

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 061121306-7105-02; I.D. 110206A]

RIN 0648-AU86

**Atlantic Highly Migratory Species (HMS); U.S. Atlantic Swordfish Fishery Management Measures**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends regulations governing the North Atlantic swordfish fishery to provide additional opportunities for U.S. vessels to more fully utilize the U.S. North Atlantic swordfish quota, in recognition of the improved stock status of the species. The U.S. North Atlantic swordfish quota is derived from the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). For the past several years, the United States has not fully harvested its available North Atlantic swordfish quota. This final rule will increase swordfish retention limits for Incidental swordfish permit holders, and modify recreational swordfish retention limits for HMS Charter/Headboat (CHB) and Angling category permit holders. It will also modify HMS limited access vessel upgrading restrictions for vessels concurrently issued certain HMS permits. These actions are necessary to address persistent underharvests of the domestic North Atlantic swordfish quota, while continuing to minimize bycatch to the extent practicable, so that swordfish are harvested in a sustainable, yet economically viable manner.

**DATES:** This final rule is effective July 9, 2007.

**ADDRESSES:** Copies of the Final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (Final EA/RIR/FRFA) can be obtained from Sari Kiraly, Highly Migratory Species Management Division at 1315 East-West Highway, Silver Spring, MD 20910. Copies of the Final EA/RIR/FRFA, the 2006 Final Consolidated Atlantic Highly Migratory Species Fishery Management Plan

(Consolidated HMS FMP), and other relevant documents are also available from the Highly Migratory Species Management Division website at <http://www.nmfs.noaa.gov/sfa/hms>.

**FOR FURTHER INFORMATION CONTACT:** Sari Kiraly, by phone: 301-713-2347; by fax: 301-713-1917; or by e-mail: [Sari.Kiraly@noaa.gov](mailto:Sari.Kiraly@noaa.gov), or Richard A. Pearson, by phone: 727-824-5399; by fax: 727-824-5398; or by e-mail: [Rick.A.Pearson@noaa.gov](mailto:Rick.A.Pearson@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

The U.S. Atlantic swordfish fishery is managed under the Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), and ATCA (16 U.S.C. 971 *et seq.*). Under ATCA, the United States is obligated to implement the recommendations of ICCAT, including those for Atlantic swordfish quotas (ICCAT Recommendations 02-02, 03-03, and 04-02). ICCAT is an inter-governmental fishery organization, currently consisting of 44 contracting parties, that is responsible for the conservation of tunas and tuna-like species, including swordfish, in the Atlantic Ocean and its adjacent seas.

In 2001, ICCAT established its "Criteria for the Allocation of Fishing Possibilities" (ICCAT Recommendation 01-25) that included 15 separate criteria to be considered when allocating quota within the ICCAT framework. The first two criteria relate to the past and present fishing activity of qualifying participants. These criteria specify that "historical catches" and "the interests, fishing patterns and fishing practices" of qualifying participants are to be considered when making allocation recommendations. Other criteria, including conservation measures, economic importance of the fishery, geographical occurrence of the stock, compliance with ICCAT management measures, and dependence on the stocks, must also be considered when allocating quota.

At its 2006 meeting, ICCAT established an annual Total Allowable Catch (TAC) for North Atlantic swordfish of 14,000 mt whole weight (ww) for the years 2007 and 2008 (ICCAT Recommendation 06-02). A total of 2,530 mt (ww) of the TAC were allocated to "other contracting parties and others," with the remainder being distributed to the European Community (52.42 percent), United States (30.49 percent), Canada (10.52 percent), and Japan (6.57 percent), using the allocation criteria described above. This

resulted in a baseline U.S. North Atlantic swordfish quota of 3,907 mt (ww) for 2007 and 2008.

U.S. North Atlantic swordfish catches, as reported to ICCAT, have declined by approximately 40 percent from 4,026 mt (ww) in 1995 to 2,424 mt (ww) in 2005, although they have stabilized since 2001. As a percent of the ICCAT-recommended U.S. quota, the decline in U.S. North Atlantic swordfish landings is even more apparent. Because the portion of the baseline quota not landed in one year (an "underage") may be added to the subsequent year's baseline quota, the "adjusted" U.S. North Atlantic swordfish quota has continued to increase. The United States has landed less than its ICCAT-recommended "baseline" and "adjusted" swordfish quota since 1997. Based on reported landings to ICCAT, the United States went from exceeding its "baseline" quota in 1996 to landing only 29 percent of its "adjusted" quota in 2005. As indicated above, reported catches in 2005 were 2,424 mt (ww) of a 2005 "adjusted" quota of 8,319 mt (ww). For the 2006 fishing year, the United States' "adjusted" quota is 9,803 mt (ww). After completing the first half of the 2006 fishing year (June 1, 2006 - November 30, 2006), the United States has landed approximately 913.7 mt (ww) of North Atlantic swordfish, which equates to 9.3 percent of the "adjusted" quota, or 23 percent of the annual "baseline" quota.

The ICCAT Standing Committee on Research and Statistics (SCRS) recently completed a stock assessment for North Atlantic swordfish, in October 2006. The 2006 assessment indicated that North Atlantic swordfish biomass had improved, possibly due to strong recruitment in the late 1990's combined with reductions in reported catch since then. The SCRS estimated the biomass of North Atlantic swordfish at the beginning of 2006 ( $B_{2006}$ ) to be at 99 percent of the biomass necessary to produce maximum sustainable yield ( $B_{msy}$ ). The 2005 fishing mortality rate ( $F_{2005}$ ) was estimated to be 0.86 times the fishing mortality rate at maximum sustainable yield ( $F_{msy}$ ). In other words, in 2006, the North Atlantic swordfish stock was determined to be almost fully rebuilt and fishing mortality was low.

NMFS has implemented several management measures in recent years, primarily to reduce the bycatch of undersized swordfish, non-target species, and protected species. These actions have been effective at reducing bycatch, but they may have also had the unintended consequence of contributing to persistent underharvests of the U.S. North Atlantic swordfish quota, and a

precipitous decline in the number of active pelagic longline (PLL) vessels ("active" is defined as vessels that report landings in the HMS logbook). Some of these measures include: year-round closures in the DeSoto Canyon and East Florida Coast areas; seasonal closures in the Charleston Bump and Northeastern areas; limited access vessel permits; mandatory utilization of Vessel Monitoring Systems (VMS); mandatory circle hook and bait requirements; possession and utilization of release and disentanglement gear; utilization of non-stainless hooks; and a live bait prohibition in the Gulf of Mexico.

The Magnuson-Stevens Act specifies that NMFS shall provide a reasonable opportunity for domestic vessels to harvest quota allocations that are derived from international fishery agreements, such as ICCAT recommendations. In this final rule, NMFS is modifying certain management measures (swordfish retention limits and vessel upgrading provisions) to increase domestic swordfish landings and revenues, while retaining important bycatch reduction provisions. The final management measures are intended to help revitalize the historical U.S. swordfish fishery in recognition of the improved stock status of North Atlantic swordfish, and to help maintain or increase the historical U.S. North Atlantic swordfish quota allocation. These actions are necessary to address persistent underharvests of the domestic swordfish quota, while continuing to minimize bycatch to the maximum extent practicable, so that swordfish are harvested in a sustainable, yet economically viable manner.

Specifically, this action will reduce swordfish dead discards by increasing swordfish retention limits for Incidental swordfish permit holders, and increase the per vessel recreational swordfish retention limits for HMS CHB and Angling category permit holders. This final rule will also modify HMS limited access vessel upgrading and permit transfer upgrading restrictions for vessels that are issued, or eligible for renewal of, the following three permits: Incidental or Directed swordfish and shark permits, and Atlantic Tunas Longline category permits.

The Agency conducted an Environmental Assessment (EA) to analyze alternatives to increase the harvest of Atlantic swordfish, while retaining important bycatch reduction provisions. The alternatives included increasing incidental and recreational swordfish retention limits, and modifying HMS limited access vessel upgrading restrictions. Information regarding the alternatives was provided

in the preamble of the proposed rule and is not repeated here. Additional information can be found in the Final EA/RIR/FRFA available from NMFS (see ADDRESSES).

The public comment period for the proposed rule (November 28, 2006; 71 FR 68784) was open from November 28, 2006, to January 31, 2007. During that time, NMFS conducted seven public hearings. The locations and dates of the public hearings were announced in a separate **Federal Register** notice (January 3, 2007; 72 FR 96). Public hearings were conducted in Gloucester, MA (January 17, 2007), Manahawkin, NJ (January 18, 2007), Madeira Beach, FL (January 18, 2007), Destin, FL (January 23, 2007), Houma, LA (January 25, 2007), Ft. Pierce, FL (January 30, 2007), and Manteo, NC (January 31, 2007). The Agency received approximately 50 e-mailed or written comment letters, and many verbal comments that were presented at the public hearings. A summary of the major comments received, along with NMFS' response, is provided below.

#### Response to Comments

These comments and responses are divided into two major categories: those that relate specifically to the alternatives discussed in the proposed rule and Draft EA, and those that relate to other potential swordfish management measures not included in the rulemaking. Because the Draft EA specifically mentions the possibility of implementing future, long-term swordfish management measures, NMFS considers and responds to comments received on issues beyond the direct scope of this rulemaking, but still related to swordfish management.

#### Purpose and Need for Rulemaking

*Comment 1:* NMFS should not change swordfish management measures. The swordfish stock has just begun to rebound. The current regulations have enabled swordfish to rebuild. The increased abundance does not justify an enlargement of the fishery, especially for the commercial sector, which nearly destroyed the swordfish fishery in the first place. Enough swordfish to supply the market are currently being harvested. Recreational fishermen can catch the occasional large swordfish. Overall, it seems that the fishery is doing well. The present swordfish population consists mostly of juveniles. These fish should be left in the water to assure that the population has a full size range. There should be a total ban on catching any swordfish at all, by any entity, or an immediate decrease in swordfish retention for all.

*Response:* The U.S. North Atlantic swordfish quota is derived from the recommendations of the ICCAT. The stock has shown a significant increase in abundance. In 2006, the SCRS of ICCAT concluded that the stock was at 99 percent of  $B_{msy}$ , and recommended continuing with a TAC of 14,000 mt (ww), in accordance with the current rebuilding plan. Based on this information, ICCAT adopted an overall TAC of 14,000 mt. This is the same TAC that had previously been recommended for the period from 2002 - 2006, and it is expected to provide for continued growth of the North Atlantic stock. The United States is allocated 30.49 percent of the overall TAC, which equates to 3,907 mt (ww) after deducting 1,185 mt (ww) to "other contracting parties." The United States has not landed its North Atlantic swordfish quota allocation since 1997. In order to help retain the historic U.S. ICCAT swordfish quota allocation, NMFS believes it is appropriate to implement prudent management measures that will increase U.S. swordfish landings and foster an economically viable fishery that adheres to sound conservation principles. Accordingly, the measures in this final rule are anticipated to increase U.S. swordfish landings, but remain within the current ICCAT-recommended U.S. quota allocation. The additional landings are not projected to jeopardize stock rebuilding. In fact, some of the additional landings may previously have been discarded dead because the vessel exceeded the current Incidental swordfish retention limits. For these reasons, this action is not expected to have a significant adverse impact upon the North Atlantic swordfish stock.

*Comment 2:* If the U.S. swordfish fishery continues to under perform, it will be difficult for the United States to protect its quota share at ICCAT in 2008. The United States must harvest its swordfish quota share, or it will lose it. The agreed upon transfer of U.S. quota underages to other countries will allow for the development of new or larger foreign fisheries. If a precedent has been established with transferring unused swordfish quota to foreign nations that are developing their own fisheries, in the future the United States will need to defend what it has done to avoid further quota transfers or losses to other ICCAT nations that do not have the same conservation measures in place to reduce or mitigate bycatch. These countries will demand quota share based upon their newly developed swordfish fisheries. If the United States loses its swordfish quota at ICCAT, foreign pelagic longline vessels will line

up in the Caribbean Straits or right outside the U.S. Exclusive Economic Zone (EEZ) and also catch billfish. Because these countries do not utilize circle hooks and careful release techniques, levels of bycatch will increase. Therefore, NMFS must retain the U.S. swordfish quota to protect other species, including blue and white marlin. Recreational and commercial swordfish fisheries, environmental groups, and NMFS will all lose if the U.S. swordfish quota share is lost or transferred. How is NMFS going to ensure that the domestic swordfish quota is filled, so that quota share is not lost?

*Response:* ICCAT quota allocations are not solely dependent upon recent landings. In 2001, ICCAT established its "Criteria for the Allocation of Fishing Possibilities" (ICCAT Recommendation 01–25) that included 15 separate criteria to be considered when allocating quota within the ICCAT framework. Many other factors must also be considered during negotiations to allocate quota, including conservation measures, economic importance of the fishery, geographical occurrence of the stock, compliance with ICCAT management measures, and dependence on the stocks. For many of these criteria, especially conservation measures and compliance, the United States has been a world leader among fishing nations. However, NMFS also recognizes the relative importance that many ICCAT contracting parties place upon "historical catches" and "fishing patterns" when making quota allocations. Because of this, NMFS implements management measures to help U.S. vessels more fully harvest the U.S. swordfish quota, especially since the stock is almost fully rebuilt. It would not be beneficial to risk losing any portion of the U.S. swordfish quota, for a variety of reasons, including those mentioned in this comment. While the Agency cannot ensure that the domestic swordfish quota will be fully harvested, it will consider future management actions, as appropriate, that are consistent with other federal law and may provide additional opportunities to harvest swordfish.

*Comment 3:* It doesn't make sense to promote the killing of more swordfish in U.S. waters so that we won't have to give away U.S. quota to other countries. Why not stop ICCAT from allocating part of the U.S. quota to the other countries?

*Response:* As discussed in the response to Comment 1, the U.S. swordfish quota allocation is derived from international negotiations conducted at ICCAT. Because of this,

the United States cannot be assured of its future quota allocation. Therefore, NMFS believes it is appropriate, at this time, to implement swordfish management measures that address persistent swordfish quota underharvests to better ensure that the United States retains an influential role in future ICCAT swordfish quota discussions and negotiations. As the North Atlantic swordfish stock is almost fully rebuilt, and overfishing is not occurring, the additional domestic fishing effort anticipated from this rulemaking should not result in overfishing.

*Comment 4:* The only way that the United States can set an international example regarding how to appropriately manage fisheries is to have its fishermen making money. It is not only about preserving fish and saving sea turtles. These two goals, a profitable fleet and sustainable fisheries, must be linked in order to convince other countries to change their fishing methods. Otherwise, foreign fishing nations will keep doing whatever it takes to maximize their landings.

*Response:* NMFS believes that a well-managed, sustainable swordfish fishery can be profitable as well. These final regulations are an initial step towards improving the financial stability of the U.S. swordfish fleet, while assuring that swordfish remain at acceptable biomass levels, and bycatch rates and bycatch mortality do not increase. Additional measures may be considered in the future to increase swordfish landings. In achieving these two goals, a sustainable and profitable fishery, NMFS believes that other ICCAT nations throughout the Atlantic Basin might be encouraged to adopt much-needed conservation measures similar to those required of American vessels. These include regulations regarding bycatch reduction techniques, and implementation of effective fishery monitoring, reporting, and recordkeeping capabilities. For species that traverse international boundaries, such as HMS, NMFS believes that it is essential to achieve broad consensus and cooperation on matters of conservation.

*Comment 5:* NMFS' mismanagement of the swordfish fishery is the problem, not the fishermen. If NMFS had not driven all of the longliners out of the Straits of Florida while stocks were at 96 percent of  $B_{msy}$ , the United States would be meeting its swordfish allocation instead of allowing so many imports from other countries. Many vessels are now out of business. I do not believe that the United States is committed to revitalizing its historical swordfish fishery. NMFS should have

looked at swordfish landings seven years ago. The Agency would have seen that the United States was not catching its quota, and tried to revitalize the fishery then. If NMFS wants more young people to get into fishing, the United States needs to allow people to catch the swordfish quota and to maintain the swordfish quota in the future.

*Response:* The East Florida Coast, DeSoto Canyon, and Charleston Bump PLL closed areas were originally implemented from November 2000 - March 2001. At that time, the North Atlantic swordfish stock assessment (SCRS 1999) indicated that the stock was overfished, and at 65 percent of the biomass necessary to achieve  $B_{msy}$ . In addition, overfishing was occurring ( $F_{1998}/F_{msy} = 1.34$ ). In 2000, the United States did not land its entire ICCAT swordfish quota allocation. The United States had an allocation of 2,951 mt (ww), and reported landings were 2,684 mt (ww) in 2000. Because swordfish were overfished and overfishing was occurring in 2000, NMFS reduced the bycatch of undersized swordfish and other species by closing to PLL gear certain important areas of the ocean with unique biological characteristics. Since the implementation of those PLL time/area closures in 2000 - 2001, the North Atlantic swordfish stock has substantially increased in abundance, and it is now almost fully rebuilt and overfishing is not occurring. This is a significant achievement. The result, in recent years, has been a larger overall TAC recommendation from ICCAT and a correspondingly larger U.S. swordfish quota allocation. During that same time period, however, the number of active PLL vessels has continued to decline. Because the swordfish stock has shown a significant increase in biomass, the Agency now believes it is appropriate to reconsider existing swordfish management measures and take additional steps to more fully utilize this important natural resource. Revitalizing the U.S. swordfish fishery, while ensuring that the biomass remains at sustainable levels, will provide opportunities for future generations of Americans to participate in this fishery.

*Comment 6:* NMFS should take a conservative approach in its attempt to more fully harvest the U.S. swordfish quota. The current size structure of the swordfish stock may not accurately reflect the stock's structure before it was severely overfished. Although swordfish abundance has increased, many of the fish are still juveniles. If swordfish harvests are unabated, it could cause irreparable harm to the stock. The preferred alternatives appear to make modest strides to more fully harvest the

swordfish quota, apparently without fully reaching or exceeding it.

*Response:* NMFS has taken a conservative approach in relieving some swordfish management measures to begin fishery revitalization efforts, while ensuring that swordfish overfishing does not occur and that bycatch of undersized swordfish, protected species and non-target species is minimized, to the extent practicable. However, it will be necessary to continue to monitor catches and landings to ensure that these objectives are met. Additional management measures may be considered in the future, as appropriate.

*Comment 7:* We support the preferred alternatives and commend NMFS for moving forward and trying to provide more opportunities in this healthy fishery for both commercial and recreational interests. The Agency's ability to publish the proposed rule prior to the November 2006 ICCAT meeting is appreciated. Although there are numerous concerns with the rule itself, it has shown the international community that the United States still has a valid stake in the swordfish fishery, and that revitalization is real and tangible.

*Response:* NMFS recognized that it was imperative to demonstrate to ICCAT that the United States is committed to revitalizing its historical swordfish fishery, especially because the stock is now almost fully rebuilt. Importantly, the United States was successful in maintaining its swordfish quota share through 2008. U.S. fishermen have contributed to swordfish stock rebuilding, and should realize some benefit from it. Further action will be considered, consistent with the requirements of the Magnuson-Stevens Act, ATCA, the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), and other Federal regulations, to revitalize this important domestic fishery.

*Comment 8:* The proposed measures fall far short of what is needed to save this national resource. I recognize that the proposed rule only includes less controversial solutions that can be implemented relatively quickly, but there will still be a significant underharvest of the U.S. swordfish quota. This poses a problem because there is a limited amount of time available to show that revitalization of the fishery is underway.

*Response:* The final management measures are not likely, by themselves, to result in full utilization of the U.S. swordfish quota. Other measures may be considered in the future to provide additional opportunities to increase U.S. swordfish landings.

*Comment 9:* The purpose of the proposed rulemaking was to revitalize the swordfish fishery, not redistribute the U.S. longline quota to recreational interests. NMFS should develop additional alternatives that will allow the commercial swordfish fishery to harvest more of the U.S. quota. The proposed alternatives are skewed to the advantage of the recreational and for-hire sectors. Because swordfish are almost fully rebuilt, it is a valuable opportunity for the U.S. food service sector. The proposed alternatives will not substantially increase the amount of product available to the seafood consuming public, or effectively increase the commercial swordfish harvest.

*Response:* The overall U.S. North Atlantic swordfish quota is harvested by both commercial and recreational fisheries. Landings from both of these sectors are reported to ICCAT. Because the objective of this rulemaking is to increase overall U.S. swordfish landings, NMFS believes that the final management measures affecting both sectors are appropriate. The final rule does not redistribute U.S. longline quota to recreational fishing interests.

Recreational and Incidental swordfish landings are currently allocated 300 mt (ww) of North Atlantic swordfish, within the overall U.S. quota. NMFS is not changing this allocation. In fact, projections contained within the Draft Environmental Assessment clearly indicated that the final measures are not likely to result in landings that would exceed the 300 mt (ww) Incidental quota. It is also important to note that commercial vessels with Directed swordfish permits are not currently governed by any retention limits, unlike recreational vessels. Furthermore, the selected vessel upgrading provisions will benefit the commercial sector exclusively. For these reasons, NMFS believes that the final management measures are appropriately balanced, and are not skewed to favor any particular sector. The rebuilt swordfish stock represents an opportunity to increase the amount of product available to the seafood consuming public. Increasing the Incidental swordfish retention limit and relieving some vessel upgrading restrictions are viable short-term ways to increase commercial swordfish harvests, while reinvigorating swordfish marketing channels.

#### *No Action Alternatives (1a and 2a)*

*Comment 10:* I strongly oppose any changes to the current swordfish regulations so that swordfish can continue to rebuild. Therefore, I support

the status quo alternatives and am opposed to all of the preferred alternatives. NMFS must conserve fish, and let the current regulations strengthen the swordfish population. Give the fish a break and rejoice in the resurrection of a magnificent fish species, which NMFS had previously allowed to go nearly extinct. The current regulations are not broken, so NMFS should not make any regulatory changes.

*Response:* Swordfish is an important natural resource that provides food to American consumers, and economic and social benefits to commercial and recreational fishery participants. Among other requirements, the Magnuson-Stevens Act specifies that NMFS shall provide a "reasonable opportunity" for U.S. vessels to harvest HMS quotas that are managed under international agreements, such as ICCAT. As discussed in the response to Comment 1, the management measures contained in this final rule will provide for a modest increase in swordfish landings, without jeopardizing stock rebuilding efforts.

*Comment 11:* Reasonable efforts to fully utilize the domestic swordfish quota are appropriate. It is vital that our commercial and recreational fishermen are given the opportunity to benefit from the successful rebuilding of the North Atlantic swordfish stock. NMFS should take responsible measures in an attempt to catch the U.S. swordfish quota, but not at the expense of billfish and the continuing recovery of swordfish. Therefore, NMFS cannot abandon its responsibility to protect juvenile swordfish, their nursery areas and critical spawning zones or other seriously overfished species, such as Atlantic marlin and bluefin tuna. NMFS should rebuild swordfish by ensuring that there is a spawning stock, and that the fishery is sustainable. Fishermen have to make a living, but it has taken 10 years to rebuild the stock. Do not let the pendulum swing the other way again to an overfished status.

*Response:* The final management measures were selected to provide additional opportunities for commercial and recreational fishermen to land swordfish, while ensuring that the bycatch of undersized, protected, and non-target species remain at acceptable levels. NMFS is required under several federal statutes, including the Magnuson-Stevens Act, ESA, NEPA, and ATCA, to minimize bycatch and bycatch mortality to the extent practicable, prevent overfishing, achieve optimum yield, provide for sustained participation of fishing communities, protect threatened and endangered

species, and analyze the environmental impacts of potential fishery management actions. NMFS will continue to comply with all applicable legal requirements as it continues to investigate methods to revitalize the domestic swordfish fishery, so that U.S. swordfish quota share is retained.

*Incidental Swordfish Retention Limits (Alternative 1a - 1d)*

*Comment 12:* Is it really necessary for NMFS to increase Incidental swordfish retention limits? The fishery is just recovering from being overfished. I propose that recreational anglers release all swordfish, and that commercial fishermen remain at their current limits (non-preferred alternative 1a) for the next five years to give the fishery a chance to more fully recover. There is no reason to increase the retention limits, no matter what category.

*Response:* Swordfish are almost fully rebuilt. As discussed in the response to Comment 1, the North Atlantic swordfish stock was at 99 percent of the biomass necessary to achieve  $B_{msy}$  in 2006. Therefore, at this time, NMFS believes it is not necessary to lower the recreational retention limit. Rather, this final rule will increase the Incidental swordfish retention limit to reduce the number of legal-sized swordfish being discarded, and to provide some economic benefit to permit holders by converting those discards into landings. Although most trips do not report a large number of discards, available logbook information shows that some trips reported as many as fifty swordfish discards. NMFS has selected final management measures that will reduce discards and allow more swordfish to be landed by Incidental swordfish permit holders, without providing an incentive for these permit holders to direct a large amount of additional fishing effort on swordfish. As such, the measures are not projected to adversely impact continued swordfish stock rebuilding.

*Comment 13:* I support preferred alternative 1c, which would increase Incidental swordfish retention limits. This alternative would especially help commercial fishermen in the Gulf of Mexico. It would also help to supplement income for those fishermen whose earnings have been drastically slashed by recent shark management regulations.

*Response:* The final management measures will increase the retention limits for vessels possessing an Incidental swordfish permit from two fish per trip to 30 fish per trip, except that permitted vessels fishing with a squid trawl will be limited to 15 swordfish per trip. These limits were

selected because they may provide additional opportunities to land swordfish that might otherwise be discarded, while preventing a large increase in directed fishing effort. The 30 fish limit is just below the median number of swordfish landed by directed permit holders (36 fish). If vessels land an additional 28 swordfish, it could increase ex-vessel revenues by over \$7,000.00 per trip, minus any additional costs, based upon the average weight and ex-vessel price for swordfish in 2005.

*Comment 14:* I thought "incidental" means just that, not 30 fish. NMFS should not change the commercial Incidental swordfish retention limits under preferred alternative 1c. I believe that this might turn Incidental swordfish permit holders into directed commercial fishers because of the high retention limit.

*Response:* The selected alternative maintains a distinction between Incidental and Directed swordfish vessels. There is no retention limit for vessels possessing a Directed swordfish permit, whereas vessels possessing an Incidental swordfish permit would be allowed to retain only 30 fish per trip, and permitted squid trawl vessels would be limited to 15 swordfish per trip. Available logbook data from 2002 - 2005 indicate that the majority of Incidental swordfish permit holders did not report landing or discarding any swordfish. However, 19 percent of the trips reported swordfish discards, with as many as 52 reported on a single trip. Increasing the Incidental limit to 30 swordfish will allow 90 percent of all swordfish discards to be converted into landings, if they are above the minimum legal size. As mentioned in the response to Comment 13, the 30 fish Incidental swordfish retention limit is just below the median number of swordfish reported kept on trips by Directed swordfish permit holders. It is possible that some Incidental permit holders may choose to deploy a directed swordfish set, perhaps seasonally. However, the new Incidental retention limit is not expected to result in a large-scale conversion to directed swordfish fishing by Incidental swordfish permit holders.

*Comment 15:* The proposed regulations for retention limits make good sense. NMFS wants to limit regulatory discards, but not open the door for incidental permit holders to target swordfish. Discarding dead fish is the biggest double-edge sword, and it does not make any sense to throw a dead fish away.

*Response:* The final management measures are intended to reduce regulatory discards without providing

an incentive for Incidental swordfish permit holders to direct a large amount of fishing effort on swordfish. This is consistent with the incidental nature of the permit. It is primarily intended to allow Incidental permit holders to retain swordfish that might otherwise be discarded. The proposed 30 fish limit is just below the median number of swordfish retained by Directed permit holders.

*Comment 16:* Increasing recreational and Incidental swordfish retention limits will not reduce discards of undersized swordfish.

*Response:* Increasing recreational and Incidental swordfish retention limits will not reduce discards of undersized swordfish. NMFS cannot determine if the swordfish discards reported in the HMS logbook were attributable to exceeding the incidental retention limit, or because the swordfish were below the minimum legal size. NMFS continually strives to reduce the catch and mortality of undersized swordfish and non-target species. For example, NMFS has recently implemented a series of mandatory safe handling and release workshops for owners and operators of vessels with swordfish or shark Incidental and Directed permits, and using longline gear or gillnets. In combination with other measures, including mandatory circle hooks on PLL gear, mandatory possession and use of careful release equipment on PLL vessels, and PLL time/area closures, NMFS has made significant progress in reducing discards and discard mortality of undersized swordfish.

*Comment 17:* The wording of the final regulations should be changed to restrict the increased Incidental swordfish retention limit to PLL gear and trawl gear only, and prohibit the higher retention limit in the buoy gear fishery in the East Florida Coast PLL closed area. The Incidental swordfish retention limit must remain at two fish, unless the permit is only to be used outside of the PLL closed areas. The area off the east coast of Florida is currently well balanced between commercial and recreational interests. Increasing Incidental swordfish retention limits could cause an increase in buoy gear sets in the East Florida Coast Closed Area off the Dade, Broward, and Palm Beach County Coasts. This would cause major conflicts with the vast recreational fleet in the Florida Straits, and undue stress on the recovering swordfish stock that consists mostly of immature fish that have not reached their full spawning potential.

*Response:* Under HMS regulations at § 635.71(e)(10), Incidental swordfish permit holders are not authorized to fish

for swordfish with buoy gear. For this reason, increasing the Incidental swordfish retention limit will not provide an incentive for fishermen to enter the buoy gear fishery in any area. Also, Incidental or Directed swordfish permit holders may not retain swordfish unless their vessel also possesses both a limited access shark permit and an Atlantic Tunas Longline category permit.

*Comment 18:* NMFS is requested to consider increasing the Incidental swordfish retention limit for squid vessels to 20 fish. Also, a higher limit might be needed for squid freezer vessels that stay at sea for longer periods of time. Seventy-seven vessels hold Illex squid moratorium permits. Approximately 25 of these vessels actively fish for Illex squid in any single year, and 10 are freezer vessels that take trips lasting from seven to ten days. The remaining vessels utilize refrigerated seawater and stay at sea for three to four days. Because all existing regulations for maintaining swordfish as an incidental catch in the squid trawl fisheries would apply, no directed fishery is possible or encouraged.

*Response:* The final management measures will increase the retention limit for Incidental swordfish permit holders that deploy squid trawls from five to 15 swordfish per trip. This increase will enable squid trawl vessels to retain fish that otherwise may have been discarded. Squid trawl vessels fish for, and land, small pelagic species such as squid, mackerel and butterfish. Swordfish catches should remain truly incidental to catches of these target species. However, NMFS welcomes additional input or comments from the squid trawl sector for future consideration.

*Comment 19:* Increasing the retention limit for 48 Incidental swordfish permit holders will not make much of a difference, in terms of catching more of the swordfish quota. NMFS' projected swordfish landings are wrong. Incidental permit holders will not catch that many fish. NMFS has shown a wide range in the number of swordfish that could potentially be landed by increasing the Incidental swordfish limit. Why is there such a wide range? How did NMFS estimate the additional swordfish that will be landed? How many active Incidental swordfish permit holders are there? How many squid trawl vessels? Would the U.S. reach its quota before reaching the maximum number that could potentially be landed? Is it appropriate to project that each one of the boats is going to keep 30 fish? Only a small number of PLL boats are still in business, as two-thirds

of the fleet is gone. The projections that NMFS has shown are confusing. NMFS should provide more detail on these numbers, so that they make sense.

*Response:* The projected swordfish landings in the Draft Environmental Assessment are based upon certain assumptions. However, until final landings data are available after implementation of the new swordfish retention limits, it is not possible to determine whether these projections are accurate. In 2005, 10,787 lb dressed weight (dw) of swordfish were reported landed by Incidental swordfish permit holders in the HMS logbook. Swordfish landings by squid trawl vessels, as reported to ICCAT, averaged 10,443 lb (dw) per year from 1998 - 2004. Because all squid trawl landings may not have been reported in the HMS logbook, these landings were added together with the other Incidental landings to derive an estimate of 21,230 lb (dw) of swordfish landed by Incidental permit holders in 2005. NMFS then presented a range of projected landings to reflect uncertainties regarding future fishing activity. At one end of the range, NMFS assumed that all reported discards by Incidental swordfish permit holders would be landed, up to 30 fish. Therefore, if a vessel reported landing two swordfish and discarding five swordfish, a total of seven swordfish were assumed to be landed. Also, squid trawl landings in 2005 were tripled, reflecting the tripling of the squid limit from five fish to 15 fish. This methodology resulted in a projected estimate of 66,207 lb. At the other end of the range, NMFS assumed that all reported trips by Incidental swordfish permit holders would land 30 fish. Therefore, if an Incidental swordfish permit holder reported landing one swordfish in 2005, it was assumed that 30 fish would be landed under the new limits. Again, squid trawl landings were also tripled. This methodology resulted in a projected estimate of 476,444 lb. A similar methodology was used for the recreational retention limits where, at one end of the range, it was assumed that only trips that had previously landed the retention limit (three fish) would also land the new retention limit (four fish or 15 fish). At the other end of the range, it was assumed that all recreational trips would land the new retention limits. NMFS believes that actual landings will likely fall somewhere between the lower and higher end of these ranges.

*Comment 20:* Putting more swordfish on the market by increasing the Incidental retention limit will reduce the price that Directed swordfish permit

holders receive. This is a bad economic decision.

*Response:* NMFS recognizes that an increase in the volume of incidentally caught swordfish could affect swordfish prices. However, some constituents have told NMFS that the current 2-fish Incidental retention limit does not justify the additional effort of fishing for, or landing, swordfish, and then bringing them to market. These constituents stated that the current two-fish Incidental retention limit has contributed to an inadequate infrastructure and marketing channel in some areas that is not suitable for handling swordfish. NMFS believes that the 30-fish retention limit will provide more of an incentive to land and market incidentally caught swordfish, without a significant disruption to swordfish prices. Increased participation by incidental permit holders could help to develop a more consistent supply of swordfish, and thus lead to a more robust market for swordfish products.

#### *Recreational Swordfish Retention Limits (Alternatives 1e - 1f)*

*Comment 21:* NMFS received several comments concerning preferred alternatives 1e and 1f, which would increase the per vessel recreational swordfish retention limits. These comments include: The current recreational swordfish retention limit is already very generous for "personal" use, and increasing it would promote commercial harvest by "recreational" anglers. Recreational permit holders are currently keeping one swordfish, and illegally selling the others to a restaurant or a market buyer. Under the preferred alternatives, these illegal recreational swordfish sales would continue to grow; there is no reason to increase "recreational" retention limits if the rampant illegal sale of recreational swordfish cannot be controlled. It is necessary to strike a balance when setting recreational limits between fulfilling the recreational "experience" and encouraging the development of a quasi-commercial activity; the preferred alternatives to increase recreational vessel limits will hurt the prices that commercial fishermen receive for their swordfish. These swordfish will be sold and compete in the market with commercially landed fish.

*Response:* The Agency received many comments regarding the illegal sale of recreationally caught swordfish. The current regulations explicitly prohibit the sale of swordfish by HMS Angling category permit holders. The sale of swordfish by HMS CHB permit holders is also prohibited, unless the vessel owner concurrently possesses a limited

access swordfish Handgear permit. Furthermore, anyone who buys Atlantic swordfish from a U.S. vessel must have a Federal Atlantic Swordfish Dealer permit, and must report all purchases to NMFS. All non-tournament swordfish landings by Angling and CHB permit holders must be reported by calling (800) 894-5528. For recreational swordfish reporting information in Maryland, contact (410) 213-1531. In North Carolina, contact (800) 338-7804. Tournament directors, if selected, must report tournament landings. NMFS does not anticipate that increasing the recreational retention limit will increase illegal recreational sales because the recreational sale of all swordfish is clearly prohibited. However, citizens with information regarding the illegal sale of recreationally caught swordfish are encouraged to call the anonymous NMFS Office of Law Enforcement tip line at (800) 853-1964 to report the incident.

*Comment 22:* A recreational vessel does not have enough room onboard to properly ice more than one fish. Therefore, the preferred alternatives to increase recreational swordfish retention limits could cause health problems. NMFS should reduce the recreational retention limit to one fish per boat per trip.

*Response:* NMFS is not reducing the recreational retention limit because it is important to provide more opportunities for fishermen to land the U.S. swordfish quota, and recreational landings are counted against the quota. The decision regarding whether or not to land a fish is often made when the animal is alongside the boat. HMS regulations currently require that all fish that are not retained must be released in a manner that will ensure the maximum probability of survival, without removing the fish from the water. If an angler decides to keep a fish, it is his or her personal responsibility to ensure that the fish is maintained properly so that it is safe to eat. Since the fish cannot be sold, the federal government has no direct role in ensuring that it is safe to eat. However, to prevent waste, NMFS strongly encourages all anglers to keep no more fish than they can safely handle.

*Comment 23:* Recreational fisheries can develop rapidly and can threaten the Incidental catch quota. NMFS must properly monitor and record recreational and CHB swordfish landings to control the ultimate destination of these catches. NMFS should also include criteria that would allow for the downward adjustment of recreational limits to prevent exceeding the Incidental catch quota.

*Response:* As indicated in the response to Comment 21, all non-tournament recreational swordfish landings by HMS Angling and CHB permit holders must be reported to NMFS, or to the states of Maryland and North Carolina as applicable. These landings are collected on a daily basis. Using historical reported recreational swordfish landings, the projections presented in the Draft Environmental Assessment indicate that increasing recreational retention limits will not result in an exceedance of the Incidental swordfish quota. However, anecdotal information suggests that recreational swordfish landings may be under reported. Reporting could increase in the future as more anglers become aware of the requirement through Agency outreach. NMFS will continue to collect recreational swordfish landings data, and will take appropriate and timely action to maintain compliance with the Incidental swordfish quota.

*Comment 24:* I prefer alternative 1e, which would increase CHB vessel retention limits. This alternative would assist the recreational CHB industry by increasing overall recreational swordfish landings. It would allow CHB vessels to target swordfish instead of just catching them as bycatch species on tuna, marlin, and dolphin fishing trips.

*Response:* The final management measures will increase the per vessel HMS CHB swordfish retention limits, based upon the number of paying passengers onboard. This could provide additional opportunities for the HMS CHB sector to market recreational swordfish fishing trips.

*Comment 25:* Increasing the recreational retention limits will not affect the U.S. swordfish quota, because recreational fishermen are catching swordfish and not reporting them. They believe that reporting their catches will result in them being closed out.

*Response:* As indicated in the response to Comment 21, all non-tournament recreational swordfish landings by HMS Angling and CHB permit holders must be reported to NMFS, or to the states of Maryland and North Carolina as applicable. These reported landings are counted against the U.S. swordfish quota. It is possible that a failure to report recreational landings could result in a potential reduction of the Incidental swordfish quota, or a reduction in the overall U.S. swordfish quota in the future.

*Comment 26:* We have no objections to the proposed regulations to increase the recreational retention limit to one per person, up to four per vessel, as long as NMFS is only making the change to help the U.S. reach its swordfish quota.

Similarly, there is no objection to the proposed regulations to increase retention limits for CHB vessels.

*Response:* The purpose of this rulemaking is to implement management measures that will enable the United States to more fully harvest its ICCAT-recommended North Atlantic swordfish quota. The U.S. swordfish quota allocation includes both recreational and commercial landings. For this reason, NMFS chose to modify the regulations for both sectors in order to increase overall U.S. swordfish landings.

*Comment 27:* We support alternatives 1e and 1f to help the United States catch its swordfish quota. However, most recreationally caught swordfish are caught in the areas that are closed to PLL gear to protect juvenile swordfish. Therefore, we recommend an increase in the minimum size limit for all swordfish caught from within the PLL closed areas.

*Response:* The minimum swordfish size is established by ICCAT. However, the United States has some discretion to negotiate a higher minimum size, considering domestic requirements. NMFS may consider this in the future, if necessary.

*Comment 28:* Does the crew count when calculating the recreational swordfish vessel retention limit for HMS CHB vessels?

*Response:* No. The captain and crew do not count when calculating the swordfish vessel retention limit for HMS CHB vessels. Under the final regulations, the vessel limit is no more than one swordfish per paying passenger, up to six swordfish per vessel per trip for charter vessels; and no more than one swordfish per person, up to 15 swordfish per vessel per trip for headboat vessels. The retention limit for vessels issued an HMS Angling category permit is no more than one per person, up to four swordfish per vessel per trip.

*Comment 29:* In Louisiana, there are approximately four headboats, but they do not fit into the typical "headboat" category. They might fall under the headboat category or the charter boat category. These boats have to meet their minimum day rate, and they must carry a certain amount of passengers in order to leave the dock. But, they are different from the boats in Florida where everybody shows up and pays their individual fees. These boats are usually targeting snapper and grouper on overnight trips, but they may target swordfish. They might also fish for tuna during the day, and then start fishing for swordfish at night.



*Response:* A charter boat means a vessel that is less than 100 gross tons (90.8 mt) that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire. A headboat means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire. Thus, the applicable swordfish retention limits for charter and headboat vessels are based upon the tonnage of the vessel and whether it meets the requirements to carry six or fewer passengers, or whether it possesses a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire.

*Vessel Upgrading Restrictions*  
(Alternatives 2a - 2e)

*Comment 30:* NMFS should consider an alternative to remove gross registered tonnage (GRT) and net tonnage (NT) restrictions for simplification of vessel construction or conversion.

*Response:* Length overall (LOA), GRT, and NT are all measurements of a vessel's size and capacity. During the initial development of the limited access permit regulations, NMFS established an upper limit on fishing effort by restricting both the number of permitted vessels, and restricting upgrades in the size and capacity of those vessels. The purpose was to maintain overall fleet capacity at a relatively constant level. This was intended to improve the effectiveness of other management measures by preventing a sudden increase in fleet capacity and fishing effort when stocks first began to rebuild. Vessel tonnage was linked with vessel length to prevent vessels from increasing in beam while complying with other restrictions on length. However, since then, the fishing and boat building industries have informed NMFS that it is sometimes difficult to increase a vessel's length proportionately with its tonnage. Also, it has been brought to the Agency's attention that restrictions on net tonnage may significantly hamper interior modifications to vessels, such as reconfiguring the engine room, which may have little impact on the vessel's capacity. Finally, some fishermen have indicated that restrictive retention limits nullify the need to restrict vessel capacity (GRT and NT). NMFS is aware of these concerns and may consider further modifications to the vessel upgrading restrictions in the future. In this final rule, the 35 percent allowance is expected to provide additional flexibility for owners to upgrade their vessels, whether through construction, conversion, or permit transfer.

*Comment 31:* I support no action alternative 2a for the upgrading restrictions. Vessel capacity is adequate. Bigger vessels are not needed to harvest swordfish in the Gulf of Mexico. By lifting the upgrading restrictions, NMFS is catering to people who are trying to go to the Grand Banks. Lifting or modifying the upgrading restrictions would only benefit larger swordfish boats that currently catch most of the swordfish. I do not want Atlantic fishermen upgrading their vessels and then moving to the Gulf of Mexico to fish for swordfish.

*Response:* The final management measures will modify the vessel upgrading criteria for all vessels that concurrently possess Incidental or Directed swordfish and shark permits, and an Atlantic Tunas Longline category permit. This will benefit all commercial vessels that concurrently possess these three permits, not just larger vessels. Vessel owners are not required to upgrade. The revised upgrading criteria will improve the flexibility of vessel owners to make individual business decisions based upon their own unique circumstances. Overall, some vessels may not be optimally configured for current market conditions, and therefore profits may be less than optimal. Without some modification to the current upgrading restrictions, these vessels (primarily PLL vessels) would continue to be limited in their ability to modernize, thus affecting the ability to retain skilled crew, carry observers, and fish further offshore. In addition, limitations on vessel capacity may affect safety at sea because, in general, a larger vessel is more seaworthy than a smaller vessel, especially in rough seas. NMFS cannot accurately predict where newly upgraded vessels will fish, but it is important to provide some additional flexibility to improve their mobility. It is possible that some vessels could move out of the Gulf of Mexico to fish, rather than move into it.

*Comment 32:* I support no action alternative 2a for the vessel upgrading restrictions. The United States is not failing to catch its swordfish quota because of the size of the vessels. The current fleet capacity can harvest the quota if the boats are provided with more opportunities to fish.

*Response:* Vessel capacity is one factor, among several, that is potentially preventing the U.S. fleet from landing its full North Atlantic swordfish quota. NMFS believes that allowing for an increase in vessel size and horsepower (HP), will provide more opportunities to increase domestic swordfish catches. For example, increased vessel capacity and HP could allow some operators to

fish further offshore, fish longer without offloading, and reduce the time spent transiting to and from fishing grounds.

*Comment 33:* As a swordfish Handgear permit holder, I am opposed to lifting the upgrading restrictions on handgear vessels (non-preferred alternative 2c). I feel that making numerous permits available would cause far too many buoy gear conflicts with the vast recreational fleet in the Florida Straits.

*Response:* In the final rule, NMFS is not removing or modifying upgrading restrictions for vessels issued limited access swordfish Handgear permits. Also, NMFS is not making any new commercial swordfish permits available, because they are all limited access. However, upgrading restrictions are being modified specifically for vessels that concurrently possess limited access Atlantic Tunas Longline permits, as well as Directed or Incidental swordfish and shark permits. Most of these vessels fish with PLL gear. HMS regulations also allow vessels with a Directed swordfish permit to fish with buoy gear in the PLL closed areas, if PLL gear is not onboard. Because many vessels that might fish with buoy gear have very high horsepower, several commenters have indicated that the current HP restriction is a limiting factor that prevents many fishermen from obtaining a Directed swordfish permit, along with the other two necessary permits, and deploying buoy gear. Therefore, by removing the HP upgrading restriction for Directed swordfish vessels, buoy gear fishing activity could increase. As described in greater detail in the response to Comment 40, NMFS currently believes that the buoy gear fishery is adequately regulated through limits on the number of buoys that may legally be deployed, gear monitoring and marking requirements, limits on the number of hooks that may be attached, logbook reporting requirements, and other general commercial fishing regulations. NMFS is aware of the concerns expressed regarding buoy gear, and may implement additional regulations on the buoy gear fishery in the future, if necessary.

*Comment 34:* NMFS received several comments in favor of increasing allowable vessel upgrades, or removing the upgrading restrictions altogether (non-preferred alternative 2d). These comments include: I support immediately taking off the restrictions on vessel size for all vessels possessing HMS limited access permits. If the number of permits is limited, then why manage the size of the boat too? It is not the government's business regarding the



size of the engine that I have on my boat. The government has put enough restrictions on fishermen; in the Pacific PLL fleet all vessels can go up to 100 feet in length, so NMFS should consider this as an alternative; limiting the size of fishing vessels is a problem. Most current swordfish vessels are from 40 to 50 feet in length. Allowing these vessels to be upgraded by 35 percent to 65-foot vessels under preferred alternative 2e makes no sense, because 65-foot vessels have become unprofitable. No new 65-foot vessels have been built in years.

*Response:* One of the goals of this rulemaking was to develop and implement management measures that would facilitate, in the short term, the ability of U.S. vessels to harvest the ICCAT-recommended domestic swordfish quota. Thus, the Agency selected alternatives that would meet these goals, and that were projected to have comparatively minor environmental impacts. Non-selected alternative 2d would have removed all HMS limited access vessel upgrading and permit transfer upgrading restrictions for ten years. This alternative was not selected because it was projected to result in the most adverse ecological impacts. The universe of affected vessels is substantially larger under alternative 2d, and there would be no limit on the size to which HMS limited access vessels could be upgraded. The final management measures will allow some owners to upgrade their vessels by 35 percent in size (relative to the baseline specifications of the vessel initially issued the limited access permit), with no limits on HP. This would allow, for example, an "average" 55-foot baseline vessel to be upgraded to a 74-foot vessel with unlimited HP. NMFS believes that this is a meaningful increase in vessel size, but overall fleet capacity will remain within acceptable limits. It provides vessel owners with more flexibility to make business decisions based upon their own individual needs. NMFS selected this alternative because there will likely be fewer adverse ecological impacts compared to the other alternatives. The North Atlantic swordfish stock is still rebuilding. Also, several species caught as bycatch in the PLL fishery are currently overfished, or protected under the ESA. The final management measures may increase overall fleet capacity, but not to extent that overfishing will occur or bycatch will substantially increase. As additional data become available regarding, among other things, swordfish stock status, sea turtle interactions, levels of bycatch, and the

effectiveness of circle hooks and careful handling and release techniques, NMFS may reexamine the HMS limited access vessel upgrading restrictions to determine if additional modifications are warranted.

*Comment 35:* Which vessels are eligible for the upgrade under preferred alternative 2e? Do they have to fish with PLL gear or just have the permits that would enable them to fish with PLL gear?

*Response:* In order to be eligible for the 35-percent vessel upgrade in LOA, GRT, and NT, with no restrictions on HP, a vessel must concurrently possess, or be eligible for the renewal of, the following three permits 30 days from the effective date of this final rule: Directed or Incidental swordfish and shark permits, and an Atlantic Tunas Longline category permit. Vessel owners may submit applications to transfer permits so that a vessel concurrently possesses the three necessary permits to be eligible for the 35 percent upgrade. However, NMFS must receive a complete application from the vessel owner no later than 30 days from the effective date of this final rule in order for the vessel to be eligible.

*Comment 36:* The swordfish industry stagnated and died because it could not build large freezer vessels just when they were needed to meet world market demand. NMFS must find a method to allow larger vessels to economically enter the fleet, such as foreign vessels or large shrimp boats. The U.S. fleet needs much larger vessels to travel further and to utilize onboard freezers.

*Response:* As indicated in the response to Comment 34, NMFS considered an alternative that would have removed all upgrading restrictions on all vessels possessing HMS limited access permits. However, this alternative was not selected because it was determined to have the most severe adverse environmental impacts. As the frozen seafood market has grown substantially in recent years, NMFS may consider the concept of domestic freezer vessels in the future, if appropriate. Currently about 38 vessels are greater than 70 feet in length, and possess Directed swordfish permits. Under the final management measures, these existing vessels could be upgraded, either through conversion or permit transfer, to 94 feet or more, depending upon the size of the baseline vessel, for use as a freezer vessel 30 days from the effective date of the final regulations. In the longer term, it may be necessary for NMFS to further analyze the potential impacts associated with a swordfish freezer fleet to determine an appropriate number of vessels, permit qualification

criteria, environmental impacts, and other items. Under the Magnuson-Stevens Act, no foreign vessels are allowed to fish within the U.S. EEZ, unless that portion of the optimum yield that would be caught by those vessels cannot be harvested by U.S. vessels.

*Comment 37:* The last U.S. PLL boat was built in 1994. There is no money for the owners of PLL vessels to upgrade their boats. If you want to revitalize the industry, then upgrading is not the way to do it because the remaining fishermen cannot afford it.

*Response:* Several constituents identified the current vessel upgrading restrictions as one factor, among several, limiting the ability of U.S. vessels to fully harvest the U.S. swordfish quota. Vessel owners are not required to upgrade. The option to upgrade could improve the flexibility of some vessel owners to make individual business decisions, based upon their own unique circumstances.

*Comment 38:* I support removing HP restrictions on PLL vessels in preferred alternative 2e. Speed is important when selling fresh fish, which the U.S. fleet does.

*Response:* Removing the HP upgrading restrictions will provide additional flexibility to modify vessels possessing, or eligible to possess, Directed or Incidental swordfish and shark permits, and Atlantic Tunas Longline category permits. These vessels usually fish with stationary PLL gear, rather than with towed gear, so HP may have a relatively minor impact on fishing effort. However, if an owner is able to increase the vessel's speed, it could reduce transit time and provide additional fishing time.

*Comment 39:* Removing HP upgrading restrictions in preferred alternative 2e will make little difference to PLL vessels. Most longline vessels are not going to go faster with more HP, and it will cost more in fuel. It is not possible to get some boats up on a plane to go faster, even if the HP is increased.

*Response:* As indicated above in Comment 38, NMFS received contrasting comments regarding the effect of removing the HP upgrading restrictions. NMFS recognizes that some vessels may not be able to travel any faster with a more powerful engine, due to the vessel's hull configuration. However, other vessels might be able to travel faster. NMFS believes that waiving the HP upgrading restrictions on vessels that concurrently possess the three necessary HMS limited access permits will provide some owners with additional flexibility to modify their vessels according to their needs, and potentially provide more fishing time.

*Comment 40:* We cannot support the proposed rule as written because the unlimited HP upgrade is not restricted to vessels that specifically fish with PLL gear. The Draft Environmental Assessment indicates that NMFS desired to restrict the upgrade to PLL vessels, but the proposed regulations do not reflect this intent. The limitation that currently keeps vessels from entering the buoy gear fishery is the HP limitation, and the fact that most available limited access swordfish permits do not match the typical high HP boats used in the recreational fishery off South Florida. We recommend and support limiting HP upgrades only to vessels that will fish with PLL gear. Otherwise, there could be an increase in buoy gear sets in the East Florida Coast Closed Area. If NMFS allows unlimited HP upgrades under preferred alternative 2e, those commercial swordfish permits will go to the Miami area, and not be used by vessels that fish with PLL gear. PLL boats will upgrade and use their Directed swordfish permit and upgraded boat to fish with buoy gear off the Florida East Coast, or the Directed swordfish permits will be bought by recreational fishermen in the Miami and Fort Lauderdale areas who want to become part-time commercial buoy gear fishermen. There are enough transferable permits available for those who wish to enter the buoy gear fishery with the serious intent of making a living. NMFS should allow the upgrades, provided that the permit holder forfeits the right to fish in the closed zones if they upgrade their permit or buy a permit that they plan to upgrade. If the HP for a commercial swordfish permit were increased, the holder would waive the right to fish in the PLL closed zones. Alternatively, we recommend limiting HP upgrades to vessels that will only fish with PLL gear. Restricting the gear types on upgraded permits would not affect vessels in any other HMS fisheries. Keeping the buoy gear fishery a small fishery with controlled growth would reduce gear conflicts and allow for a sustainable fishery. The intent was for the permits to be used to make PLL boats go farther offshore and stay out longer.

*Response:* The intent of this final rule is to provide additional opportunities for U.S. vessels to harvest a larger portion of the ICCAT-recommended domestic swordfish quota. It is not intended solely to make PLL boats fish further offshore or for these vessels to take longer trips, although that could be a secondary benefit if additional swordfish landings occur with few additional adverse ecological impacts.

The vessel upgrading restrictions are administered largely through the issuance of permits, as the allowable upgrade specifications for each vessel are printed directly on its limited access swordfish and shark permit. With the exception of the swordfish Handgear permit and some tuna permits, HMS vessel permits are currently issued by species, and not by gear. NMFS rejected an alternative to waive the upgrading restrictions on vessels possessing swordfish Handgear permits in the Draft Environmental Assessment because the upgrades would not be limited, and also to reduce buoy gear conflicts with recreational users. In this final rule, NMFS is modifying vessel size upgrading restrictions and removing HP upgrading restrictions on vessels concurrently possessing Incidental or Directed swordfish and shark permits, and an Atlantic Tunas Longline category permit. These three permits are necessary to fish for HMS with PLL gear, or to land swordfish commercially (other than with the swordfish Handgear permit). Because buoy gear is authorized only for vessels possessing either a Directed swordfish permit (along with the other two permits) or a swordfish Handgear permit, NMFS recognizes that, as a result of waiving the HP upgrading restrictions for vessels possessing a Directed swordfish permit, some current recreational fishermen may seek to obtain a Directed swordfish permit and the other two commercial permits to fish with buoy gear in the East Florida Coast PLL closed area. However, the Agency believes that the actual number of recreational fishermen choosing to pursue this commercial activity is likely to be limited, although it does warrant future monitoring. The start-up costs associated with obtaining the three commercial limited access permits and all of the required fishing and safety gear are sizeable. Furthermore, accurate recordkeeping and reporting are essential. This could potentially necessitate the formation of a corporation and a career change, if conducted on anything other than a part-time basis. Reporting forms and weighout slips must be submitted after each trip, or monthly if no fishing occurs. Additionally, vessel owners and operators must remain cognizant of, and adhere to, all commercial fishing regulations. If selected, these vessels would also be required to carry observers. In the 2006 Consolidated HMS FMP, NMFS recently authorized the use of buoy gear, and clarified its usage, by implementing several new restrictions for swordfish Directed and Handgear permit holders deploying

buoy gear. These are the only permits with which buoy gear may be deployed. The new restrictions included a limit on the allowable number of hooks per buoy gear, a limit on the number of floatation devices that may be deployed, and gear monitoring requirements. The permit and upgrading restrictions are not based upon gear type, whereas the closed areas are administered by gear type. To restrict the new vessel upgrading requirements only to Directed swordfish permit holders that do not, or will not, fish in the PLL closed areas would require permit restructuring under a separate rulemaking. As additional information regarding buoy gear becomes available through the HMS logbook and research efforts, NMFS will reevaluate the fishery and its current regulations, if necessary.

*Comment 41:* We support the increase in size and HP for PLL vessels in preferred alternative 2e, because it provides greater safety and range for each trip, which should provide a better opportunity to land the U.S. swordfish quota. Larger vessels fishing further from closed zones within U.S. waters should also reduce user group conflicts. However, if the increases in length and HP also result in larger drums and longer longlines on PLL vessels, restrictions should be implemented to restrict the longline length to no more than the current average length to avoid longer soak times and increased incidental catch mortality.

*Response:* NMFS' Draft Atlantic Pelagic Longline Take Reduction Plan (available at <http://www.nmfs.noaa.gov/pr/interactions/trt/pl-trt.htm>), which was prepared to reduce bycatch of marine mammals in the Atlantic PLL fishery, has recommended that PLL vessels establish a 20 nautical-mile upper limit on mainline length for all PLL sets within the Mid-Atlantic Bight region. NMFS is preparing a proposed rule to implement this plan.

*Comment 42:* Commercial fishermen are concerned that waiving the upgrading restrictions for HP will encourage additional recreational vessels to transfer commercial permits to their charter vessels and land swordfish commercially.

*Response:* For a charter vessel to sell swordfish commercially, the vessel owner must obtain either a swordfish Handgear permit, or three required permits (Directed or Incidental swordfish and shark permits, and an Atlantic Tunas Longline category permit). Upgrade restrictions for swordfish Handgear permits are not being modified in this final rule. If the vessel owner obtains the other three required permits, that owner cannot

obtain an HMS CHB category permit, as specified in § 635.4(d)(3). For this reason, NMFS does not believe that a large number of vessel owners will relinquish their HMS CHB permit for the opportunity to sell swordfish. It would likely necessitate a substantial change in business activities, from carrying paying recreational passengers to commercial fishing. Also, as discussed in the response to Comment 40, the start-up and operating costs are likely to be sizeable. However, the Agency believes that if some current CHB fishermen choose to become commercial fishermen as a result of this final rule, overall positive benefits could result. It would assist the Agency's efforts in harvesting the ICCAT-recommended U.S. swordfish quota.

#### *Other Swordfish Management Measures*

##### *Pelagic Longline Closed Areas*

*Comment 43:* The current PLL closed areas are important biological areas that protect many species of juvenile fish. They should be closed to all vessels, both recreational and commercial.

*Response:* The current HMS time/area closures apply to either PLL or bottom longline (BLL) gear. The first time/area closure for HMS was implemented in 1999 off New Jersey to reduce bluefin tuna discards in the PLL fishery. Since then, additional PLL closures have been implemented in the DeSoto Canyon (2000), Florida East Coast (2001), Charleston Bump (2001), and the Northeast Distant Area (2001). The Northeast Distant time/area closure was later modified in 2004 to a Gear Restricted Area, where only large circle hooks with special bait are allowed. In 2005, NMFS implemented the Mid-Atlantic shark BLL closed area. The goals of all the HMS time/area closures are to: (1) reduce bycatch; (2) minimize the reduction in target catches; and, (3) minimize or reduce non-target HMS (i.e., bluefin tuna and billfish) catch levels. There are currently no areas closed to recreational HMS fishing gears (i.e., rod and reel and handline), primarily because these gears are actively tended, and have few interactions with marine mammals and protected species. However, due to the large number of recreational anglers, NMFS will continue to investigate methods to reduce post release mortality in the recreational fishery.

*Comment 44:* The primary reason that the United States is not catching its swordfish quota is because PLL vessels cannot fish in the PLL closed areas. Many PLL vessels went out of business due to the PLL time/area closures. Because the prime fishing grounds are

closed, PLL vessels must fish in areas that do not produce many swordfish. The only way that the United States can increase its swordfish catch is to immediately reopen some of the PLL closed areas. Otherwise, the United States will lose some of its baseline swordfish quota by 2008. Also, swordfish catches will likely continue to decline as the few remaining PLL boats go out of business due to inadequate fishing opportunities. The commercial fishing industry is fast approaching a "point of no return." Vessel owners will not invest in a larger vessel to continue in a business that is restricted in growth. The longer a fishery recovery program is drawn out, the faster that the fishing infrastructure will decay. There may soon be no docks left for HMS vessels to land swordfish in certain areas. NMFS should not encourage people to upgrade or buy a newer or larger boat, unless it can provide assurances that it will not regulate them out of business in the future. NMFS could open selected closed areas using intensive observer coverage. This would allow for an increase in catch while simultaneously providing important data. If any adverse trends are detected, the areas could immediately be closed. If NMFS opens some closed areas, the boats may be willing to give a percentage of their gross revenues to cover the cost of observers. To reduce bycatch, the PLL fleet has already transitioned to circle hooks, uses careful release and disentanglement gear, and is prohibited from using live bait in the Gulf of Mexico.

The commercial PLL industry requests to work with NMFS on an Exempted Fishing Permit (EFP) that would provide data on PLL gear and lead to the eventual reopening of the PLL closed areas. The first PLL time/area closure that should be reconsidered is the area extending from the Straits of Florida up to, and including, the Charleston Bump area. This area is currently producing large volumes of high quality swordfish that average about 80 lb each. The bycatch of marine mammals and protected species in this area is low. There is also real time information available from mandatory Vessel Trip Reports and dealer reports. This information would support what appears to be a revitalized fishery when compared to landings in the same area ten years ago.

NMFS should also consider a small-scale, cooperative research program (six to seven pelagic longline vessels) in the Charleston Bump time-area closure with 18/0 circle hooks and 100 percent observer coverage to monitor catch,

discards and protected species interactions. This would provide important data on the swordfish population and the impacts of circle hooks and bait restrictions that have gone into effect since the inception of the closure. There are not many small fish, sea turtles, or marine mammals in the Charleston Bump at that time of the year. There are also a limited number of directed swordfish vessels, so adverse ecological impacts would likely be minimal. Re-opening the area would allow for a short-term increase in commercially harvested swordfish on the market during the late winter and early spring.

Finally, NMFS should reopen the southern portion of the DeSoto Canyon, because more area than necessary is closed in the Gulf of Mexico. Smaller boats cannot travel farther out west to fish in the Gulf of Mexico. The northern portion of the DeSoto Canyon should remain closed because it is a nursery ground for swordfish.

In conclusion, NMFS has already implemented many bycatch mitigation measures for PLL vessels, based on the NED experimental fishery. Another experimental fishery in the current PLL time-area closures would provide additional important information. Re-opening portions of the PLL closed areas is essential to fully harvest the U.S. swordfish quota.

*Response:* The current time/area closures were implemented for specific management objectives. NMFS may modify the existing closures, as appropriate, to allow utilization of a given fishery, consistent with the Consolidated HMS FMP, once the objective of the time/area closure had been met. However, NMFS must balance many factors when considering whether to re-open or to modify the HMS time/area closures. These include the bycatch of protected species, non-target species, and undersized fish. Also, socio-economic issues must be considered. A reexamination of the PLL closed areas, using information that has become available since the implementation of circle hooks in the PLL fishery, may be warranted because much of that information was not available during the recent development of the Consolidated HMS FMP.

NMFS has received an application for an EFP to collect data from PLL vessels in the East Florida Coast and Charleston Bump closed areas to gather data on circle hook performance, and target and bycatch species composition. This information could be compared with historical PLL logbook and observer data to determine if the new PLL practices warrant a review of fishing in

the PLL closed areas. NMFS published a notice in the **Federal Register** on March 13, 2007, to solicit public comments on the EFP request. NMFS published an additional notice in the **Federal Register** on April 11, 2007, extending the comment period to April 25, 2007. The comment period was extended again to June 20, 2007, through publication of a notice in the **Federal Register** on May 7, 2007, based upon a request by the South Atlantic Fishery Management Council and others.

Finally, the Agency recently established new criteria in the Consolidated HMS FMP to be considered when deciding whether to add, change, or modify time/area closures. These criteria include, but are not limited to, the following: (1) ESA related issues, concerns, or requirements; (2) bycatch rates of protected species, prohibited HMS, or non-target species; (3) bycatch rates and post-release mortality rates of bycatch species associated with different gear types; (4) new or updated landings, bycatch, and fishing effort data; (5) evidence or research indicating that changes to fishing gear and/or fishing practices can significantly reduce bycatch; (6) social and economic impacts; and (7) the practicability of implementing new or modified closures compared to other bycatch reduction options. For ICCAT managed species, NMFS will also consider the overall effect of U.S. catches on that species before implementing time/area closures. If the public believes that modification of an existing closure or the establishment of a new closure is warranted based upon these criteria, they may submit a petition for rulemaking to NMFS. It should contain sufficient information to consider the substance of the petition. The specific information that should be included in the petition is described in the Consolidated HMS FMP. Based upon the results of such an analysis, NMFS will determine whether to reopen or modify the PLL closed areas.

*Comment 45:* NMFS must not implement any new regulations that would allow PLL fishing in the closed areas, or increase longline activity for the U.S. commercial fleet in the vicinity of the U.S. EEZ. These PLL closures are the only reason why swordfish abundance has increased. The recreational fishery has improved for every pelagic species, not just swordfish, since the PLL time/area closures were first implemented. These areas are extremely important management features that benefit swordfish, billfish, tuna, and protected

species and must remain intact. There are still many undersized swordfish in these areas. If NMFS allows PLL vessels in the closed areas, the swordfish fishery will collapse again.

*Response:* As indicated in response to Comment 44, the current time/area closures were implemented for specific management objectives. NMFS may modify existing closures, as appropriate, consistent with the FMP, once the objective of the time/area closure has been met. Additionally, because fisheries, fishing gear, fishing practices, and stock status change over time, NMFS must periodically examine the continued need for the existing time/area closures. The criteria that NMFS will consider are described in the response to Comment 44. Based upon the results of such an analysis, NMFS will decide whether or not to reopen or modify the PLL closed areas.

*Comment 46:* Swordfish abundance has increased because of the PLL closed areas. The DeSoto Canyon provides Florida recreational fishermen in the Gulf of Mexico with better fishing opportunities. The Mississippi Canyon and Green Canyon are also biologically rich areas. Perhaps NMFS should consider reopening portions of the DeSoto Canyon in exchange for closing portions of the Mississippi or Green Canyons. This could benefit species that reside or transit the western Gulf of Mexico.

*Response:* These are options that NMFS could consider in the future. In analyzing the time/area closures, NMFS will strive to balance protection for overfished species, undersized fish, threatened and endangered species, and marine mammals, while providing opportunities for financially solvent fisheries.

#### Recommendations for Future Management

*Comment 47:* To increase swordfish landings and/or improve management, NMFS should consider restructuring its HMS permit system. Specific suggestions include: (1) place swordfish in the General Category tuna permit; (2) allow Incidental swordfish permits to be converted to directed swordfish permits; (3) remove the restriction that requires three permits to fish for swordfish; (4) reinstate lapsed permits in the Barnegat Light area; (5) allow for the leasing of inactive permits; (6) allow all vessels that hold an Illex moratorium permit to apply for an Incidental swordfish permit; (7) implement a commercial rod and reel permit (not limited access) that would allow sport fishermen to sell their swordfish; and (8) issue more swordfish permits.

*Response:* NMFS notes these very specific and informative comments from the public and will take them into consideration in the future, as warranted.

*Comment 48:* If U.S. fishermen substantially increase their swordfish catch from July to October, along with the Canadian production, the market will not be able to support all of the fresh product in the first couple of years, which is when we need to make a difference. To retain the U.S. swordfish quota, NMFS should allow U.S. vessel owners to deploy large freezer vessels (50 meters or larger with  $-60^{\circ}\text{C}$  freezers) to substantially increase catches without destroying the fresh swordfish market. These types of vessels can stay at sea for two to three months at a time. The Grand Banks are fishable from June-November, so these vessels could take two trips annually to the Grand Banks, and then fish offshore in the south during winter months, freezing the entire catch at  $-60^{\circ}\text{C}$ . The vessels would be fishing rather than steaming back and forth to the dock. The landed fish would be sold on an entirely different market than fresh product. This is what the United States needs to catch its swordfish quota, and it would not affect local fresh markets. It would also create an exportable product. To deploy a vessel of this caliber in time for the 2007 Grand Banks season, U.S. vessel captains need permission to contract or lease an existing, ready-to-fish vessel. This would be a vessel flagged outside of the United States. For the short term (three to five years), U.S. owners should be allowed to obtain existing foreign-flagged vessels. Then, after three to five years, they should be allowed to bring these same vessels under U.S. ownership and flag. It would be necessary to consider permits for these vessels too. Perhaps NMFS should allow for a 50-percent or larger increase, instead of a 35-percent increase in vessel upgrading.

*Response:* As indicated in the response to Comment 36, NMFS may consider the concept of freezer vessels fishing for swordfish. Under the final management measures, some vessels potentially could be upgraded, through conversion or permit transfer, to be utilized as freezer vessels, depending upon the size of the baseline vessel. In the longer-term, it may be necessary to further analyze the potential impacts associated with a freezer fleet to determine the appropriate number of vessels, permit qualification criteria, and environmental impacts. Under the Magnuson-Stevens Act, foreign vessels may only harvest the portion of the

optimum yield that will not be harvested by vessel of the United States. Foreign vessels fishing in the U.S. EEZ must also comply with the requirements of Title II of the Magnuson-Stevens Act.

*Comment 49:* It is important to open the Windward Passage and the area off the Yucatan to allow a larger percentage of the Atlantic swordfish fleet to fish in the winter.

*Response:* The Windward Passage is a strait in the Caribbean Sea, between Cuba and Haiti. The waters off the Yucatan peninsula are largely within Mexican jurisdiction. Therefore, NMFS does not have the authority to open these waters to U.S. vessels.

*Comment 50:* The swordfish market has collapsed in terms of price. The problem is not with the fish, but with the prices that commercial longliners receive for their swordfish. These boats fish for tunas because of the price. There is a limited U.S. market for fresh swordfish. Therefore, market revitalization to increase public demand for swordfish is critical. Promotional marketing of domestic swordfish would help reduce imports. Also, NMFS must combat media perceptions that swordfish are unsafe due to mercury, and that swordfish are endangered. U.S. fishermen get hurt every year by swordfish imports from Canada, especially in September when the domestic ex-vessel price plummets from over \$4/lb to around \$2/lb.

*Response:* Market considerations are important. In October 2006, NMFS announced the results of a government-sponsored study conducted by the National Academy of Sciences addressing seafood safety and the health benefits associated with eating seafood. NMFS intends to continue to distribute fact-based information to the public regarding seafood consumption. For example, it is important to publicize the fact that swordfish are almost fully rebuilt to refute persistent perceptions that the stock is severely overfished. Exploring potential cooperative efforts with the seafood industry may further serve to promote domestic markets. Also, NMFS published a final rule in the **Federal Register** (April 11, 2007, 72 FR 18105) that provides for the establishment of Seafood Promotion Councils designed to help market and promote seafood to U.S. consumers, to eliminate confusion by providing the public with accurate information on the health benefits of eating seafood, and to assist the seafood industry to better market its products.

*Comment 51:* NMFS must stop swordfish imports from flooding the U.S. market with cheap product. The United States should require that

imported pelagic species be harvested according to the same conservation standards as domestic fish.

*Response:* NMFS continues to conduct bilateral and multilateral outreach efforts with foreign countries, particularly regarding the use of circle hooks. In addition, the international provisions of the newly re-authorized Magnuson-Stevens Act will support the United States' continued efforts at the international level to pursue conservation measures comparable to the United States, while taking into account differing conditions.

*Comment 52:* NMFS should establish in-season adjustments to PLL closed areas to improve the ability of the longline fleet to better harvest the swordfish quota. Flexibility is necessary to adjust pre-established criteria, as is currently conducted in the bluefin tuna fishery. For example, in the Charleston Bump Area, the average swordfish size is increasing. The objective of that closed area has been met, but the area is still closed due to a lack of flexibility in the regulations. The swordfish industry has been denied a reasonable opportunity to catch a greater share of the U.S. quota, because NMFS lacks the authority to modify or waive closures on a real-time basis.

*Response:* In-season adjustments are pre-specified modifications to existing management measures, and are typically used to change subquotas, retention limits, or some time/area closures such as restricted fishing days (RFDs,) based on landing trends, seasonal distribution of the species, availability, abundance, migration patterns, and other factors. The impacts associated with in-season adjustments are limited, and have already been analyzed in other supporting documents. For time/area closures that are more significant in scope, NMFS specified seven criteria in the Consolidated HMS FMP that may be considered when implementing or adjusting time/area closures. These are described in the response to Comment 44.

*Comment 53:* The United States needs to show other countries that circle hooks are reducing bycatch while fostering an economically viable fishery. This would encourage other countries to use them and reduce bycatch throughout the Atlantic Ocean.

*Response:* NMFS has conducted, and will continue to conduct, bilateral and multilateral outreach efforts with foreign countries regarding the use of circle hooks. In 2004, NMFS demonstrated the use of circle hooks at ICCAT. In 2005, ICCAT passed a non-binding measure regarding the use of circle hooks. These types of activities, in

combination with economically viable domestic fisheries, may be an effective way to reduce bycatch throughout the Atlantic Ocean.

*Comment 54:* NMFS received comments regarding the need to either increase or decrease the swordfish minimum size requirement. Comments include: The swordfish minimum size should be increased to at least 55 inches. This would allow the fish to grow larger and rebuild the stock. NMFS should reduce the minimum swordfish size to increase catches. This would be more effective than the preferred alternatives at attaining the U.S. quota.

*Response:* The current minimum size and weight for swordfish is 29 inches (73 cm) from cleithrum to caudal keel (CK); 47 inches (119 cm) lower jaw fork length (LJFL); or 33 lb (15 kg) dressed weight (dw). These minimum sizes are established by ICCAT. However, the United States does have some discretion to negotiate a higher minimum size, considering domestic requirements. NMFS will consider this in the future, as appropriate.

*Comment 55:* We do not support enacting measures to revitalize the PLL fishery, per se, because the gear results in intolerable levels of bycatch of protected and other species. Therefore, NMFS is urged to investigate other gears that will allow the United States to capture its swordfish quota without excessive bycatch.

*Response:* This final rule is intended to facilitate the ability of U.S. vessels to fully harvest the domestic swordfish quota. The PLL fleet is a major component of the swordfish fishery. Therefore, NMFS believes that appropriate measures to revitalize the domestic PLL fleet are necessary, as are other measures to increase swordfish landings in other sectors. The number of active vessels that reported fishing with PLL gear has declined by approximately 68 percent since 1997, the last year that the United States fully harvested its swordfish quota. However, in that same time period, the swordfish stock has rebuilt from 65 percent of  $B_{msy}$  to 99 percent of  $B_{msy}$ . This indicates that a balanced approach is necessary to increase swordfish landings, while ensuring that the fishery remains sustainable and that bycatch is minimized to the extent practicable. The HMS PLL fishery is currently subject to many regulations that were implemented to reduce bycatch and bycatch mortality. These include circle hook requirements, bait restrictions, mandatory possession and use of careful handling and release equipment, protected species safe handling, release, and identification certification

workshops, and time/area closures. In addition, PLL vessels must utilize VMS, submit logbook reports, and adhere to retention limits, quotas, minimum sizes, prohibited species restrictions, and other regulations. The measures in this final rule are anticipated to modestly increase swordfish landings, with only minor environmental impacts. NMFS will consider additional actions in the future. In the meantime, NMFS encourages investigations of other gears that will allow the United States to fully capture its swordfish quota without excessive bycatch.

*Comment 56:* NMFS should allow greenstick gear in the Longline and General category tuna fisheries because the reduction in billfish bycatch in the tuna fishery may significantly offset any potential negative impact that swordfish revitalization may have on billfish bycatch. Greenstick gear is the most environmentally friendly method to commercially harvest tunas (including bluefin tuna) because it minimizes the discard mortality of undersized tunas and virtually eliminates any billfish bycatch.

*Response:* NMFS did not modify the list of authorized gears to include green stick gear in the Consolidated HMS FMP due to confusion over the gear and concerns regarding bluefin tuna stock status. Rather, NMFS clarified the use of the gear and stated it would conduct additional outreach regarding its use. NMFS is continuing to examine the use of green stick gear and its impact on the environment, as well as its social and economic benefits and consequences.

*Comment 57:* NMFS should implement the same regulations for swordfish that currently apply to yellowfin tuna in the CHB fishery. NMFS should allow charter boats to conduct either charter or commercial trips and allow the swordfish to be sold.

*Response:* HMS CHB vessels may sell up to three yellowfin tuna per person per day when engaged on a for-hire trip, and there are no limits on the amount of yellowfin tuna that may be retained and sold when on a non for-hire trip. CHB vessels may not sell swordfish, unless the vessel also possesses a swordfish Handgear permit. This restriction was first implemented when swordfish were overfished, and the United States was fully harvesting its quota prior to 1997. Because these conditions have changed, NMFS may further analyze and reconsider the restriction in the future.

*Comment 58:* Please consider limiting or banning buoy gear. We oppose granting additional buoy permits, and favor 100 percent VMS coverage for vessels fishing with buoy gear. Other

restrictions on the buoy gear fishery must be considered, including circle hook requirements and geographical restrictions. Fishermen are concerned about the significant growth of this fishery in the last few months. Gear conflicts are a constant concern by both commercial and recreational interests. Keeping the buoy gear fishery small, with controlled growth, would reduce conflicts and allow for a sustainable fishery.

*Response:* NMFS received many comments regarding the buoy gear fishery, especially as it occurs in the Straits of Florida. The public is reminded that, prior to 2006, the HMS buoy gear fishery was largely unregulated. NMFS significantly restricted the fishery in the Consolidated HMS FMP by authorizing buoy gear only for swordfish Handgear and Directed permit holders, limiting the number of floatation devices that could be deployed, limiting the number of hooks per buoy gear, and requiring that monitoring devices be attached to each gear. In addition, NMFS amended the definition of handline by requiring that they remain attached to vessels. The effect of these regulations was to limit the buoy gear fishery only to commercial fishermen, reduce the likelihood of lost gear, and provide for the collection of logbook information. As logbook and other research information become available, NMFS will consider whether additional regulations or restrictions are necessary.

*Comment 59:* We oppose the issuance of any type of commercial swordfish permit to current recreational fishermen to fish in the closed zones. Making numerous commercial permits available would cause far too many buoy gear conflicts with the recreational fleet in the Florida Straits.

*Response:* All commercial swordfish permits are limited access, which means that no new permits are being issued. However, persons may obtain an existing commercial limited access fishing permit through the permit transfer regulations specified at § 635.4(l). The PLL and BLL closed areas apply only to those specific gears, and are not for the exclusive use of recreational fishing. For example, in the East Florida Coast closed area, holders of swordfish Handgear or Directed permits may fish for swordfish using handgear and buoy gear. Similarly, commercial shark permit holders may fish for sharks using BLL gear in this area. As logbook and other research information regarding buoy gear become available, NMFS will consider whether additional regulations or restrictions are necessary.

*Comment 60:* Careful handling and release equipment should be required for HMS CHB, especially in the Gulf of Mexico. Terminal tackle should be removed to help increase post-release survival.

*Response:* Terminal tackle should be removed from all species prior to their release in order to increase post-release survival. Current HMS regulations require that all fish that are not retained must be released in a manner that will ensure the maximum probability of survival, but without removing the fish from the water. Billfish that are not retained must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water. NMFS' Southeast Regional Office (SERO) recently published Amendment 18A to the Gulf of Mexico Reef Fish Management Plan on August 9, 2006 (71 FR 45428). Amendment 18A required that all for-hire reef fish permitted vessels must possess and utilize release gear and careful handling protocols to reduce injuries to sea turtles and smalltooth sawfish. SERO estimated that 1,500 - 1,600 for-hire reef fish vessels would be affected by this requirement. Because many reef fish permitted for-hire vessels in the Gulf of Mexico also possess an HMS CHB permit, they are already required to possess and utilize careful handling and release equipment. Depending upon future analyses, NMFS may consider requiring other HMS permitted vessels to possess and utilize careful handling and release equipment.

*Comment 61:* NMFS should keep the live bait prohibition for PLL vessels in the Gulf of Mexico, because live bait results in higher rates of white marlin bycatch. If white marlin is listed under the ESA, most fisheries will be out business.

*Response:* The live bait prohibition for HMS PLL vessels is not being modified in this final rule. However, NMFS has received several requests to reconsider the regulation because mandatory circle hooks have effectively reduced marlin bycatch and bycatch mortality. As more information becomes available through logbooks, observer data, and research efforts, NMFS may re-evaluate this requirement.

*Comment 62:* Any effort to increase U.S. recreational swordfish landings is worthless unless adequate data collection methods are in place to monitor and report these landings. Accurate data is important. NMFS should reach out to the recreational fishing industry to work on these improvements. Outside of Florida, recreational swordfish landings are considered rare events and are not likely

to be recorded by traditional data collections like the Marine Recreational Fisheries Statistical Survey (MRFSS), the Large Pelagic Survey (LPS), and the Recreational Billfish Survey (RBS). MRFSS is fatally flawed, especially for swordfish. It is difficult for MRFSS surveyors to see if people are swordfish fishing because they are typically caught at night, oftentimes on a tuna or snapper/grouper trip. Therefore, there may not be many swordfish recorded in the MRFSS survey. NMFS should start using CHB logbooks to assess recreational swordfish landings. Additionally, NMFS should consider using a catch card program for swordfish similar to programs used by Maryland and North Carolina for BFT.

*Response:* Accurate recreational landings data are important. For this reason, all non-tournament swordfish landings by HMS Angling category permit holders are required to be reported by calling (800) 894-5528. In Maryland and North Carolina, vessel owners should report their swordfish landings at state-operated reporting stations. For information on these state's reporting stations, please call (410) 213-1531 (MD) or (800) 338-7804 (NC). Swordfish landed in a registered tournament may be reported by the tournament operator. However, vessel owners are responsible for reporting if the tournament operator does not. HMS CHB permit holders must complete a logbook with landings information and submit it to NMFS, if selected. Finally, the newly re-authorized Magnuson-Stevens Act has new MRFSS-related provisions which NMFS will address, as required under the Act.

*Comment 63:* NMFS should consider allowing recreational anglers 48 hours to report their recreational swordfish and billfish catches, instead of 24 hours. This would increase recreational reporting and, thus, recorded U.S. swordfish landings.

*Response:* Currently, all recreational landings of swordfish must be reported to NMFS within 24 hours of landing. This ensures timely and accurate data collection. NMFS may consider extending the time period, if warranted, if it does not compromise data collection. The Agency is also currently testing an on-line reporting system to facilitate recreational reporting.

*Comment 64:* NMFS should allow recreational fisherman to retroactively report previous swordfish landings. It would substantially increase historical recreational swordfish catches.

*Response:* The recreational reporting requirement has been in place since 2003. NMFS is concerned that data quality and accuracy would be

compromised if an amnesty program were implemented to allow for retroactive reporting of recreational landings. Unless the angler kept very detailed catch records, much of the data would be based upon personal recollection and have limited usefulness. It would also be very difficult to verify the reports.

*Comment 65:* NMFS needs to employ a tagging system where only legal, tagged swordfish may be sold and distributed. This would help to track the removal of swordfish biomass.

*Response:* NMFS received numerous comments regarding the illegal sale of recreationally caught swordfish. A tagging system could reduce this activity. Tags have been used effectively in the bluefin tuna fishery for many years, and could be appropriate for the swordfish fishery. However, domestic swordfish landings have historically been much higher than bluefin tuna landings, so the logistics associated with administering a swordfish tagging program would have to be addressed.

*Comment 66:* Recreational fisherman need to have the current regulations presented to them in a way that makes them understand how to identify catches, know if they are legal, and know if they need to be reported. Perhaps mandatory workshops should be required for recreational fishermen. NMFS could also include information on fishing regulations and species identification with permit mailings or when renewing permits.

*Response:* It is important for recreational fishermen to know and understand the regulations that affect their fishery. Due to the size and diversity of the HMS recreational fishing community, and because some anglers may fish only a few times a year, this sector presents a unique challenge. In addition to current outreach methods such as the HMS website and the e-mail list, additional outreach efforts are being explored with local newspapers, magazines, and other websites. Mandatory workshops for recreational anglers are not being considered at this time because they would likely be expensive and difficult to administer, given the large number of recreational anglers.

*Comment 67:* Socio-economic data on recreational swordfishing is almost non-existent. NMFS must thoroughly evaluate socio-economic ramifications before making any major changes in swordfish fishery dynamics. This is a requirement of the Magnuson-Stevens Act.

*Response:* The recreational swordfish fishery has developed relatively rapidly within the past three to six years, as the

swordfish stock has continued to rebuild. For this reason, detailed socio-economic data are limited. However, NMFS collects mandatory recreational swordfish landings data and mandatory swordfish tournament registration forms. In addition, NMFS has received many comments from recreational fishery participants in recent years regarding a variety of proposed management measures. Swordfish fishing is an important and growing recreational activity off the southeast coast of Florida, and is starting to spread to other regions as well. NMFS thoroughly considered verifiable information available on the socio-economic ramifications of the final management measures on the recreational swordfish fishing community during this rulemaking. As the swordfish stock continues to rebuild and the recreational fishery continues to grow, it will be necessary to obtain more socio-economic data regarding this activity.

#### *Questions Regarding the U.S. ICCAT Swordfish Quota*

*Comment 68:* How many years is the current swordfish quota from ICCAT valid for?

*Response:* In 2006, ICCAT recommended a 3,907 mt (ww) U.S. North Atlantic swordfish quota for 2007 and 2008.

*Comment 69:* Are dead discards counted against the ICCAT swordfish quota or used in stock assessments?

*Response:* Yes. Estimated dead discards from scientific observer and logbook sampling programs are counted against the U.S. North Atlantic swordfish quota, and are used in the swordfish stock assessments conducted by ICCAT's SCRS.

*Comment 70:* If the United States loses its ICCAT swordfish quota, would it affect recreational fisheries in this country as well?

*Response:* It is possible that recreational fisheries could be directly or indirectly affected if the United States loses a portion of its swordfish quota. Recreational swordfish landings are included within the Incidental quota allocation, currently at 300 mt. Depending upon the size of any potential reduction in the overall U.S. swordfish quota, the Incidental quota allocation or recreational retention limits could be reduced correspondingly. Indirect impacts could occur if foreign nations are given a larger quota share, and those foreign vessels exert additional fishing effort on swordfish without measures to reduce the bycatch of protected species, undersized swordfish, and billfish. This



is one of the primary reasons why NMFS believes it is imperative to retain the historical U.S. North Atlantic swordfish quota share.

*Comment 71:* If the U.S. swordfish quota is not being caught by 2009, does NMFS have a contingency plan?

*Response:* NMFS intends to continue monitoring U.S. swordfish landings and may adjust management measures in the future to provide additional opportunities for U.S. vessels to land the domestic swordfish quota.

#### Changes from the Proposed Rule

In addition to minor edits, NMFS has made the following two changes to the proposed rule.

1. In the final rule, at § 635.4(l)(2), NMFS has modified paragraphs (ii)(B), and (ii)(C) by removing language specifying that a vessel's horsepower, length overall, gross registered tonnage, and net tonnage may be increased only once, subsequent to the issuance of a limited access permit. Also, in the final rule at § 635.4(l)(2), paragraph (ii)(C) modifies the current regulations by removing language specifying that if any of the three specifications of vessel size are increased, any increase in the other two must be performed at the same time. These changes were made to provide additional flexibility for permit holders to incrementally upgrade their vessels, and to expedite the issuance and renewal of HMS permits. Under current regulations, NMFS must review over seven years worth of permit renewal information for each application submitted by the owner of an upgraded vessel to determine if the original vessel, or its replacement, has already been upgraded, even if the upgraded vessel is within the allowable upgrade specifications. If an upgrade has already occurred, several pieces of correspondence are often necessary to resolve the situation. NMFS believes that removing the regulation specifying that a vessel may only be upgraded once will not compromise the intent of the vessel upgrading restrictions and will have limited ecological impacts, because all of the upgraded vessels would still need to comply with the allowable upgrade specifications. This modification is within the range of alternatives considered in the EA/RIR/IRFA, and will provide additional flexibility for all HMS limited access permit holders to incrementally upgrade their vessels, while expediting the issuance and renewal of HMS permits.

2. In the final rule at § 635.4(l)(2)(x), NMFS has clarified the procedures, and specified the required permits, to qualify for the 35 percent limited access vessel size upgrade allowance, with no

restrictions on horsepower. These changes were made to better inform the public of the requirements, and to facilitate implementation of the new regulations.

#### Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C., 1801 *et seq.*, and ATCA, 16 U.S.C. 971. NMFS has determined that the final rule and its related Environmental Assessment (EA) are consistent with the national standards of the Magnuson-Stevens Act, other provisions of the Act, and other applicable laws.

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 IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The full FRFA and analysis of economic and ecological impacts are available from NMFS (see **ADDRESSES**). A summary of the information presented in the FRFA follows.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires the Agency to state the objective and need for the rule. As stated in the proposed rule, the objective of this final rule is to provide a reasonable opportunity for U.S. vessels to more fully harvest the ICCAT-recommended domestic swordfish quota, consistent with the Magnuson-Stevens Act and ATCA, by modifying North Atlantic swordfish retention limits and HMS limited access vessel upgrading restrictions.

Section 604(a)(2) of the RFA requires the Agency to summarize significant issues raised by the public comments in response to the IRFA, summarize the assessment of the Agency of such issues, and state any changes made in the rule as a result of such comments. NMFS received several comments on the proposed rule and draft EA during the public comment period. A summary of these comments and the Agency's response are included in this final rule. NMFS did not receive any comments that were specific to the IRFA, but did receive a limited number of comments related to economic issues and concerns. These comments are responded to with the other comments (see Comments 20, 34, and 37). The specific economic concerns are also summarized here.

A comment was received expressing concern that increasing the Incidental

swordfish retention limit would put more swordfish in the market, and therefore have negative economic consequences by reducing the price that Directed swordfish permit holders receive for their swordfish. NMFS recognizes that an increase in the volume of incidentally-caught swordfish could impact swordfish prices received by all permit holders. However, some constituents have indicated to NMFS that the current 2-fish Incidental retention limit does not justify the additional effort and costs of fishing for, or landing, swordfish, and then bringing it to market. These constituents stated that the current 2-fish Incidental retention limit has contributed to an inadequate infrastructure and marketing channel in some areas that is not suitable for handling swordfish. A 30-fish retention limit should provide more of an incentive to land and market incidentally-caught swordfish, without a significant disruption to swordfish prices. Increased participation by Incidental swordfish permit holders could help to develop a more consistent supply of swordfish, and thus lead to a more robust market for swordfish products, and help to stabilize prices.

NMFS also received public comment regarding the availability of capital to pay for vessel upgrading. There was concern that relaxing the vessel upgrading restrictions would not revitalize the swordfish fishery, because many fishermen could not afford to upgrade their vessels, or were unable to obtain loans for vessel upgrades. However, other constituents identified the current vessel upgrading restrictions as one factor, among several, that is limiting the ability of the U.S. vessels to more fully harvest the U.S. swordfish quota. NMFS recognizes that each business is unique. Some vessel owners may choose to upgrade their vessels, whereas others will not. Owners are not required to upgrade vessels under this final rule. The option to upgrade could improve the flexibility of some vessel owners to make individual business decisions, based upon their unique circumstances. This could result in larger, more modern, U.S. swordfish vessels, and increased swordfish landings.

Finally, some commenters indicated that a 35 percent upgrade in vessel size was not sufficient for their business purposes. NMFS believes that a 35 percent increase in vessel size, which would allow an "average" 55-foot vessel to be upgraded to a 69 - 74-foot vessel depending upon whether a vessel has already been upgraded by 10 percent, is a meaningful increase in vessel size. There are approximately 50

vessels greater than 70 feet in length that would qualify for the new upgrading provisions. These vessels could be upgraded to more than 90 feet in length and possibly be converted to freezer vessels, upgrades which some commenters suggested are necessary. NMFS believes it is important to keep fleet capacity commensurate with resource abundance to ensure the sustainability of the swordfish fishery. Until additional analysis is completed and other logistical issues are resolved, NMFS believes that it is necessary to keep overall fleet capacity within some limits.

No changes were made to the final rule as a result of these comments.

Section 604(a)(3) of the RFA requires the Agency to describe and estimate the number of small entities to which the final rule will apply. NMFS considers all commercial permit holders to be small entities as reflected in the Small Business Administration's (SBA) criteria (gross receipts less than \$4.0 million, the SBA size standard for defining a small versus a large business entity). The final action to increase incidental swordfish retention limits could directly affect 48 vessel owners possessing valid Incidental swordfish permits. The final actions to modify recreational swordfish retention limits could directly affect approximately 4,173 HMS Charter/headboat permit holders and 25,238 HMS Angling category permit holders. The proposed action to modify PLL vessel upgrading restrictions could directly affect approximately 176 vessel owners possessing valid swordfish permits (i.e., concurrently possessing Directed or Incidental swordfish permits, Directed or Incidental shark permits, and an Atlantic Tunas Longline category permit). In total, the final actions could directly affect 29,587 HMS permit holders. Of these, 4,349 commercial permit holders (the combined number of HMS Charter/headboat permit holders and valid swordfish-permitted PLL vessel owners) are considered small business entities according to the Small Business Administration's standard for defining a small entity (Angling category permit holders are not considered businesses). Other small entities involved in HMS fisheries such as processors, brokers, ship builders, tackle shops, bait suppliers, marinas, and gear manufacturers might also be indirectly affected by the final regulations. However, the final rule does not apply directly to them. Rather, it applies only to permit holders and fishermen.

Section 604(a)(4) of the RFA requires NMFS to describe the projected reporting, record-keeping, and other

compliance requirements of the final rule, including an estimate of the classes of small entities that will be subject to the requirements of the report or record. This final rule does not contain any new reporting, recordkeeping, or other compliance requirements that will require new Paperwork Reduction Act filings. Vessel owners and operators must comply with the revised swordfish retention limits and upgrading regulations in the same manner that they have been required to comply with existing swordfish retention limits and upgrading regulations. However, the regulations contained in this rule are less restrictive than the current provisions.

Section 604(a)(5) of the RFA requires the Agency to describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of the applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. Additionally, the RFA (5 U.S.C. 603(c)(1) through (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.

As noted earlier, NMFS considers all commercial permit holders to be small entities. In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act, ATCA, and the ESA, NMFS cannot exempt small entities or change the compliance requirements only for small entities. Thus, there are no alternatives that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above) because all of the alternatives considered were intended to increase the domestic harvest of Atlantic swordfish, while maintaining important bycatch reduction measures. With regards to category three above, all of

the alternatives for modifying vessel upgrading restrictions are based upon performance standards. In particular, the selected alternative does not mandate a particular change to vessel design, but rather provides additional flexibility for vessel owners to decide how best to upgrade their vessels.

NMFS analyzed six different alternatives to increase swordfish retention limits, and five different alternatives to modify HMS limited access vessel upgrading restrictions. As described below, NMFS has provided justification for the selection of the preferred alternatives to achieve the desired objectives.

Alternative 1a is considered the no action, or status quo, alternative for modifying recreational and incidental swordfish retention limits. Under current regulations, vessels issued valid Incidental swordfish limited access permits, other than those in the squid trawl fishery, are allowed to retain, possess or land no more than two swordfish per vessel per trip in or from the Atlantic Ocean north of 5° N. lat. Vessels issued valid Incidental swordfish limited access permits that participate in the squid trawl fishery are allowed to retain, possess, or land no more than five swordfish per trip from the same area. HMS Angling and Charter/headboat vessel permit holders are allowed to retain one North Atlantic swordfish per person, up to three per vessel per trip.

Under alternative 1a, there would be no change in the current baseline economic and social impacts associated with previously implemented North Atlantic swordfish retention limits. This alternative was not selected because it may be contributing to persistent underharvests of the domestic swordfish quota. Nineteen percent of trips reported by Incidental swordfish permit holders in the HMS logbook from 2002 - 2005 reported swordfish discards. If any of these swordfish discards were attributable to exceeding the current two fish limit, then these discards could potentially represent lost revenues associated with the status quo alternative. The current recreational swordfish retention limit of one fish per person, up to three per trip, may be lowering the demand for charter and headboat trips, especially when several people are on board, since each person may not be able to retain a swordfish.

Under alternative 1b, the North Atlantic swordfish retention limit for vessels issued valid Incidental swordfish limited access permits would be removed, except that, for vessels issued valid Incidental swordfish permits that participate in the squid

trawl fishery, the limit would be increased to ten, until 70 percent of the adjusted domestic semi-annual North Atlantic swordfish quota is projected to be landed. After 70 percent of the directed semi-annual is projected to be landed, the Incidental swordfish retention limit would revert back to two swordfish per trip, and five swordfish per trip for squid trawl vessels, for the remainder of the semi-annual period.

Alternative 1b was not selected because it could potentially have the most significant adverse ecological impacts if vessel owners with Incidental swordfish permits alter their strategies and choose to deploy additional sets to target swordfish. The potential economic gain from this alternative would be associated with increased landings from two swordfish per trip up to as many as 605 swordfish per trip (the highest number of swordfish reported landed by a directed vessel) minus what vessels could make tuna fishing during the same time if they switch entirely to swordfish fishing. Using the mean weight of swordfish landed in 2005 of 75.7 lb and the mean ex-vessel price of \$3.71 per lb in 2005, the estimated value of potentially retaining up to an additional 603 swordfish could be as high as \$169,351 per trip. However, this should only be considered an upper bound, especially because it does not take into account reductions in the retention of other species that might occur in order to make room to hold swordfish on the vessel. More typically, vessels issued Directed swordfish permits during the period from 2002 to 2005 kept an average of 60 to 77 swordfish per trip. That would equate to potentially \$16,289 to \$21,064 in additional revenue per trip for Incidental swordfish permit holders that engage in directed fishing for swordfish, assuming their capability to harvest swordfish is the same as the Directed swordfish permit holders.

Alternative 1b would also increase the swordfish retention limit from 5 to 10 swordfish for vessels issued valid Incidental swordfish limited access permits that participate in the squid trawl fishery. This effectively doubles the current retention limit for these vessels. From 1998 - 2004, all squid trawl vessels landed a combined average of 6.3 mt (ww) of swordfish per year. Increasing the limit for squid trawl vessels by an additional five swordfish per trip could potentially increase total annual landings of swordfish by all squid trawl vessels to 12.6 mt (ww) in total per year. This increase of 6.3 mt (ww) of swordfish would be worth a total of \$38,743 per year among all

squid trawl vessels, based on the 2005 average ex-vessel price of swordfish of \$3.71 per lb and a ratio of whole weight to dressed weight of 1.33.

Alternative 1c, a selected alternative, would increase the North Atlantic swordfish retention limit for vessels issued valid Incidental swordfish limited access permits to 30 fish per vessel per trip; and for vessels issued valid Incidental swordfish limited access permits that participate in the squid trawl fishery, would increase the limit to 15 fish per vessel per trip. This alternative was selected because it will provide an opportunity for Incidental swordfish permit holders to land swordfish that might otherwise be discarded, but prevent a large increase in additional directed fishing effort on swordfish. As many as 52 swordfish have been reported discarded on a single trip by Incidental swordfish permit holders, although most trips report few discards. A 30 fish limit is just below the median number of swordfish that have been landed by Directed swordfish permit holders from 2002 - 2005 (36 fish). Thus, this alternative is expected to have limited adverse ecological impacts, because fishing effort is not expected to greatly exceed current levels.

The economic benefits associated with this alternative are estimated by taking the difference between the value of two swordfish and the value of 30 swordfish. Using the mean weight of swordfish landed in 2005 of 75.7 lb and the mean ex-vessel price of \$3.71 per lb in 2005, the estimated value of potentially retaining an additional 28 swordfish under this alternative is \$7,864 per vessel per trip. Using logbook records from 2005, it is projected that total annual landings of swordfish could increase from 10,787 to 34,879 lb, if all reported discards were converted to landings, up to 30 fish. Using the average ex-vessel price of \$3.71 per lb for 2005, the estimated total value of these additional landings would be \$89,381 amongst all active Incidental swordfish vessels per year.

Alternative 1c would also increase the swordfish retention limit from 5 to 15 swordfish for vessels issued valid Incidental swordfish limited access permits that participate in the squid trawl fishery. This would triple the current retention limit for these vessels. From 1998 - 2004, all squid trawl vessels landed an average of 6.3 mt (ww) of swordfish in total per year. Increasing the limit for squid trawl vessels by an additional ten swordfish per trip could potentially increase annual landings by all squid trawl vessels to 18.9 mt (ww) in total per year.

This increase of 12.6 mt (ww) of swordfish would be worth a total of \$77,487 per year among all squid trawl vessels, based on the same prices and ratios discussed above in alternative 1b.

Alternative 1d would increase the North Atlantic swordfish retention limit for vessels issued valid Incidental swordfish limited access permits to 15 fish per vessel per trip; and, for vessels issued valid Incidental swordfish limited access permits that participate in the squid trawl fishery, would increase the limit to 10 fish per vessel per trip.

Alternative 1d would provide an opportunity for Incidental swordfish permit holders to land swordfish that otherwise might be discarded, and would prevent a large increase in additional directed fishing effort on the swordfish. Therefore, this alternative would have only limited adverse ecological impacts because effort would be expected to remain at current levels. However, alternative 1d was not selected because a 15 fish limit is significantly below the mean number of swordfish landed by Directed swordfish permit holders (36 fish), although it is much higher than the current limit of two fish. It would not be as effective as the selected alternative at increasing domestic swordfish landings.

The economic benefits of alternative 1d are estimated by taking the difference between the value of two swordfish and the value of 15 swordfish. Using the mean weight and ex-vessel price of swordfish landed in 2005, as described in alternative 1c above, the estimated value of potentially retaining an additional 13 swordfish under this alternative is \$3,651 per vessel per trip. Using logbook records from 2005, it is projected that total annual landings of swordfish could increase from 10,787 lb to 30,350 lb, if all reported discards were converted to landings, up to 15 fish. Using the average ex-vessel price of \$3.71 per lb for 2005, the estimated total value of these additional landings would be \$72,579 amongst all active Incidental swordfish vessels per year.

Alternative 1d would increase the swordfish retention limit from 5 to 10 swordfish for vessels issued valid Incidental swordfish limited access permits that participate in the squid trawl fishery. This doubles the current retention limit for these vessels. From 1998 - 2004, all squid trawl vessels landed an average of 6.3 mt (ww) in total per year. Increasing the limit for squid trawl vessels by an additional five swordfish per trip could potentially increase annual landings by squid trawl vessels to 12.6 mt (ww) per year. This increase of 6.3 mt (ww) of swordfish

would be worth a total of \$38,743 among all squid trawl vessels per year, based on the same prices and ratios discussed above in alternative 1b.

Alternative 1e, a selected alternative, would implement a North Atlantic swordfish retention limit for HMS Charter/headboat vessels of one fish per paying passenger, up to six swordfish per trip for charter vessels and 15 swordfish per trip for headboat vessels. This alternative would maintain the current recreational limit of one swordfish per person, but increase the allowable upper retention limit from three to six fish for charter vessels, or from three fish to fifteen fish for headboat vessels. This alternative was selected because for-hire vessels often carry multiple paying passengers. A six-fish upper vessel retention limit for charter vessels was the only alternative analyzed for this sector, besides the no action alternative, because these vessels are licensed to carry a maximum of six passengers per trip. Although headboats can carry upwards of 50 passengers, a 15-fish retention limit was analyzed because it would provide a better opportunity for anglers on headboats to land a swordfish, while maintaining a recreational aspect to the charter/headboat fishery. In addition, given the lack of data for swordfish retention by anglers, a 15 fish limit would still preclude potential negative effects on the swordfish stock. Thus, alternative 1e provides a reasonable opportunity for paying passengers to land swordfish, and may increase U.S. swordfish landings. Few adverse ecological impacts are anticipated under this alternative as swordfish are nearly rebuilt, and the recreational rod and reel fishery has been determined to have only minor impacts on protected species.

In 2005, approximately 25 percent of the swordfish reported landed by Charter/headboat vessels in the HMS non-tournament recreational reporting database were in groups of three fish on the same date. Even though a quarter of the trips may have been limited in the amount of swordfish retained under the existing vessel trip limit, the benefits of raising the limit could extend beyond those trips. The economic benefits would result from additional bookings of charter trips, because the perceived value of a trip for an angler may be increased by the ability to land more fish. The 2004 average daily HMS charterboat rate for day trips was \$1,053. The willingness-to-pay for swordfish charter trips is likely to be much higher than this value. Increased charter and headboat bookings could lead to positive economic multiplier

impacts to tackle shops, boat dealers, hotels, fuel suppliers, and other associated local and regional businesses.

Alternative 1f, a selected alternative, would implement a North Atlantic swordfish recreational retention limit for HMS Angling category vessels of one fish per person per trip, up to four swordfish per vessel per trip. This alternative would maintain the current recreational limit of one swordfish per person, but increase the upper retention limit from three fish to four fish per vessel per trip. A four-fish upper vessel retention limit for angling vessels was the only alternative analyzed for this sector, besides the no action alternative, because it would provide a modest increase in the opportunity to land a swordfish, while maintaining a recreational aspect to the fishery. Because there were 25,238 vessels issued HMS Angling category permits, as of February 1, 2006, an increase in the upper retention limit of more than one fish per angling vessel was considered, but rejected, due to concerns about potentially excessive recreational landings. HMS Angling category vessels do not carry paying passengers, so a higher limit based on the number of paying passengers onboard was also considered, but rejected. Thus, alternative 1f provides a reasonable opportunity for recreational anglers to land swordfish, and may increase U.S. swordfish landings. Few adverse ecological impacts are anticipated under this alternative as swordfish are nearly rebuilt, and the recreational rod and reel fishery has been determined to have only minor impacts on protected species.

Approximately seven percent of the swordfish reported landed by Angling category vessels in the HMS non-tournament recreational reporting database were in groups of three fish on the same day. Therefore, the increase from three to four swordfish per vessel per trip under this alternative would likely affect a similar percentage of trips. The economic benefit of this alternative would derive from an increased perceived value of a recreational angling trip, due to the ability to land more fish. Recreational anglers might take more trips, which could lead to some multiplier benefits to tackle shops, boat dealers, hotels, fuel suppliers, and other related businesses. The average expenditure on HMS related trips is estimated to be \$122 per person per day based on the recreational fishing expenditure survey add-on to the NMFS' Marine Recreational Fisheries Statistical Survey (MRFSS). The expenditure data include the costs of tackle, food, lodging, bait, ice, boat,

fuel, processing, transportation, party/charter fees, access/boat launching, and equipment rental.

Alternative 2a is the no action, or status quo, alternative for modifying HMS limited access vessel upgrading restrictions, because it would retain the existing regulations. Under current regulations, owners may upgrade vessels or transfer permits to another vessel only if the vessel upgrade or permit transfer does not result in an increase in horsepower (HP) of more than 20 percent, or an increase of more than 10 percent in length overall (LOA), gross registered tonnage (GRT), or net tonnage (NT), relative to the respective specifications of the first vessel issued the initial limited access permit (the baseline vessel). If any of the three vessel size specifications is increased, any increase in the other two must be performed at the same time. The current regulations also specify that vessel horsepower and vessel size may be increased only once. However, vessel size may be increased separately from an increase in vessel horsepower. These regulations have been in effect since 1999.

Alternative 2a was not selected because it may be contributing to persistent underharvests of the domestic ICCAT-recommended swordfish quota. It may also be contributing to a decline in the number of active PLL vessels (i.e., vessels reporting landings) by limiting vessel owners' ability to optimally configure their vessels to maximize profits given changing ecological, regulatory, and market conditions.

Under alternative 2a, there would be no change in the current baseline economic and social impacts associated with previously implemented North Atlantic swordfish vessel upgrade restrictions. By itself, the status quo alternative does not create any new economic burdens on HMS limited access permit holders. However, it would likely continue several negative economic impacts associated with upgrade restrictions. First, as previously mentioned, vessels may not be optimally configured for current market conditions, and therefore profits may be less than optimal. Second, current upgrade restrictions may make it burdensome for some vessels to comply with HMS observer accommodation requirements, due to inadequate bunk or berthing space. Third, some fishing vessels may wish to enhance their crew quarters in order to better attract labor. Finally, limitations on vessel upgrading may be affecting safety at sea. A larger vessel is generally more seaworthy than a smaller vessel, especially in rough seas. Current restraints on vessel size

may also affect the ability to modernize or purchase new vessels. Without changes to upgrading restrictions, the number of active vessels in the swordfish PLL fleet may continue to decline, and persistent underharvests of the annual swordfish quota may continue to accrue. The following alternatives may allow for greater flexibility and provide for a more efficient deployment of the swordfish fleet.

It is not possible to precisely quantify the economic impacts associated with the alternatives to modify HMS limited access permit vessel upgrading restrictions. This is because the decision to upgrade is a business decision, and depends largely upon whether the returns expected from an upgrade outweigh the costs of planning the upgrade, construction, financing, time to complete the necessary work, age of the current vessel, and the forgone revenues associated with being out of the fishery while vessel work is being completed. The potential economic benefits of vessel upgrades largely depend upon future harvests, ex-vessel prices, fuel prices, and labor costs. These factors fluctuate, often dramatically, with market forces from year to year making any estimated benefits difficult to assess. Independent of those factors, however, vessel owners will gain the economic benefits associated with having the increased flexibility to adjust vessel configurations in terms of length and horsepower to best fit their business needs. In addition, vessel owners under the following alternatives would be better able to comply with HMS observer accommodation requirements, and thus avoid lost fishing time. The potential to expand bunk and berthing areas could enhance the quality of life for crew and captains, provide intangible comfort benefits, and also potentially reduce the actual costs of retaining labor. Finally, the potential to upgrade vessels may have important positive safety implications, especially for smaller vessels operating far offshore in areas prone to extreme weather.

Under each of the following alternatives, vessel owners will have to weigh the costs of potentially upgrading the length or horsepower of their vessels by the potential economic benefits associated with an upgrade. Many vessel owners may choose not to upgrade, even with relaxed upgrade restrictions, because of the capital costs associated with upgrading. The main economic benefit associated with the following alternatives will likely be from not having to acquire a permit from a larger vessel, including the

associated transaction costs, when an owner wishes to increase vessel size or horsepower.

The capital costs associated with potential upgrades are difficult to estimate. Large vessel length upgrades are not likely to occur by modifying existing vessels, according to several marine engineers and shipyards that NMFS contacted. They are more likely to result from the purchase of another vessel and the subsequent transfer of permits to that vessel. Horsepower upgrades are more likely to occur on existing vessels in conjunction with an engine replacement due to capital depreciation.

NMFS contacted several shipyards regarding the potential costs of new vessels and upgrades to existing vessels. The shipyards agreed that it is probably more economical to perform large increases in vessel length by acquiring another larger vessel, than by modifying existing vessels. However, the estimated cost of building a new vessel is uncertain because few new vessels have been built since the upgrade restrictions were implemented in 1999, according to the shipyards contacted. The overall cost of upgrading would likely depend on the current size of the vessel, the age of the vessel, where the work will be done, financing costs, and whether an existing used vessel is available with the desired specifications, versus constructing a new vessel. For example, a 68 foot PLL vessel over 20 years old recently had a sales price of \$245,000, according to a vessel broker list. To better quantify the associated costs and potential scope of vessel upgrades, NMFS sought comments from the public on the current market costs of upgrading PLL and swordfish Handgear vessels, but did not receive any new information.

Alternative 2b would waive HMS limited access vessel upgrading and permit transfer upgrading restrictions for all vessels that are authorized to fish with pelagic longline gear for swordfish and tunas for 10 years, after which a new vessel baseline would be established and the current 10 percent LOA, GRT, NT; and 20 percent HP restrictions would go back into effect. A ten-year sunset provision was selected for this alternative because it provides a reasonable amount of time for owners to purchase or upgrade vessels, but establishes a deadline to account for any unanticipated future changes in the fishery or status of stocks.

This alternative would likely have positive economic benefits for PLL vessel owners because it could provide increased operational flexibility for business owners to modify their vessels.

However, it is not possible to predict how many vessels would be upgraded under this alternative, as any estimate is predicated upon the decisions of many different owners. Waiving vessel upgrade restrictions for PLL vessels could produce secondary and regional economic impacts. Shoreside support businesses such as shipyards, marine architects, and other commercial vessel suppliers could receive increased business from owners wanting to upgrade their vessels. Fish dealers may need to expand their operations to handle any greater supplies of swordfish that could result from increased fleet capacity. It is also possible that the value of limited access permits could be reduced by waiving the upgrade restrictions. The supply of usable permits for vessel owners that want to upgrade under the current limited access regulations is restricted, because permits have to meet certain characteristics in order to be transferred to a different vessel. Removing the upgrading restrictions would give a potential new entrant into the fishery a larger selection of permits to choose from, since they would be able to select from a larger pool of potential permits for sale. This increased supply could reduce the value of limited access permits. However, any improvements in the profitability of the fishery might increase demand for permits and could potentially offset any decrease in permit value.

Alternative 2b was not selected because there would be no limit on the size to which PLL vessels could be upgraded. Therefore, unquantifiable adverse ecological impacts could occur, especially over the long term. However, it is also possible that larger PLL vessels might operate further offshore, thereby reducing some adverse impacts in nearshore areas.

Alternative 2c would waive HMS limited access swordfish handgear vessel upgrading and permit transfer upgrading restrictions for 10 years, after which a new baseline would be established and the current restrictions would go back into effect. A ten-year sunset provision was selected for this alternative because it provides a reasonable amount of time for owners to purchase or upgrade vessels, but establishes a deadline to account for any unanticipated future changes in the fishery or status of stocks.

This alternative would likely have positive economic benefits for swordfish Handgear permit holders because it could increase operational flexibility for business owners to modify their vessels according to their business needs. However, for the same reasons

discussed above, it is not possible to predict how many vessels would be upgraded under this alternative, or the anticipated economic impacts, because the estimate is predicated upon the decisions of many different vessel owners. In general, similar direct and indirect economic benefits to vessel owners, dealers, shipyards, processors, and shoreside support businesses that were discussed under alternative 2b could result.

Alternative 2c was not selected because it could result in unquantifiable adverse ecological impacts, especially over the long term, as there would be no limit on the size to which swordfish Handgear vessels could be upgraded. In addition, because the swordfish handgear fleet is currently most active in the East Florida Coast PLL closed area, ecological benefits associated with the area, including reductions in the bycatch of undersized swordfish, and non-target and protected species, could be compromised with a large expansion of the swordfish handgear fishery.

Alternative 2d would waive all HMS limited access vessel upgrading and permit transfer upgrading restrictions for 10 years, after which a new baseline would be established and the current restrictions would go back into effect. This alternative would likely have the largest potential economic benefits as well as the largest potential adverse ecological costs, particularly on sharks, because the universe of impacted entities is the largest among all of the alternatives, and there would be no limit on the size to which vessels could be upgraded. For this reason, it was rejected.

Alternatives 2b and 2c would be limited to vessels that are eligible to fish for swordfish and tunas with PLL gear, and swordfish Handgear vessels, respectively. Alternative 2d includes those vessels, as well as all other HMS limited access vessels, including those eligible to fish for sharks with bottom longline gear. Therefore, approximately 376 additional vessels would be eligible for unlimited upgrades under alternative 2d. While all of these additional shark vessels could be upgraded under this alternative, few are anticipated to take immediate advantage of the opportunity because of current regulatory conditions in the domestic shark fishery. Incidental shark permit holders are governed by retention limits for large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks. Directed shark permit holders are governed by retention limits for LCS. Because of these retention limits, vessel size may not be a limiting factor in the shark fishery. Nevertheless, because

many shark fisheries are overfished with overfishing occurring, the potential for adverse ecological impacts from increased effort on these species exists under alternative 2d. Other economic benefits and costs are similar to Alternatives 2b and 2c, including any secondary economic impacts to shoreside industries.

Alternative 2e, the selected alternative, would establish new HMS limited access vessel upgrading and permit transfer upgrading restrictions only for HMS vessels that are authorized to fish with pelagic longline gear for swordfish and tunas (i.e., vessels that concurrently possess Directed or Incidental shark and swordfish permits, and an Atlantic Tunas Longline category permit), equivalent to 35 percent LOA, GRT, and NT, as measured relative to the baseline vessel specifications (i.e., the specifications of the vessel first issued an HMS limited access permit), and remove horsepower upgrading and permit transfer upgrading restrictions for these vessels. This alternative was selected because it could improve the ability of U.S. vessels to fully harvest the domestic ICCAT-recommended swordfish quota, but imposes some limits on vessel upgrading by restricting the universe of potentially impacted entities to certain vessels only, and by limiting the magnitude of allowable upgrades.

Alternative 2e is anticipated to have slightly lower economic benefits to permit holders than alternative 2d, and would likely have a very similar outcome to alternative 2b, except that a few major upgrades would not qualify and there would be no reversion back to the current regulations after 10 years. For the same reasons discussed above under alternative 2a, however, it is not possible to accurately predict how many vessels will be upgraded, or the anticipated future capacity of the fishery, because the prediction is dependent upon the business decisions of many individual boat owners.

For an "average" 55-foot swordfish vessel, this alternative could result in a 69 - 74 foot vessel, depending upon whether the vessel has already been upgraded. At the opposite end of the spectrum, it is also possible that all eligible vessels could increase by 25 - 35 percent or, conversely, none of the eligible vessels would be upgraded. Eligible vessel owners would gain the economic benefits associated with having increased operational flexibility to adjust vessel configurations in terms of length and horsepower to best fit their business needs. However, that flexibility would be capped by imposing a 35 percent limit on increases in vessel

length, gross tonnage, and net tonnage, unlike alternatives 2b, 2c, and 2d which have no limits on the size of upgrades.

Other economic benefits and costs of alternative 2e are similar to those discussed under alternatives 2b, 2c, and 2d, including any secondary economic impacts to shoreside industries.

This final rule contains no new collection-of-information requirements subject to review and approval by OMB under the PRA.

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

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

Dated: May 29, 2007.

**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 (l)(2)(i), (l)(2)(ii) introductory text, (l)(2)(ii)(B), (l)(2)(ii)(C), (l)(2)(iv), the first sentence in paragraph (l)(2)(v), and the first sentence in paragraph (l)(2)(vi) are revised; and paragraph (l)(2)(x) is added to read as follows:

#### § 635.4 Permits and fees.

\* \* \* \* \*

(1) \* \* \*

(2) \* \* \*

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

(ii) Except as specified in paragraph (l)(2)(x) of this section, an owner may

upgrade a vessel with a shark, swordfish, or tuna longline limited access permit, or transfer the limited access permit to another vessel, and be eligible to retain or renew a limited access permit only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications.

\* \* \* \* \*

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

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

\* \* \* \* \*

(iv) In order to transfer a swordfish, shark or tuna longline limited access permit to a replacement vessel, the owner of the vessel issued the limited access permit must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit to another vessel, subject to requirements specified in paragraphs (l)(2)(ii) or (x) of this section, if applicable. The owner must return the current valid limited access permit to NMFS with a complete application for a limited access permit, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' U.S. Coast Guard documentation or state registration must accompany the application.

(v) For swordfish, shark, and tuna longline limited access permit transfers to a different person, the transferee must submit a request to NMFS, at an address designated by NMFS, to transfer the original limited access permit(s), subject to the requirements specified in paragraphs (l)(2)(ii), (iii), and (x) of this section, if applicable. \* \* \*

(vi) For limited access permit transfers in conjunction with the sale of the permitted vessel, the transferee of

the vessel and limited access permit(s) issued to that vessel must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit(s), subject to the requirements specified in paragraphs (l)(2)(ii), (iii), and (x) of this section, if applicable. \* \* \*

\* \* \* \* \*

(x) The owner of a vessel that, on August 6, 2007, concurrently possesses, or is eligible to renew, a directed or incidental swordfish limited access permit, a directed or incidental shark limited access permit, and an Atlantic Tunas Longline category permit is eligible to upgrade that vessel, or transfer its limited access permits to another vessel, subject to the following restrictions:

(A) For eligible vessels, as defined in paragraph (l)(2)(x), any increase in the three specifications of vessel size (length overall, gross registered tonnage, and net tonnage), whether through refitting, replacement, or transfer, may not exceed 35 percent of the vessel baseline specifications, as defined in paragraph (l)(2)(ii)(A) of this section. Horsepower for eligible vessels is not limited for purposes vessel upgrades or permit transfers under paragraph (l)(2)(x).

(B) If a vessel owner wants to request a transfer of limited access permits in order to be eligible for the upgrading restrictions under paragraph (l)(2)(x), the transferee must submit a complete application(s), as specified in paragraphs (h), (i), (j), and (l)(1) of this section, according to the procedures at paragraphs (l)(2)(iv), (v), or (vi) of this section, as applicable, to an address designated by NMFS, so that the completed application(s) are received by NMFS by August 6, 2007. Vessels will not be eligible for the upgrading restrictions under paragraph (l)(2)(x) if applications are incomplete or received after August 6, 2007.

(C) Owners of directed or incidental swordfish limited access permit(s), directed or incidental shark limited access permit(s), and Atlantic Tunas Longline category permit(s) that are not assigned to a specific vessel may request transfer of these permits to a vessel in order to be eligible for the upgrading restrictions under paragraph (l)(2)(x). The transferee must submit complete applications, as specified in paragraphs (h), (i), (j), and (l)(1) of this section, according to the procedures at paragraphs (l)(2)(iv), (v), or (vi) of this section, as applicable, to an address designated by NMFS, so that the completed applications are received by

NMFS by August 6, 2007. Vessels will not be eligible for the upgrading restrictions under paragraph (l)(2)(x) if applications are incomplete or received by NMFS after August 6, 2007.

\* \* \* \* \*

■ 3. In § 635.22, paragraph (f) is revised to read as follows:

**§ 635.22 Recreational retention limits.**

\* \* \* \* \*

(f) *North Atlantic swordfish.* The recreational retention limits for North Atlantic swordfish apply to persons who fish in any manner, except to persons aboard a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4.

(1) Vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are charter boats as defined under § 600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to six North Atlantic swordfish per vessel per trip.

(2) Vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are headboats as defined under § 600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to 15 North Atlantic swordfish per vessel per trip.

(3) Vessels issued an HMS Angling category permit under § 635.4(c), may retain, possess, or land no more than one North Atlantic swordfish per person and up to four North Atlantic swordfish per vessel per trip.

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

**§ 635.24 Commercial retention limits for sharks and swordfish.**

\* \* \* \* \*

(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., except as specified in paragraph (b)(2) of this section.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an incidental LAP for swordfish 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.

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