regardless of gear type.

Comment 25: NMFS received a comment indicating that the proposed

action could increase trawl fishing effort and possibly result in increased impacts to essential fish habitat (EFH), the sea floor, and protected resources.

Response: This final rule will establish a retention limit for smoothhound sharks caught incidentally while fishing for other species with trawl gear. NMFS does not expect that trawl fishing effort will change because of this action. Although the vast majority of historical trawl trips that landed smoothhound sharks could still occur under Alternative B2, 11 percent of historically-acceptable trips would likely be precluded. Therefore, any change in trawl fishing that could potentially occur as a result of this final action would tend to be in the direction of decreased fishing effort, due to the implementation of a limit on the amount of smoothhound sharks that can be retained by trawl vessels.

Comment 26: One commenter stated that the smoothhound shark retention limit will lead to regulatory discards and that more research should be performed to determine the proportion of smoothhound sharks that are alive at trawl haulback. This information could be used to develop regulations to require discarding of live individuals while allowing for the retention of dead smoothhound sharks. Another commenter stated that only males should be allowed to be retained and that females should be released to allow for greater reproductive potential in the population.

Response: NMFS agrees that additional research would be helpful to fully characterize the incidental smoothhound shark fishery. Data collected from additional research could provide information regarding trawl gear mortality and smoothhound sex ratios. Once management measures are in place, including permitting, reporting, and observer requirements, NMFS will be able to collect this information and implement additional management measures, if necessary. Currently, however, the available information does not support live-release or sex-specific release requirements.

Comment 27: Allowing trawl fishermen to retain a limited amount of smoothhound sharks is not likely to impact the stock.

Response: NMFS agrees. Although a formal stock assessment has not been performed, catch rates and levels have stayed reasonably consistent over the past 10 years. There is no indication that the smoothhound shark stock cannot support current harvest levels. This final action will not increase trawl fishing effort levels or rates. It

implements a management measure that will keep trawl fishing effort approximately at current levels.

Comment 28: Several commenters stated that while the ecological impacts are negligible, the economic benefits could be large for many trawl fishermen.

Response: NMFS does not expect that trawl fishing effort levels or rates will change as a result of this final rule. As such, no new direct, indirect, or cumulative ecological impacts are expected. However, continuing to allow trawl fishermen to retain and sell incidentally-caught smoothhound sharks, rather than prohibiting trawl landings, will maintain some revenue from the species. The allowance to retain and sell a limited number of smoothhound sharks is expected to maintain revenues at levels just below the 10-year average of \$68,968 annually across the entire trawl fishery.

Comment 29: One commenter disagreed with the statement in the economic impact analysis that businesses supporting trawl fisheries do not rely on smoothhound shark landings, especially as the statement applies to Ocean City, MD.

Response: Smoothhound sharks are overwhelmingly caught and retained incidentally in Atlantic trawl fisheries while fishing for other species. They are not the primary reason for fishermen to embark on a trawl trip. NMFS is establishing a trawl retention limit that will allow 89 percent of historical trips that landed smoothhound sharks to continue to occur. Because the retention of trawl-caught smoothhound sharks will continue to be allowed at historical levels, businesses supporting trawl trips are not likely to be affected by this rulemaking. If, after the fishery is better characterized through mandatory permitting, reporting, and observer coverage, it is determined that smoothhound sharks caught in trawl gear have a greater indirect economic impact, the economic analyses will be updated.

Comment 30: NMFS received several comments asking how the prohibition on shark finning, the 2010 Shark Conservation Act, and the fins-attached requirement implemented through the final rule for Amendment 3 to the 2006 HMS FMP would impact this rulemaking. Comments ranged from support for a fins-attached requirement in the smoothhound shark fishery, to a modification of the 5-percent fin-to-carcass ratio, to opposition to a fins-attached requirement due to efficiency and meat quality reductions. Additionally, NMFS received suggestions regarding how the 2010

Shark Conservation Act should be implemented in Atlantic trawl fisheries.

Response: The 2010 Shark Conservation Act was signed into law on January 4, 2011. This Act, among other things, prohibits the removal of fins from sharks in the U.S. EEZ. The Act also includes a separate provision addressing the smoothhound shark fishery. NMFS is currently preparing a proposed rule to implement the 2010 Shark Conservation Act and will consider these comments during that rulemaking. This final rule, however, does not address the landing condition of any shark species aboard a vessel or when landed and, therefore, these comments are outside the scope of this rulemaking.

Comment 31: NMFS received a comment requesting that the Agency not move forward with this rule until after the 2010 Shark Conservation Act is implemented.

Response: The 2010 Shark Conservation Act addresses the condition of sharks aboard a vessel or when landed. Under this final rule, NMFS is providing for the limited retention of smoothhound sharks caught incidentally in trawl gear to maintain the historical nature of the trawl fishery and to minimize changes, consistent with the intent of Amendment 3 to the HMS FMP. Thus, the final action in this rule does not address the condition of sharks aboard a vessel or when landed. The 2010 Shark Conservation Act will be implemented in a separate rulemaking and need not be completed first.

Comment 32: Some commenters disagreed with the Draft Finding of No Significant Impact (FONSI) assertion that the action is unlikely to jeopardize the sustainability of any non-target species. The commenters indicated that because this rule could lead to an at-sea processing allowance, enforcement will be complicated and will result in fishermen finning other shark species. The sustainability of other shark species would be in jeopardy due to potential at-sea processing allowances.

Response: The prevention of shark finning is an important objective for NMFS. As noted in the response to Comment 30, NMFS is preparing a proposed rule to implement the 2010 Shark Conservation Act. Within the context of this final rule, the action to establish a retention limit for smoothhound sharks in the Atlantic trawl fisheries is not likely to jeopardize the sustainability of any non-target shark species. This action is not expected to alter trawl fishing effort levels and, therefore, no new impacts to non-target shark species are expected.

Comment 33: NMFS received a comment stating that the Draft FONSI is erroneous because smoothhound shark issues became controversial after the 2010 Shark Conservation Act became law. Therefore, an environmental impact statement (EIS) should have been prepared rather than an environmental assessment (EA).

Response: The Draft FONSI considered 16 criteria in making a determination of no significant impact. Each criterion is relevant to making a determination and has been considered individually, as well as in combination with the others. The significance of this action was analyzed based on the NAO 216-6 criteria and the President's Council on Environmental Quality (CEQ) context and intensity criteria, including the eighth criterion: "To what degree are the effects on the quality of the human environment expected to be highly controversial?" NMFS notes that interest in both the swordfish and smoothhound shark portions of the proposed rule was low during previous outreach efforts. NMFS recognizes that the visibility of, and interest in, the smoothhound shark fishery may have increased with passage of the 2010 Shark Conservation Act. However, such increased interest is not enough to make the proposed action controversial, for the purpose of NEPA. The term "controversial" does not refer to the mere existence of opposition to, or interest in a proposed action; rather "controversial" refers to cases where a substantial dispute exists as to the size, nature, or effect of the major federal action. Such substantial dispute does not exist here. Moreover, as discussed above, any heightened interest in or controversy surrounding the Shark Conservation Act is unrelated to implementing a limited smoothhound retention limit in Atlantic trawl fisheries. As such, controversy resulting from the legislation does not impact NMFS' finding of no significant impact. NMFS has determined that the FONSI was accurate and warranted, per NOAA NEPA guidance, thus an EA is the appropriate level of analysis for the current final rule rather than an EIS.

Comment 34: NMFS received a comment indicating that the rule will have implications for the entire Atlantic and Gulf of Mexico, but the EA only focuses upon the mid-Atlantic region.

Response: The vast majority of trawl trips that catch smoothhound sharks have historically occurred in the mid-Atlantic region. As such, the characterization of the fishery focused upon this area. It is not presently possible for NMFS to speculate what the smoothhound shark trawl fishery may

look like in areas where the fishery could expand. If the incidental smoothhound shark trawl fishery begins to expand outside of the mid-Atlantic region, NMFS will conduct additional analyses to characterize that fishery and develop new management measures, if necessary.

Comment 35: NMFS received a comment that, by not authorizing trawl gear, the Agency is attempting to circumvent ESA requirements to prepare a Biological Opinion (BiOp). The commenter stated that if NMFS intends to allow trawl gear to catch smoothhound sharks, the Agency should prepare a new BiOp for the trawl fishery.

Response: NMFS disagrees. BiOps document whether a Federal activity is likely to jeopardize the continued existence of an ESA-listed species or result in the destruction or adverse modification of a species critical habitat. Typically, a BiOp is prepared for each directed fishery and can contain requirements to mitigate or prevent impacts to endangered species or critical habitat. It is not common for a BiOp to be prepared for an incidental fishery because the fishing activities have already been assessed under the directed fishery's BiOp. In the case of smoothhound sharks and trawl gear, the directed trawl fisheries each have BiOps that have assessed the fishing activity and possibly required mitigation measures. For example, when smoothhounds sharks are caught incidentally in trawl gear, they are most often caught in the directed fisheries for *Loligo* squid, summer flounder, scup, croaker, silver hake (whiting), and skate. The *Loligo* squid fishery was analyzed in the 2010 Mackerel Squid and Butterfish BiOp (http://www.nero.noaa.gov/prot_res/section7/NMFS-signedBOs/SMB%20BIOP%202010.pdf). The summer flounder and scup fisheries were analyzed in the 2010 Summer Flounder, Scup, and Black Sea Bass BiOp (http://www.nero.noaa.gov/prot_res/section7/NMFS-signedBOs/FLS_SCP_BSB%20BIOP%202010.pdf). The silver hake fishery was analyzed in the 2010 Northeast Multispecies BiOp (http://www.nero.noaa.gov/prot_res/section7/NMFS-signedBOs/MULTI_SPECIES%20BIOP%202010.pdf). The skate fishery was analyzed in the 2010 Northeast Skate Complex BiOp (http://www.nero.noaa.gov/prot_res/section7/NMFS-signedBOs/SKATE%20BIOP%202010.pdf). Since the directed trawl fisheries that incidentally catch smoothhound sharks have already been analyzed under the directed fishery's BiOps, it would be duplicative and unnecessary to reinitiate ESA

consultation for the incidental smoothhound shark trawl fishery.

Changes From the Proposed Rule

Minor changes to the paragraphs at 50 CFR 635.4(f)(1) and 635.4(n) have been made to clarify that the term “or sold” in the original paragraphs means “or from which Atlantic swordfish are sold.”

Classification

The NMFS AA has determined that this final action is necessary for the conservation and management of the HMS fishery, and that it is consistent with the Magnuson-Stevens Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, ATCA, and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for the Incidental HMS Squid Trawl provisions because such delay would be contrary to the public interest. Failure to implement this rule immediately would undermine its intent. The squid trawl management measures in this final rule will reduce economic waste by converting incidentally-caught swordfish regulatory dead discards into landings for sale and human consumption, improve data collection, and have no adverse environmental impacts. This rule will grant eligibility for all *Illex* squid moratorium permit holders to be issued a new Incidental HMS Squid Trawl permit that will allow these vessels to retain incidentally-caught swordfish that previously would have been discarded. Based upon observer data, NMFS estimates that this action would allow a total of approximately 172 swordfish per year to be retained that previously had to be discarded assuming that 13 active *Illex* vessels discard 13.2 swordfish per year (or from 1.1–3.3 swordfish/trip). In the unlikely event that all 76 permitted *Illex* vessels were to become active and retain the maximum allowable amount of swordfish per trip, it is possible that 4,560 or more swordfish could be retained (76 vessels * 4 trips/yr. * 15 swordfish/trip). Because the *Illex* squid trawl fishing season extends only through September of each year, any delay in effectiveness would be contrary to the public interest and against the intention of this rule to reduce regulatory dead discards of swordfish by squid trawl vessels. Finally, there is no hardship placed on the public by making this rule effective immediately. Those fishermen who do not apply for the permit enacted by this rule can continue their current practice of discarding swordfish.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action.

The FRFA analyzed the anticipated economic impacts of the final action and any significant economic impacts on small entities. A summary of the FRFA is below. The full FRFA and analysis of social and economic impacts are available from NMFS (see ADDRESSES).

In compliance with section 604(a)(1) of the Regulatory Flexibility Act, the purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act, and the 2006 Consolidated HMS FMP and its amendments, to consider modifications to the permitting requirements for squid trawl vessels to retain incidentally-caught swordfish that would otherwise be discarded dead, and to establish smoothhound shark incidental retention limits for all Atlantic trawl vessels.

Section 604(a)(2) of the Regulatory Flexibility Act requires NMFS to summarize significant issues raised by the public in response to the IRFA, a summary of NMFS' assessment of such issues, and a statement of any changes made as a result of the comments. The IRFA was included as part of the draft EA and was summarized in the proposed rule. NMFS did not receive any comments specific to the IRFA; however, NMFS did receive comments related to the overall economic impacts of the proposed rule. Those comments and NMFS' responses to them are mentioned above in the preamble for this rule. In particular, comments 2, 28, and 29 address the rule's economic impacts. There are no substantive changes from the proposed rule as a result of these economic comments.

Section 604(a)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS has determined that all squid trawl vessels that are issued an *Illex* squid moratorium fishing permit, and all trawl vessels that would obtain an open-access smooth dogfish permit when it becomes required in 2012, are small entities under the Small Business Administration (SBA) size standards. All potentially affected vessels 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 (13 CFR 121.201). These are the Small Business Administration (SBA) size standards for defining a “small” versus “large” business entity in this industry.

The final rule would apply to the 76 current (as of September 2010) *Illex* squid moratorium permit holders, of which 18 are considered “active” (i.e., reported landings in 2009). Rhode Island and New Jersey accounted for 99 percent of *Illex* squid landings in 2009. NMFS cannot provide an estimate of the number of trawl vessels that would obtain an open-access permit for smoothhound sharks when they are fully incorporated into the HMS management unit, because the permit is currently not required. However, as a proxy, NMFS based its analysis upon vessels participating in the summer flounder and scup fisheries because these trawl fisheries frequently interact with smoothhound sharks. In 2009, approximately 1,100 vessels were issued either a commercial summer flounder permit or a commercial scup permit, or both, with 798 vessels landing summer flounder in 2000. Rhode Island, New York, New Jersey, Virginia, and North Carolina are the primary states with landings of summer flounder and scup.

Under section 604(a)(4) of the RFA, agencies are required to describe any new reporting, record-keeping, and other compliance requirements. The new Federal permit requirement for an Incidental HMS Squid Trawl permit will allow NMFS to collect data regarding participants in the fishery and swordfish landings through Federal dealer reports. The Federal Incidental HMS Squid Trawl permit requirement will require a similar permit application to the other current HMS permits. The information collected on the application would include vessel information, owner identification and contact information. A modest fee to process the application and an annual renewal fee of approximately \$20 may be required in the future.

When developing this action, NMFS considered different ways to reduce the regulatory burden on and provide flexibility to the regulated community, consistent with the recent Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation (January 18, 2011). NMFS currently intends to issue the new Incidental HMS Squid Trawl permit out of its Northeast Regional Permit Office pursuant to this final rule and other

applicable provisions of 50 CFR part 635. NMFS will use similar application procedures as those of the *Illex* squid moratorium permit. Because both permits will be issued from the same office using similar forms, the amount of paperwork and completion time will be reduced. Similarly, NMFS will continue to require squid trawl vessel owners to report their catch and landings in the Northeast Fishing Vessel Trip Report (VTR), rather than requiring a separate HMS logbook. This will avoid duplicative reporting requirements. By utilizing current operational procedures for permit issuance and reporting, the regulatory burden on regulated entities will be reduced.

Under section 604(a)(5), agencies are required to describe any alternatives to the rule which accomplish the stated objectives and which minimize any significant economic impacts. Economic impacts are discussed below and in the Environmental Assessment for the action. Additionally, the Regulatory Flexibility Act (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 rule in a manner consistent with all other legal obligations, NMFS cannot exempt small entities or change the reporting requirements for only small entities. Thus, NMFS did not analyze any alternatives for either issue that fall under the first and fourth categories described above. In addition, NMFS intends to clarify and consolidate all reporting and compliance requirements associated with this final rule, to the extent practicable (category two above). All federally-permitted squid trawl vessels must currently report all of their landings via a NMFS Northeast Region VTR. NMFS intends to continue to utilize this reporting mechanism for all vessels that will be issued an Incidental HMS Squid Trawl permit to report their swordfish landings, although vessels could be selected for additional reporting under this rule if such reporting is determined to be necessary and appropriate. Similarly, the application process for the Incidental HMS Squid Trawl permit will be the

same, or similar, to the process used to apply for an *Illex* squid moratorium permit. The only prerequisite for obtaining the new permit will be that the vessel has already been issued a valid *Illex* squid moratorium permit. There are no reporting or compliance requirements associated with establishing a smoothhound shark trawl vessel retention limit that could be consolidated, clarified, or simplified for small entities. Finally, 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 (category three above).

As described below, for this final rule, NMFS considered and analyzed four alternatives to address the retention of incidentally-caught swordfish in squid trawl fisheries (Issue A), and three alternatives to address the retention of incidentally-caught smoothhound sharks in trawl fisheries (Issue B).

The first alternative for Issue A is the no action alternative. This alternative would maintain existing HMS permit requirements and incidental swordfish retention limits in squid trawl fisheries. The second alternative, the final action, will implement a new permit (referred to as the Incidental HMS Squid Trawl permit) for *Illex* squid moratorium permit holders to retain up to 15 swordfish per trip, the current squid trawl limit. The third alternative would exempt *Illex* squid moratorium permit holders from current HMS permit requirements (*i.e.*, the “HMS permit triple-pack”) and allow them to retain up to 15 swordfish when fishing for squid. Finally, the fourth alternative would establish either a new Incidental HMS Squid Trawl permit available to all vessel owners currently issued a *Loligo* squid moratorium permit, or establish an exemption from the need for *Loligo* squid trawl vessels to be issued the “HMS permit triple-pack” to retain swordfish.

The no action alternative (A1) would not result in any additional economic impacts to small entities in the short-term. However, this alternative contributes to a loss of potential income by squid trawl vessels that may occasionally catch a swordfish while it is foraging on squid or in the same physical environment, during normal squid trawl fishing activities. Only five squid trawl vessels out of 180 active *Illex* and *Loligo* squid vessels have been issued the requisite “HMS permit triple-pack” needed to retain swordfish. There are 18 active squid trawl vessels that are issued both an *Illex* and *Loligo* permit (*i.e.*, *Illex/Loligo* vessels). It is presumed

that the five squid trawl vessels issued the necessary HMS permits are also *Illex/Loligo* vessels. This means that the vast majority of squid trawl vessels must discard any incidentally-caught swordfish because they do not have the proper LAPs needed to retain them. Most of the swordfish incidentally caught by squid trawl vessels are brought onboard dead, or die soon afterwards; these dead discards constitute unrealized income and economic waste. NMFS estimates that the no-action alternative contributes from \$3,849.30–\$4,145.40 annually in unrealized income individually for the 13 active *Illex/Loligo* squid trawl vessels that are not issued HMS permits. In aggregate, the total amount of unrealized annual income by all 13 active *Illex/Loligo* squid trawl vessels is estimated to range from \$50,041–\$54,007, depending upon the number of small and large active squid trawl vessels. Similarly, the total amount of unrealized annual income by all 162 active *Loligo* squid trawl vessels ranges from \$57,562–\$76,749, depending upon the number of small and large active *Loligo* squid trawl vessels. Each swordfish discard is estimated to be valued at approximately \$296.10. Because the no-action alternative (A1) contributes to regulatory discards of dead swordfish by squid trawl vessels, thereby causing economic waste, and because current permit requirements (*i.e.*, the “HMS permit triple-pack”) are not well-suited for squid trawl vessels, it was not chosen as the final action.

The chosen alternative, Alternative A2, will implement a new permit (referred to as the Incidental HMS Squid Trawl permit) for *Illex* squid moratorium permit holders to retain up to 15 swordfish per trip, which is the current squid trawl limit. Because Alternative A2 will allow *Illex* squid trawl vessels to retain swordfish caught incidentally during normal squid trawl fishing activities, thereby converting dead swordfish discards into landings, this alternative is expected to provide some minor economic benefits to *Illex* squid trawl vessels. Specifically, this alternative is estimated to provide a moderate increase in annual revenues from between \$3,849.30–\$4,145.40 annually for each of the 13 active *Illex/Loligo* squid trawl vessels that have not been issued HMS permits. In aggregate, Alternative A2 could produce from \$50,041–\$54,007 annually in additional revenue amongst all 13 active *Illex/Loligo* squid trawl vessels. These estimates were calculated using the average number of swordfish discards per tow from NEFSC observer data, and

then extrapolating to determine the average number of swordfish discards per year for active vessels. Also, by implementing a permit requirement, NMFS will obtain important fishery management information, such as the identification of participants in the squid trawl fishery that may occasionally catch swordfish. This information will help in outreach efforts. The Federal Incidental HMS Squid Trawl permit requirement will require a permit application similar to other current HMS permits. The information collected on the application will include vessel information and owner identification and contact information. A modest fee to process the application and an annual renewal fee of approximately \$20 may be required in the future. This alternative is selected because it will convert dead swordfish discards into landings, provide minor economic benefits to some small entities, reduce economic waste, provide additional fishery management information, and is not expected to alter current levels of fishing effort or have other adverse ecological consequences, including impacts on protected species, target species, non-target species, and essential fish habitat.

Alternative A3 is estimated to have the same minor positive economic impacts on small entities as Alternative A2. However, there would be no costs or recordkeeping burden to vessel owners associated with obtaining a new HMS permit (approximately \$20/year). Rather, Alternative A3 would exempt vessels issued an *Illex* squid moratorium permit from HMS permit requirements and allow them to land up to 15 swordfish caught incidentally while squid trawling. All swordfish landings would have to be reported in the VTR logbook (as currently required), so landings information would be obtained. While this alternative would be less burdensome to industry, it would not help to identify the universe of vessels participating in the *Illex* squid trawl fishery that may be catching swordfish incidentally. It is currently difficult to separate squid trawl vessels from other vessels in landings databases because the required HMS permits are identical to those issued to longline vessels and other HMS vessels. Removing the HMS permitting requirements for *Illex* squid trawl vessels would worsen this situation. Furthermore, it would hamper NMFS's efforts to improve outreach and communications with this small, but important, HMS constituency. Without a new HMS permit, NMFS could be deprived of important information

regarding squid trawl vessel swordfish landings and fishery participation. Therefore, Alternative A3 was not selected as the final action because it would not provide additional information for fishery management purposes.

Alternative A4 would implement the same requirements for *Loligo* squid trawl vessels that NMFS selects for *Illex* squid trawl fishermen. This alternative is estimated to provide a moderate increase in annual revenues from between \$355.32–\$473.76 annually for 162 active *Loligo* squid trawl vessels that are not issued HMS permits (*i.e.*, 180 active *Loligo* vessels minus 18 active *Illex/Loligo* vessels). In aggregate, the total amount of additional annual income that could be realized under this alternative by the 162 active *Loligo* squid trawl vessels ranges from \$57,562–\$76,749, depending upon the number of small and large active *Loligo* squid trawl vessels. This alternative would convert dead swordfish discards into landings and could provide minor economic benefits. However, the incidental catch of swordfish in squid trawls is much higher in the *Illex* squid trawl fishery than in the *Loligo* squid trawl fishery. This is because the *Loligo* fishery operates inshore during summer months whereas the *Illex* fishery operates in the offshore mid-Atlantic canyons during the summer where swordfish are more prevalent. Temporally and spatially, the two fisheries are different. Establishing a new permit or a permit exemption for potentially as many as 289 additional *Loligo* squid trawl vessels is not necessary to reduce dead discards because these vessels individually have very low swordfish discard rates.

For Issue B, under the no-action alternative (B1), when smoothhound sharks are fully incorporated into the HMS management unit in the future, the retention of smoothhound sharks would be prohibited by trawl vessels without the additional regulatory action contained in this rulemaking. Therefore, Alternative B1 would have moderate direct short-term and long-term negative social and economic impacts when smoothhound sharks are fully incorporated into the HMS management unit. Based on VTR data from 2000–2009, an average of 145,088 lbs dw of smoothhound sharks were caught in trawl gear, retained, and likely sold per year. Using an average ex-vessel price of \$0.29 for smoothhound shark meat, \$2.02 for smoothhound shark fins, and assuming a fin-to-carcass ratio of 12 percent (per the 2010 Shark Conservation Act, Public Law 111–348), total revenues from smoothhound

sharks caught in trawl gear averages \$68,968 per year. Thus, in aggregate, under Alternative B1, trawl fishermen could collectively lose \$68,968 per year across up to 266 vessels. Individually, each vessel could lose approximately \$259 annually in revenue under the no-action alternative. This alternative was not selected because prohibiting the retention of incidentally-caught smoothhound sharks by trawl gear would be inconsistent with NMFS's intent in Amendment 3 to minimize changes to the smoothhound fishery by allowing for incidental trawl landings.

Alternative B2, the final action, will allow for the retention of smoothhound sharks caught incidentally in trawl gear, in an amount not to exceed 25 percent of the total catch, by weight. When compared to the no-action alternative, after smoothhound sharks are fully incorporated into the HMS management unit in the future, Alternative B2 will provide moderate direct short-term and long-term positive social and economic impacts. Currently, some trawl fishermen supplement fishing revenue with smoothhound shark products. Under the no-action alternative, when smoothhound sharks are fully incorporated into the HMS management unit, they would no longer be able to do so. Under Alternative B2, however, they will continue to be allowed to retain and sell incidentally-caught smoothhound sharks. Calculating the exact level of revenue that will continue to be earned through smoothhound shark sales by trawl fishermen is difficult due to incomplete reporting and data. However, based upon the average annual total smoothhound shark trawl revenue estimate of \$68,968, and the fact that Alternative B2 will continue to allow approximately 89 percent of historical smoothhound trawl trips, fishermen stand to experience moderate positive social and economic impacts compared to Alternative B1 when smoothhound sharks are fully incorporated into the HMS management unit. This alternative was selected as the final action because it maintains 89 percent of historical smoothhound shark trips, but implements a reasonable upper threshold on landings to discourage a directed trawl fishery for smoothhound sharks. This alternative is consistent with NMFS's intent to maintain smoothhound sharks as an incidental catch in trawl fisheries.

Alternative B3 would allow for the retention of smoothhound sharks caught incidentally in trawl gear, in an amount not to exceed 50 percent of the total catch, by weight. When compared to the no-action alternative, Alternative B3 would have moderate direct short-term

and long-term positive social and economic impacts when smoothhound sharks are fully incorporated into the HMS management unit. Currently, some trawl fishermen supplement fishing revenue with smoothhound shark products. Under the no-action alternative, they would no longer be able to do so when smoothhound sharks are fully incorporated into the HMS management unit. Under Alternative B3, however, they would continue to be allowed to retain and sell incidentally-caught smoothhound sharks. Calculating the exact level of revenue that would continue to be earned through smoothhound shark sales by trawl fishermen is difficult due to incomplete reporting and data. However, based upon the average annual total smoothhound shark trawl revenue estimate of \$68,968, and the fact that Alternative B3 would continue to allow approximately 97 percent of the historical smoothhound trawl trips, fishermen would experience moderate positive social and economic impacts compared to Alternative B1 when smoothhound sharks are fully incorporated into the HMS management unit. This alternative was not selected because allowing up to 50 percent of a trawl trip to consist of smoothhound sharks would not effectively prevent a directed trawl fishery for smoothhound sharks from occurring. This alternative would not be consistent with NMFS's intent in Amendment 3 to minimize changes to the smoothhound fishery by allowing only for incidental trawl landings.

In summary, Alternative A2 will have minor direct short-term positive economic impacts. It is estimated to allow 13 active *Illex* squid trawl vessels to retain and sell from 13–14 swordfish per vessel per year that they would otherwise be required to discard, assuming that historical fishing effort and discard rates remain constant. In aggregate, Alternative A2 could produce from \$50,041–\$54,007 annually in additional revenue amongst the 13 active *Illex/Loligo* squid trawl vessels. Similarly, Alternative B2 will have minor direct short-term positive economic impacts when smoothhound sharks are fully incorporated into the HMS management unit. Trawl vessels will continue to be allowed to retain and sell incidentally-caught smoothhound sharks. Calculating the exact level of revenue that would continue to be earned through smoothhound shark sales by trawl fishermen is difficult due to incomplete reporting and data. However, based upon the average annual total

smoothhound shark trawl revenue estimate of \$68,968, and the fact that Alternative B2 will continue to allow approximately 89 percent of historical smoothhound trawl trips to occur, fishermen will experience moderate positive social and economic impacts compared to the no-action alternative when smoothhound sharks are fully incorporated into the HMS management unit.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of the compliance guide for this final rule are available (see **ADDRESSES**).

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0327. The public reporting burden to apply for the Incidental HMS Squid Trawl permit is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to the HMS Management Division (see **ADDRESSES**) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 635

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

Dated: August 4, 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 amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.4, paragraphs (a)(5), (a)(10), (f)(1), (f)(2), (h)(1) heading, (m)(1), and (m)(2) are revised, and paragraphs (h)(1)(iv) and (n) are added to read as follows:

§ 635.4 Permits and fees.

* * * * *

(a) * * *

(5) *Display upon offloading.* Upon offloading of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit; Atlantic tunas, shark, or swordfish permit; Incidental HMS squid trawl; and/or the shark research permit to the first receiver. The permit(s) must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2), and (b)(2)(i).

* * * * *

(10) *Permit condition.* An owner of a vessel with a valid swordfish, shark, HMS Angling, HMS Charter/Headboat, or Incidental HMS squid trawl permit issued pursuant to this part must agree, as a condition of such permit, that the vessel's HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the U.S. EEZ, or outside the U.S. EEZ, and without regard to where such HMS, or gear, are possessed, taken, or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations pertaining to HMS, persons aboard the vessel must abide by the state's more restrictive regulations.

* * * * *

(f) * * *

(1) Except as specified in paragraph (n) of this section, the owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained or possessed with an intention to sell or from which Atlantic swordfish are sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish

permits: Swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section, or those issued under paragraph (n) of this section.

* * * * *

(h) * * *

(1) *Atlantic Tunas, HMS Angling, HMS Charter/Headboat, and Incidental HMS squid trawl vessel permits.*

* * * * *

(iv) An applicant for an incidental HMS squid trawl permit must submit, in addition to all other information specified in § 635.4(h)(1), a copy of a valid *Illex* squid moratorium permit, as described at § 648.4(a)(5)(i) of this chapter.

* * * * *

(m) * * *

(1) *General.* Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, swordfish, or Incidental HMS squid trawl vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to § 635.8, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit are met, including those described in paragraphs (h)(1)(iv) and (l)(2) of this section; all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in § 635.5 and § 300.185 of this title; the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section; and the workshop requirements specified in § 635.8 are met.

(2) *Shark and swordfish LAPs.* The owner of a vessel of the U.S. that fishes for, possesses, lands or sells shark or swordfish from the management unit, or that takes or possesses such shark or swordfish as incidental catch, must have the applicable limited access permit(s) issued pursuant to the

requirements in paragraphs (e) and (f) of this section, except as specified in paragraph (n) of this section. Only persons holding non-expired shark and swordfish limited access permit(s) in the preceding year are eligible to renew those limited access permit(s).

Transferors may not renew limited access permits that have been transferred according to the procedures in paragraph (l) of this section.

(n) *Incidental HMS Squid Trawl permits.*—(1) The owner of a vessel in the squid trawl fishery, as described at § 635.24(b)(2), on which Atlantic swordfish are retained, or possessed with an intention to sell, or from which Atlantic swordfish are sold must obtain, in addition to any other required permits, an Incidental HMS squid trawl permit.

(2) An Incidental HMS squid trawl permit is valid only when the vessel has on board a valid *Illex* squid moratorium permit, as described at § 648.4(a)(5)(i) of this chapter, and no commercial fishing gear other than trawl gear.

■ 3. In § 635.5, paragraph (a)(1) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) *Logbooks.* If an owner of an HMS charter/headboat vessel, an Atlantic tunas vessel, a shark vessel, a swordfish vessel, or a vessel in the squid trawl fishery for which a permit has been issued under § 635.4(b), (d), (e), (f), or (n) is selected for logbook reporting in writing by NMFS, he or she must maintain and submit a fishing record on a logbook form specified by NMFS. Entries are required regarding the vessel's fishing effort and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the logbook form within 48 hours of completing that day's activities or before offloading, whichever is sooner. The owner or operator of the vessel must submit the logbook form(s) postmarked within 7 days of offloading all Atlantic HMS. If no fishing occurred during a calendar month, a no-fishing form so stating must be submitted postmarked no later than 7 days after the end of that month. If an owner of an HMS charter/headboat vessel, Atlantic tunas vessel, shark vessel, swordfish vessel, or a vessel in the squid trawl fishery permitted under § 635.4(b), (d), (e), (f), or (n) is selected in writing by NMFS to complete the cost-earnings portion of the logbook(s), the owner or operator must maintain and submit the cost-earnings portion of the logbook postmarked no later than 30 days after completing the offloading for each trip

fishing for Atlantic HMS during that calendar year, and submit the Atlantic Highly Migratory Species Annual Expenditures form(s) postmarked no later than the date specified on the form of the following year.

* * * * *

■ 4. In § 635.21, paragraphs (e)(3)(i), (e)(4)(i), and (e)(4)(iv) are revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(e) * * *

(3) * * *

(i) No person may possess a shark in the EEZ taken from its management unit without a permit issued under § 635.4. No person issued a Federal Atlantic commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet, except that smoothhound sharks taken incidentally while fishing with trawl gear may be retained by vessels issued a Federal commercial smoothhound permit, subject to the restrictions specified in § 635.24(a)(7). No person issued an HMS Angling permit or an HMS Charter/Headboat permit under § 635.4 may possess a shark if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit and a Federal Atlantic commercial shark permit may possess sharks taken with rod and reel, handline, bandit gear, longline, or gillnet if the vessel is not engaged in a for-hire fishing trip.

* * * * *

(4) * * *

(i) No person may possess north Atlantic swordfish taken from its management unit by any gear other than handgear or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained by a vessel issued a valid Incidental HMS squid trawl permit, subject to restrictions specified in § 635.24(b)(2). No person may possess south Atlantic swordfish taken from its management unit by any gear other than longline.

* * * * *

(iv) Except for persons aboard a vessel that has been issued a limited access North Atlantic swordfish permit or Incidental HMS squid trawl permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish

taken by, any gear other than handline or rod and reel.

* * * * *

■ 5. In § 635.24, paragraphs (a)(7), (b)(1), and (b)(2) are revised to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(a) * * *

(7) Only persons who own or operate a vessel that has been issued a Federal commercial smoothhound permit may retain, possess, and land smoothhound sharks if the smoothhound fishery is open per §§ 635.27 and 635.28. Persons aboard a vessel in a trawl fishery that has been issued a commercial smoothhound permit, and are in compliance with all other applicable regulations, may retain, possess, land, or sell incidentally-caught smoothhound sharks, but only up to an amount that does not exceed 25 percent, by weight, of the total catch on board or offloaded from the vessel. A vessel is considered to be in a trawl fishery when it has no commercial fishing gear other than trawls on board and when smoothhound sharks constitute no more than 25 percent by weight of the total fish on board or offloaded from the vessel.

* * * * *

(b) * * *

(1) Persons aboard a vessel that has been issued an incidental LAP for swordfish may retain, possess, land, or sell no more than 30 swordfish per trip

in or from the Atlantic Ocean north of 5° N. lat.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an Incidental HMS squid trawl permit may retain, possess, land, or sell no more than 15 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel.

■ 6. In § 635.27, paragraph (c)(1)(i)(B) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish or an HMS Angling or Charter/Headboat or Incidental HMS squid trawl permit has been issued, or caught after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued, is counted against the incidental catch quota.

* * * * *

■ 7. In § 635.28, the first sentence of paragraph (c)(1)(i)(A) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a pelagic longline, or issued an Incidental HMS squid trawl permit. * * *

* * * * *

■ 8. In § 635.71, and paragraph (d)(18) is added and paragraph (e)(8) is revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(18) Retain or possess on board a vessel in the trawl fishery smoothhound sharks in an amount that exceeds 25 percent, by weight, of the total fish on board or offloaded from the vessel, as specified at § 635.24(a)(7).

(e) * * *

(8) Fish for North Atlantic swordfish from, possess North Atlantic swordfish on board, or land North Atlantic swordfish from a vessel using or having on board gear other than pelagic longline or handgear, except as specified at § 635.21(e)(4)(i).

* * * * *

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