

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services****42 CFR Parts 410, 411, 414, 415, and 485****[CMS-1413-CN2]****RIN 0938-AP40****Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010; Correction****AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Correction of proposed rule.

**SUMMARY:** This document corrects technical errors in the proposed rule entitled “Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B

for CY 2010” which appeared in the July 13, 2009 **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Aucha Prachanronarong, (410) 786-1879.

**SUPPLEMENTARY INFORMATION:****I. Background and Summary of Errors**

In FR Doc. E9-15835 of July 13, 2009, there were technical errors that are identified and corrected in the Correction of Errors section below.

In the Physician Quality Reporting Initiative section of the preamble to the proposed rule (section II.G.2.), we inadvertently omitted eight measures in our discussion of the new individual quality measures proposed for 2010.

**II. Correction of Errors**

In FR Doc. E9-15835 of July 13, 2009 (74 FR 33520), make the following corrections:

1. On page 33574, second column, first full paragraph, the number “168” is corrected to read “176.”

2. On page 33580, bottom fourth of the page, third column, last paragraph, the number “22” is corrected to read “30.”

3. On page 33581,

a. Top of the page,

(1) Second column, first paragraph, line 11, the number “22” is corrected to read “30.”

(2) Third column, first full paragraph, (a) Line 3, the phrase “16 of these 22 measures” is corrected to read “24 of these 30 measures.”

(b) Line 6, the number “16” is corrected to read “24.”

b. Bottom two-thirds of the page, in Table 19—New Individual Quality Measures Proposed for 2010, after the last measure titled “HIV/AIDS: Sexually Transmitted Diseases—Syphilis Screening” add the following measures:

Measure title	NQF endorsement status as of 5/1/09	AQA adoption status as of 1/31/09	Measure developer	Reporting mechanism(s)
Functional Communication Measure: Spoken Language Comprehension.	Yes .....	No .....	American Speech-Language-Hearing Association (ASHA).	Registry.
Functional Communication Measure: Attention .....	Yes .....	No .....	ASHA .....	Registry.
Functional Communication Measure: Memory .....	Yes .....	No .....	ASHA .....	Registry.
Functional Communication Measure: Motor Speech .....	Yes .....	No .....	ASHA .....	Registry.
Functional Communication Measure: Reading .....	Yes .....	No .....	ASHA .....	Registry.
Functional Communication Measure: Spoken Language Expression.	Yes .....	No .....	ASHA .....	Registry.
Functional Communication Measure: Writing .....	Yes .....	No .....	ASHA .....	Registry.
Functional Communication Measure: Swallowing .....	Yes .....	No .....	ASHA .....	Registry.

**Authority:** Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: July 31, 2009.

**Dawn Smalls,**

*Executive Secretary to the Department.*

[FR Doc. E9-18840 Filed 8-3-09; 4:15 pm]

**BILLING CODE 4120-01-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 300 and 635****[Docket No. 080724902-9663-01]****RIN 0648-AX07****Atlantic Highly Migratory Species; North and South Atlantic Swordfish Quotas**

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

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

**SUMMARY:** This proposed rule would adjust the North and South Atlantic swordfish quotas for the 2009 fishing year (January 1, 2009, through December 31, 2009) to account for underharvests, and to transfer 18.8 metric tons (mt)

dressed weight (dw) to Canada per the 2006 and 2008 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 06-03 and 08-02. In addition, NMFS proposes to include minor regulatory modifications and clarifications, eliminate an existing sunset provision in the Madison-Swanson and Steamboat Lumps time/area closure, and establish a small time/area closure in the Gulf of Mexico called the “Edges 40 Fathom Contour.” These changes could impact fishermen with a commercial swordfish, HMS Angling, or Charter/Headboat (CHB) permit who fish for Atlantic swordfish.

**DATES:** Comments on this proposed rule may be submitted at a public hearing (oral or written), or via mail, or fax by September 4, 2009.

The public hearing dates and times are:

1. Monday, August 24, 2009, 3–5 p.m., Silver Spring, MD.

2. Wednesday, August 26, 2009, 6:30–8:30 p.m., Madeira Beach, FL.

**ADDRESSES:** You may submit comments, identified by [0648–AX07], by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal

eRulemaking Portal <http://www.regulations.gov>

- Fax: 301–713–1917, Attn: Steve Durkee

- Mail: 1315 East-West Highway, Silver Spring, MD 20910

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

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the supporting documents including the 2007 Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), and the EA for the proposed time/area closures are available from the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Steve Durkee (see **FOR FURTHER INFORMATION CONTACT**).

The public hearing locations are:

1. Silver Spring, MD - National Oceanic and Atmospheric Administration, SSMC III, room 1311B, 1301 East-West Highway, Silver Spring, MD 20910; and

2. Madeira Beach, FL Madeira Beach Town Hall, 300 Municipal Drive, Madeira Beach, FL 33708

**FOR FURTHER INFORMATION CONTACT:**

Steve Durkee or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917 or Rick Pearson by phone: 727–824–5399.

**SUPPLEMENTARY INFORMATION:** The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

**1. Swordfish Quota**

*a. North Atlantic*

ICCAT recommendation 06–02 established the current North Atlantic swordfish total allowable catch (TAC) of 14,000 metric tons (mt) whole weight (ww) through 2008. ICCAT recommendation 08–02 extended this TAC through 2009. Of the 14,000 mt ww, the United States is allocated 3,907 mt ww (2,937.6 mt dw). This allocation is the same the United States received during 2004 through 2008. ICCAT recommendation 06–02 (extended through 2009 by ICCAT recommendation 08–02) also limits the amount of North Atlantic swordfish underharvest that can be carried forward by all Contracting Parties, non-Contracting Cooperating Parties, Entities and Fishing Entities (CPCs) to 50 percent of the baseline quota allocation for 2008 and 2009. Therefore, the United States could carryover a maximum of 1,468.8 mt dw of underharvests from the previous year to be added to the baseline quota.

This proposed rule would adjust the total available quota for the 2009 fishing year to account for the 2008 underharvests. The 2009 North Atlantic swordfish baseline quota is 2,937.6 mt dw. The total North Atlantic swordfish underharvest for 2008 was 2,691.9 mt dw, which exceeds the maximum carryover cap of 1,468.8 mt dw. Therefore, NMFS is proposing to carry forward the capped amount per the ICCAT recommendation. The baseline quota plus the underharvest carryover maximum of 1,468.8 mt dw equals a proposed adjusted quota of 4,406.4 mt dw for the 2009 fishing year. The directed category would be allocated 3,639.5 mt dw that would be split equally into two seasons in 2009 (January through June and July through December). The incidental category, which includes recreational landings, would be allocated 300 mt dw, and the reserve category would be reduced from a quota of 485.7 mt dw to 466.9 due to the transfer of 18.8 mt dw to Canada (Table 1).

*b. South Atlantic*

ICCAT recommendation 06–03 established the South Atlantic

swordfish TAC at 17,000 mt ww for 2007, 2008, and 2009. Of the 17,000 mt ww TAC, the United States is allocated 100 mt ww (75.2 mt dw). As with the North Atlantic swordfish recommendation, ICCAT recommendation 06–03 establishes a cap on the amount of underharvest that can be carried forward during the defined management period (2007–2009). For South Atlantic swordfish, the United States is limited to carrying forward 100 mt ww (75.2 mt dw). The 2009 South Atlantic swordfish U.S. baseline quota is 75.2 mt dw. The total South Atlantic swordfish underharvest for 2008 was 150.4 mt dw, which exceeds the maximum carryover cap of 75.2 mt dw. Therefore, NMFS is proposing to carry forward the capped amount per ICCAT recommendation 06–03. As a result, the baseline quota plus the underharvest carryover maximum of 75.2 mt dw equals a proposed adjusted quota of 150.4 mt dw for the 2009 fishing year (Table 1).

*c. Impacts*

In recent years, the United States has not caught its entire swordfish quota and previous to 2007, underharvests were growing significantly from year to year. Beginning in 2007, the amount of underharvest that was available for carryover was capped at 50 percent of the quota for North Atlantic swordfish, and 100 percent for South Atlantic swordfish. The proposed adjusted quota for the North and South Atlantic swordfish, after accounting for the 2008 underharvests and annual transfer to Canada, would be the same in 2009 as the 2007 adjusted quota specifically examined in the Environmental Assessment (EA) that was prepared for the 2007 Swordfish Quota Specification Final Rule published on October 5, 2007 (72 FR 56929). The quota adjustments would not increase overall quotas and are not expected to increase fishing effort or protected species interactions beyond those considered in the EA mentioned above. Therefore, because there would be no changes to the swordfish management measures in this proposed rule, or the affected environment or any environmental consequences that have not been previously analyzed, NMFS has determined that the proposed rule and impacts to the human environment as a result of the quota adjustments are not significant and would not require additional NEPA analysis.

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Table 1 – Landings and Quotas for the Atlantic Swordfish Fisheries (2005 – 2009)

North Atlantic Swordfish Quota (mt dw)		2005	2006	2007	2008 (preliminary)	2009
Baseline Quota		2,937.6	2,937.6	2,937.6	2,937.6	2,937.6
Quota Carried Over		3,359.1	4,691.2	1,468.8	1,468.8	1,468.8
<b>Adjusted quota</b>		<b>6,296.7</b>	<b>7,628.8</b>	<b>4,406.4</b>	<b>4,406.4</b>	<b>4,406.4</b>
Quota Allocation	Directed Category	5,895.2	7,246.1	3,601.9	3,620.7	3,639.5
	Incidental Category	300.0	300.0	300.0	300.0	300.0
	Reserve Category	101.5	82.7	504.5	485.7	466.9
Utilized Quota	Landings	1,471.8	1,291.5	1,167.5	1,695.7	TBD
	Reserve Transfer to Canada	18.8	18.8	18.8	18.8	18.8
Total Underharvest		4,806.1	6,318.5	3,220.1	2,691.9	TBD
Dead Discards		114.9	154.9	149.2	149.8	TBD
Carryover Available		4,691.2	1,468.8	1,468.8	1,468.8	TBD
South Atlantic Swordfish Quota (mt dw)		2005	2006	2007	2008	2009
Baseline Quota		75.2	90.2	75.2	75.2	75.2
Quota Carried Over		319.3	394.5	75.2	75.2	75.2
<b>Adjusted quota</b>		<b>394.5</b>	<b>484.7</b>	<b>150.4</b>	<b>150.4</b>	<b>150.4</b>
Landings		0.0	0.0	0.0	0.0	TBD
Carryover Available		394.5	75.2	75.2	75.2	75.2

## 2. Regulatory Clarifications and Modifications

This proposed rule would also modify and clarify existing regulations as outlined below.

### a. Swordfish Minimum Size.

Swordfish minimum size requirements would be simplified per a request from NMFS Enforcement. Currently, the regulation (50 CFR 635.20 (f)(1)) specifies three minimum size measurement methods for swordfish and swordfish damaged by shark bites. These measurements are 29 inches curved length from cleithrum to caudal keel (CK), 47 inches straight-line lower jaw forked length (LJFL), and 33 lbs dressed weight (dw). These three measurements, however, are equal in effect and all refer to the same size of fish. To simplify compliance determinations, the proposed rule would specify a singular measurement method for cases where the head is naturally attached to the fish, also referred to as “whole”, and a separate singular measurement method for cases where the head has been removed from

the fish, also referred to as “dressed.”

For cases where the head remains naturally attached to the swordfish (whole), a LJFL measurement of 47 inches will be the sole method for determining if a retained swordfish meets the minimum size requirement. This measurement will also apply to whole swordfish damaged by shark bites. For cases where the head has been removed from the fish (dressed), a CK measurement of 29 inches will be the sole method for determining if a retained swordfish meets the minimum size requirement. This measurement will also apply to dressed swordfish carcasses damaged by shark bites. The proposed rule will simplify enforcement efforts and NMFS does not expect the proposed action to have any impacts on swordfish fishermen.

### b. Shark Identification Workshops.

Current regulations (50 CFR 635.8(b)) only allow for Atlantic shark dealer or proxy certificates to be issued at Atlantic shark identification workshops. These certificates can only be issued to an individual or entity that currently

holds a valid shark dealer permit or to a proxy for that individual or entity. However, formal certification at an Atlantic shark identification workshop is a prerequisite for obtaining a new shark dealer permit, or renewing an expired permit (50 CFR 635.8(b)(5)). As such, individuals or entities that would like to become new shark dealers, and persons holding expired shark dealer permits, are unable to obtain or renew a permit under the current regulations because they cannot present a formal certification of completing a workshop with their shark dealer permit application. Under this proposed rule, NMFS would authorize the issuance of “participant certificates” to attendees who do not possess a valid shark dealer permit at the time of workshop attendance. These participant certificates would offer proof of workshop completion for any individuals attempting to obtain a new shark dealer permit, or renew an expired shark dealer permit. Issuing participant certificates to workshop attendees would not have any adverse impacts, but would instead better

accommodate the issuance of shark dealer permits to new entrants and persons holding expired shark dealer permits.

*c. Observer Requirements.*

As was highlighted by the 100 percent observer coverage requirement in the Gulf of Mexico, many bycatch species such as bluefin tuna incidentally caught in the pelagic longline fishery are discarded without being brought on board even if an observer is on board. While this is done to maximize the efficiency of fishing, this activity hinders the ability of observers to collect biological samples for research. As such, this proposed rule would require incidentally caught, dead HMS or other species to be brought on board at the request of the observer. Further clarifications regarding this reasonable assistance requirement include: allowing the measurement of decks, codends, and holding bins; providing the observer with a safe work area; collecting bycatch when requested by the observer; collecting and carrying baskets of fish when requested by the observer; allowing the observer to collect biological data and samples; providing adequate space for storage of biological samples.

This should allow for the opportunity to collect biological samples from dead individuals, would have minimal to no additional impact on population biomass, and would have minimal impact on the fishing fleet. Haulback may be slowed to allow for the recovery of the fish that would normally be discarded dead. However, NMFS does not expect this activity to cause additional hardship or training, as most fish are brought on board. Additionally, to the extent that a particular set catches a large number of fish to be discarded, the observer will work to ensure fishing operations are disrupted as little as possible to ensure additional fish to not die on the line.

*d. Change in Address.*

Changes in permit application information are currently required to be made in writing, except in the case of Atlantic tunas or an HMS Charter/Headboat permit, wherein the vessel owner or operator must report the change by phone or internet (50 CFR 635.4(i)). Under the proposed rule, the Atlantic Tunas Longline Limited Access Permit (a permit category within the Atlantic tunas permit) holders would be required to report any changes to the information submitted in their application to the NMFS in writing to a designated address. Written submission of information changes would provide

NMFS with a robust record of updates. Vessel owners or operators possessing an open access vessel permits for Atlantic tunas permit, HMS Charter/Headboat permit, or HMS Angling category permit would still report changes by phone or internet to a number or website designated by NMFS. Altering the method to change permit information should not create significant hardship to permit holders as Atlantic Tunas Longline Limited Access Permit Holders are already required to provide written updates for their Atlantic shark and swordfish permits, which are issued by the Southeast Regional Office (SERO). The proposed rule would make permit information changes easier since one request can be used to alter all limited access permits issued by SERO.

*e. HMS Importation Information Requirements*

Currently, the regulatory text regarding international trade permits stipulates that certain information must be provided on the consignment documents that accompany certain imported HMS species (specifically Atlantic, Pacific and Southern bluefin tuna, frozen bigeye tuna, and swordfish). As such, when the required data fields change per international agreements, NMFS must conduct rulemaking to change the data fields in the regulations. Depending on the rulemaking schedule, this could lead the United States to be out of compliance with international agreements. Under this proposed rule, the documentation requirements would become more general, and the regulatory text would require "correct and complete information" on each consignment document. The more general documentation requirements would give NMFS the flexibility to request data necessary to fulfill international recommendations. This change would have no new impacts on HMS importers. The public would still have an opportunity to comment on substantial changes to the requirements through the Paperwork Reduction Act process and/or rulemaking process.

**3. Adjustment and Implementation of Time/Area Closures in the Gulf of Mexico**

Under current regulations (50 CFR 635.21 (a)(4)(ii) (iv)), the Madison-Swanson and Steamboat Lumps time/area closures within the Gulf of Mexico are set to expire on June 16, 2010. In Amendment 30b, the Gulf of Mexico Fisheries Management Council (GOMFMC) voted to remove this sunset provision, and on November 7, 2008,

the GOMFMC requested that NMFS implement similar measures. Consistent with this request, the proposed rule would eliminate this sunset provision and prevent expiration of the time/area closures on June 16, 2010. Eliminating the sunset provision of the Madison-Swanson and Steamboat Lumps time/area closures would not have any additional impacts to the original closures. The proposed rule would only remove the expiration date of the closures where no fishing activity is currently occurring (except for surface trolling from May-October of each year).

In addition to the above request, the GOMFMC also asked NMFS to backstop a new, small time/area closure, called the "Edges 40 Fathom Contour," implemented by the Council. This proposed rule would respond to the request and establish the time/area closure in the northwestern Gulf of Mexico. The boundaries of this closure are defined by the coordinates: NW = 28° 51'N, 85° 16'W; NE = 28° 51'N, 85° 04'W; SW = 28° 14'N, 84° 54'W; SE = 28° 4'N, 84° 42'W. No records of pelagic longline sets exist within the proposed closure area between 1995 and 2006, or of bottom longline sets between 1996 and 2006. The extent of HMS recreational and charter/headboat (CHB) fishing activity within the proposed closure area is unknown. However, because the Edges 40 Fathom Contour would be closed for only four months, most recreational fishing activity would be allowed. These open months coincide with a period of increased HMS recreational fishing activity in the eastern Gulf of Mexico. Therefore, NMFS does not expect the implementation of the Edges 40 Fathom Contour time/area closure to have any significant adverse impacts.

**Request for Comments**

Comments on this proposed rule may be submitted at public hearings (see **DATES** and **ADDRESSES**), or via mail, fax, or online at <http://www.regulations.gov> by September 4, 2009. NMFS will hold public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Steve Durkee at (301) 713-2347 at least 5 days prior to the hearing date.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (e.g., alcohol is

prohibited from the hearing room; attendees will be called to give their comments in the order in which they register to speak; the attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the meeting. For individuals unable to attend a hearing, NMFS also solicits written comments on this proposed rule (see **DATES** and **ADDRESSES**).

### Classification

The Acting Assistant Administrator has determined that this proposed rule is consistent with the Consolidated HMS FMP, the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

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

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The certification reads:

#### *Swordfish Quotas*

NMFS published a final rule on October 5, 2007 (72 FR 56929) that established the 2,937.6 mt dw and 75.2 mt dw yearly baseline quotas for the North and South Atlantic swordfish, respectively; created an underharvest carryover cap of 50% the baseline quota for North Atlantic swordfish and 100% the baseline quota for South Atlantic swordfish; and transferred 18.8 mt dw of quota to Canada from the reserve category. These actions were based upon ICCAT recommendations 06–02 and 06–03. The North Atlantic swordfish provisions in recommendation 06–02 were extended through 2009 by ICCAT recommendation 08–02.

These 2009 annual specifications are necessary to implement the 2006 and 2008 International Commission for the Conservation of Atlantic Tunas (ICCAT) quota recommendation, as required by the Atlantic Tunas Convention Act, and to achieve domestic management objectives under the Magnuson-Stevens Act. This proposed rule would adjust the 2009 baseline quotas for the North and South Atlantic swordfish fisheries for the 2009 fishing year (January 1, 2009, through December 31, 2009) to account for 2008 underharvests per 50 part 635.27(c) and transfer 18.8 metric tons (mt) dressed weight (dw) to Canada from the reserve category. Consistent with Federal regulation (50 CFR part 635.27(c)(1)), the

2009 North Atlantic swordfish directed baseline quotas plus the 2008 underharvests would be divided equally between the semiannual periods of January through June and July through December, 2009. The 2009 adjusted quotas are 4,406.4 mt dw for North Atlantic swordfish and 150.4 mt dw for South Atlantic swordfish (Table 1).

The commercial swordfish fishery is comprised of fishermen who hold a swordfish directed, incidental, or handgear limited access permits (LAP) and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the Small Business Administration. As of June 2009, there were approximately 185 fishermen with a directed swordfish LAP, 69 fishermen with an incidental swordfish (LAP), and 84 fishermen with a handgear (LAP) for swordfish. Based on the 2007 swordfish ex-vessel price per pound of \$3.88, the 2009 North Atlantic swordfish baseline quota could result in revenues of \$25,127,780 (6,476,232 lbs dw \* \$3.88) and \$643,246 (165,785 lbs dw \* \$3.88) for South Atlantic quota if the quota was fully utilized. As proposed in this action, the 2009 baseline quotas would be adjusted to account for the 2008 underharvest which could result in additional revenues for the North and South Atlantic swordfish fisheries of \$37,691,675 and \$1,286,499, respectively, for fully utilized quotas. Potential revenues on a per vessel basis, considering a total of 338 swordfish permit holders, could be \$111,514 for the North Atlantic swordfish fishery and \$3,806 for the South Atlantic swordfish fishery. However, in both the North and South Atlantic swordfish fisheries, the pelagic longline fleet has not caught the entire U.S. swordfish quota for many years. For example, the total 2008 North Atlantic swordfish landings were 1,695.7 mt dw and the current 2009 landings for North Atlantic swordfish, as of April 30, 2009, are 411.1 mt dw. Therefore, because the United States is not expected to catch its entire quota, and the quota adjustments are the same in 2009 as in 2008, NMFS does not expect these quota adjustments to have a significant economic impact on a large number of small entities.

#### *Administrative Regulatory Modifications and Clarifications*

In addition to adjusting the North and South Atlantic swordfish quotas, NMFS is also proposing the following five administrative modifications and clarifications to the regulations: 1) clarifying minimum size requirements for whole and dressed swordfish; 2) issuing “participant certificates” at shark identification workshops to attendees that do not have a dealer license; 3) requiring that any dead bycatch in the pelagic longline fishery be brought on board, at the observer’s request, for biological sampling; 4) requiring that any changes in information from the application for Atlantic Tuna Longline Limited Access Permit be requested in writing; and 5) clarifying the information that is to be included on consignment documents for the importation of Atlantic, Pacific and Southern bluefin tuna, frozen bigeye tuna, and swordfish. These changes are mostly

administrative in nature and it is unlikely that they would result in any economic impacts on individuals or small businesses. Therefore, NMFS does not expect these regulatory modification and clarifications to result in significant impacts on a substantial number of small entities.

#### *Adjustment and Implementation of Time/Area Closures in the Gulf of Mexico*

Under current regulations (50 CFR 635.21 (a)(4)(ii) (iv)), the Madison-Swanson and Steamboat Lumps time/area closures within the Gulf of Mexico are set to expire on June 16, 2010. In Amendment 30b, the Gulf of Mexico Fisheries Management Council (GOMFMC) voted to remove this sunset provision, and on November 7, 2008, the GOMFMC requested that NMFS implement similar measures. Consistent with this request, the proposed rule would eliminate this sunset provision and prevent expiration of the time/area closures on June 16, 2010. Eliminating the sunset provision of the Madison-Swanson and Steamboat Lumps time/area closures would not have any additional impacts to the original closures. The proposed rule would only remove the expiration date of the closures where no fishing activity is currently occurring (except for surface trolling from May October of each year).

In addition to the above request, the GOMFMC also asked NMFS to backstop a new, small time/area closure, called the “Edges 40 Fathom Contour,” implemented by the Council. This proposed rule would comply with the request and establish the time/area closure in the northwestern Gulf of Mexico. No records of pelagic longline sets exist within the proposed closure area between 1995 and 2006, or of bottom longline sets between 1996 and 2006. The extent of HMS recreational and charter/headboat (CHB) fishing activity within the proposed closure area is unknown. However, because the Edges 40 Fathom Contour would be closed for only four months, most recreational fishing activity would be allowed. These open months coincide with a period of increased HMS recreational fishing activity in the eastern Gulf of Mexico.

In order to examine the baseline universe of entities potentially affected by the two Gulf of Mexico time/area closure actions, NMFS analyzed the number of commercial swordfish, shark, and tuna longline permits that were issued as of May 2008 in Destin, FL; Panama City, FL; Apalachicola, FL; and Madeira Beach/St. Petersburg/Clearwater FL. Also, NMFS examined the number of HMS CHB (CHB) permits, and HMS Angling permits that were issued in these same locations. There could be as many as 21 commercial permit holders in the potentially affected communities that possess “valid” pelagic longline permits because they possess the requisite three limited access permits for swordfish, shark and tunas longline permits. These vessels are primarily home ported in the Panama City, FL and the Madeira Beach/St. Petersburg, FL areas. The number of potentially affected commercial shark permit holders could be as many as 39 vessels. These vessels are also primarily home ported in the Panama City, FL and Madeira Beach/

St. Petersburg/Clearwater, FL areas. There are a relatively large number of HMS CHB vessels (70) in the communities of Destin, FL; Panama City, FL; and Madeira Beach/St. Petersburg/Clearwater, FL.

The total number of HMS Angling category permits issued and of May 2008 was 26,933. These permits were distributed among many communities, both large and small, primarily along the eastern seaboard and the Gulf of Mexico. Approximately 500 1000 HMS Angling category permits were issued to recreational anglers located from Destin, FL to St. Petersburg, FL.

In summary, the preferred alternative analyzed for this proposed rule could potentially impact HMS commercial permit holders possessing the requisite three permits to fish with pelagic longline gear (~21 vessels), commercial shark permit holders (~39 vessels), HMS CHB permit holders (~70 vessels), and HMS Angling category permit holders (~1000 vessels). In total, the preferred alternative could impact approximately 1,130 HMS permit holders. The HMS Angling category permit is strictly for recreational fishing activities, and does not authorize the commercial sale of any HMS. Thus, HMS Angling category permit holders are not considered small business entities. Therefore, about 130 of these permit holders are considered small entities. However, as described in the draft EA accompanying this rule, no records of pelagic longline sets exist within the proposed Edges 40 Fathom Contour closure area between 1995 and 2006, or of bottom longline sets between 1996 and 2006. Furthermore, eliminating the sunset provision of the Madison-Swanson and Steamboat Lumps time/area closures would not alter fishing practices from the status quo. The extent of HMS recreational and charter/headboat (CHB) fishing activity within the proposed closure area is unknown. However, because the Edges 40 Fathom Contour would be closed for only four months, most recreational fishing activity would be allowed. These open months coincide with a period of increased HMS recreational fishing activity in the eastern Gulf of Mexico.

#### Conclusion

This proposed rule would not result in any increase in fishing mortality, change basic fishing practices, or pose any significant impacts to the human environment. Therefore, NMFS does not expect the administrative modification and clarifications or the adjustment of the Gulf of Mexico time/area closures to have significant economic impacts on small entities.

#### List of Subjects

##### 50 CFR Part 300

Reporting and recordkeeping requirements.

##### 50 CFR Part 635

Fisheries, Fishing, Management, Reporting and recordkeeping requirements, Treaties.

Dated: July 30, 2009.

**James W. Balsiger,**

*Acting Assistant Administrator for Fisheries,  
National Marine Fishery Service.*

For the reasons set out in the preamble, 50 CFR parts 300 and 635 are proposed to be amended as follows:

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

### Subpart M—International Trade Documentation and Tracking Programs for Highly Migratory Species

1. The authority citation for subpart M continues to read as follows:

**Authority:** 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 300.185, paragraph (a)(2)(vii) is revised to read as follows:

#### § 300.185 Documentation, reporting and recordkeeping requirements for consignment documents and re-export certificates.

(a) \* \* \*

(2) \* \* \*

(vii) For fish or fish products except shark fins regulated under this subpart that are entered for consumption, the permit holder must provide correct and complete information, as requested by NMFS, on the original consignment document that accompanied the consignment.

\* \* \* \* \*

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

3. 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.*

4. In § 635.2, the following definition is added within the correct alphabetic order.

#### § 635.2 Definitions.

\* \* \* \* \*

*Edges 40 Fathom Contour closed area* means a parallelogram-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 28° 51'N. lat., 85° 16'W. long.; 28° 51'N. lat., 85° 04'W. long.; 28° 14'N. lat., 84° 42'W. long.; 28° 14'N. lat., 84° 54'W. long.

\* \* \* \* \*

5. In § 635.4, paragraph (i) is revised to read as follows:

#### § 635.4 Permits and fees.

\* \* \* \* \*

(i) Change in application information. A vessel owner or dealer must report any change in the information contained in an application for a permit within 30 days after such change. The report must

be submitted in writing to NMFS, to an address designated by NMFS with the issuance of each permit. For HMS charter/headboat and Atlantic tunas vessel permits other than tuna longline, the vessel owner must report the change by phone or internet to a number or website designated by NMFS. For certain information changes, a new permit may be issued to incorporate the new information, subject to limited access provisions specified in paragraph (l)(2) of this section. NMFS may require supporting documentation before a new permit will be issued. If a change in the permit information is not reported within 30 days, the permit is void as of the 31st day after such change

\* \* \* \* \*

6. In § 635.7, paragraph (f) is added to read as follows:

#### § 635.7 At-sea observer coverage.

\* \* \* \* \*

(f) Vessel responsibilities. An owner or operator of a vessel required to carry one or more observer(s) must provide reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(1) Measuring decks, codends, and holding bins.

(2) Providing the observer(s) with a safe work area.

(3) Collecting bycatch when requested by the observer(s).

(4) Collecting and carrying baskets of fish when requested by the observer(s).

(5) Allowing the observer(s) to collect biological data and samples.

(6) Providing adequate space for storage of biological samples.

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

#### § 635.8 Workshops.

\* \* \* \* \*

(b) \* \* \*

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

place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must possess a valid Atlantic shark identification workshop certificate.

(5) A Federal Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for inspection a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy at each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. For the purposes of this part, trucks or other conveyances of a dealer's place of business are considered to be extensions of a dealer's place of business and must possess a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to a place of business covered by the dealer permit. A copy of a valid Atlantic shark identification workshop certificate must be included in the dealer's application package to obtain or renew an Atlantic shark dealer permit. If multiple businesses are authorized to receive Atlantic sharks under the Atlantic shark dealer's permit, a copy of the Atlantic shark identification workshop certificate for each place of business listed on the Atlantic shark dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must be included in the Atlantic shark dealer permit renewal application package.

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

trade by contacting NMFS at an address designated by NMFS.

(c) \* \* \*

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

(5) A vessel owner, operator, shark dealer, proxy for a shark dealer, or participant who is issued either a protected species workshop certificate or an Atlantic shark identification workshop certificate may not transfer that certificate to another person.

\* \* \* \* \*

8. In § 635.20, the first sentence of paragraph (a) and paragraph (f) are revised to read as follows:

#### **§ 635.20 Size Limits.**

(a) *General.* The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas for a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4. \* \* \*

\* \* \* \* \*

(f) *Swordfish.*

(1) For a swordfish that has its head naturally attached, the LJFL is the sole criterion for determining the size of a swordfish. No person shall take, retain, possess, or land a whole (head on) North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 47 inches (119 cm) LJFL. A swordfish with the head naturally attached that is damaged by shark bites may be retained only if the length of the remainder of the fish is equal to or greater than 47 inches (119 cm) LJFL.

(2) If the head or tail of a swordfish has been removed prior to or at the time

of landing, the CK measurement is the sole criterion for determining the size of a swordfish. No person shall take, retain, possess, or land a dressed North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 29 inches (73 cm) CK length. A swordfish with the head removed that is damaged by shark bites may be retained only if the length of the remainder of the carcass is equal to or greater than 29 inches (73 cm) CK length.

(3) No person shall import into the United States an Atlantic swordfish weighing less than 33 lb (15 kg) dressed weight, or a part derived from a swordfish that weighs less than 33 lb (15 kg) dressed weight.

(4) Except for a swordfish landed in a Pacific state and remaining in that Pacific state of landing, a swordfish, or part thereof, not meeting the minimum size measurements specified in § 635.20(f)(1) or (2) will be deemed to be an Atlantic swordfish harvested by a vessel of the United States and to be in violation of the minimum size requirement of this section unless such swordfish, or part thereof, is accompanied by a swordfish statistical document attesting that the swordfish was lawfully imported. Refer to § 300.186 of this title for the requirements related to the swordfish statistical document.

(5) A swordfish, or part thereof, will be monitored for compliance with the minimum size requirement of this section from the time it is landed in, or imported into, the United States up to, and including, the point of first transaction in the United States.

9. In § 635.21, paragraphs (a) (4) (ii) and (iii) are revised and paragraph (4) (v) is added to read as follows:

#### **§ 635.21 Gear operation and deployment restrictions.**

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \*

(ii) From November through April of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson closed area or the Steamboat Lumps closed area, as defined in § 635.2.

(iii) From May through October of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson or the Steamboat Lumps closed areas except for surface trolling, as specified below under paragraph (a)(4)(iv) of this section.

\* \* \* \* \*

(v) From January through April of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Edges 40 Fathom Contour closed area, as defined in § 635.2.

\* \* \* \* \*

10. In § 635.71, paragraphs (d) (11) and (14) are revised to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(d) \* \* \*

(11) Receive, purchase, trade, or barter for Atlantic sharks without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

\* \* \* \* \*

(14) Receive, purchase, trade, or barter for Atlantic sharks without making available for inspection, at each of the dealer's places of business listed on the

dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, a valid dealer or proxy Atlantic shark identification workshop certificate issued by NMFS to the dealer or proxy in violation of § 635.8(b), except that trucks or other conveyances of the business must possess a copy of such certificate.

\* \* \* \* \*

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