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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 170901859-7999-02]

RIN 0648-BH19

Atlantic Highly Migratory Species; Charter/Headboat Permit Commercial Sale Provision

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

ACTION: Final rule.

SUMMARY: This final rule creates a separate permit endorsement provision for the commercial sale of Atlantic highly migratory species (HMS) by HMS Charter/Headboat permit holders. Prior to implementation of this final rule, all vessels issued an HMS Charter/Headboat permit could be categorized as commercial fishing vessels and could be subject to United States Coast Guard (USCG) commercial fishing vessel safety requirements regardless of whether the permit holder engages or intends to engage in commercial fishing. Under this final rule, HMS Charter/Headboat permit holders will be prohibited from selling Atlantic tunas, swordfish, or sharks unless they obtain a commercial sale endorsement for their permit. This final rule will clarify which HMS Charter/Headboat permitted vessels are properly categorized as commercial fishing vessels for purposes of USCG safety requirements. This action is administrative in nature and will not affect fishing practices or result in any significant environmental effects or economic impacts.

DATES: Effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of the supporting documents—including the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments and associated documents—are available from the HMS Management Division website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Dianne Stephan by phone at 978-281-9260. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the HMS Management Division and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Dianne Stephan or Tobey Curtis by phone at 978-281-9260, or Steve Durkee by phone at 202-670-6637.

SUPPLEMENTARY INFORMATION:

Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Under the Magnuson-Stevens Act, NMFS must ensure consistency with 10 National Standards and manage fisheries to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under ATCA, the Secretary of Commerce is required to promulgate regulations, as necessary and appropriate, to implement measures adopted by the International Commission for the Conservation of Atlantic Tunas. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Background

Atlantic HMS regulations at 50 CFR 635.4(b) require that charter/headboat vessels (i.e., vessels taking fee-paying passengers) used to fish for, take, retain, or possess Atlantic HMS must

obtain an HMS Charter/Headboat permit. In addition to carrying paying passengers, the permit also allows charter/headboat fishermen to diversify their operations by fishing commercially for Atlantic tunas and swordfish. They may sell sharks if they also have a commercial shark permit in addition to the Charter/Headboat permit. Relatively few permit holders use the commercial sale provision. From 2012-2016, an annual average of only seven percent of HMS Charter/Headboat permit holders sold any tuna or swordfish. USCG commercial vessel safety requirement therefore may result in an unnecessary "commercial vessel" compliance burden for HMS Charter/Headboat permitted vessels.

Commercial fishing vessel safety provisions contained in the Coast Guard Authorization Act of 2010 (CGAA) and the Coast Guard and Maritime Transportation Act of 2012 were the subject of a Marine Safety Information Bulletin (MSIB 12-15) issued by the USCG on October 20, 2015. MSIB 12-15 clarified that the law would require mandatory dockside safety exams for a broader population of commercial fishing vessels. As clarified in the notice, that broader community included HMS Charter/Headboat vessels that were authorized by the permit to sell fish commercially (i.e., all Charter/Headboat vessels). The mandatory safety exam includes a check for required commercial fishing vessel safety equipment such as life rafts, emergency beacons, and survival suits, and other requirements found in 46 CFR Part 28. Outfitting a vessel with these items comes at a substantial cost. Mandatory dockside safety exams for vessels operating beyond three nautical miles from shore began October 15, 2015 under this program.

These mandatory commercial vessel safety requirements had overly broad application to all Charter/Headboat permit holders, whether they engaged in commercial sales or not, absent a more effective way to identify which HMS Charter/Headboat permit holders engage in

commercial fishing. After questions about applicability from NMFS and the regulated community, on July 10, 2017, the USCG issued Marine Safety Information Bulletin (MSIB 008-17) in an attempt to clarify the applicability of commercial fishing vessel safety requirements for vessels with HMS permits, including HMS Charter/Headboat permits. USCG regulations at 46 CFR 28.50 define a commercial fishing vessel as a vessel that commercially engages in the catching, taking, or harvesting of fish, or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish. According to the MSIB 008-17, if an individual has an HMS Charter/Headboat permit (which allows commercial sale) and a state permit to sell catch, the vessel is considered subject to commercial fishing vessel safety regulations.

Many HMS Charter/Headboat operators that neither sell, nor intend to sell, their catch but hold a permit to sell have thus found that the USCG policy identifies their operations as a “commercial fishing vessel,” and requires them to adhere to USCG commercial fishing vessel safety requirements. For example, even small charter vessels (i.e., less than 20 feet in length) operating in the warm waters of the Gulf of Mexico and with no intent to sell HMS, may be required under the USCG regulations to carry an inflatable life raft that can cost approximately \$1,750. In addition to the cost burden, a vessel of this size has minimal space to store such gear. These smaller HMS Charter/Headboat permitted vessels were previously subject to the USCG safety regulations for uninspected passenger vessels of less than 100 gross tons and carrying six or less passengers, which are less extensive and less costly.

In late 2016 and early 2017, NMFS and the USCG staff informally discussed how to more effectively categorize HMS charter/headboat vessels under USCG regulations. The HMS Advisory Panel discussed this issue at length at its May and September 2017 meetings. Many

HMS Advisory Panel members, including commercial, recreational, and council/state representatives, supported creating a separate regulatory provision for charter/headboat vessels that intend to sell HMS and to thus specify that other such vessels were not engaged in commercial sale and not subject to expensive USCG commercial vessel compliance obligations. Panel members stated that creating a separate sale provision would support more appropriate application and enforcement of USCG commercial fishing vessel safety requirements in the Atlantic HMS Charter/Headboat fishery, and would better clarify for permit holders the specific USCG regulations that apply to their vessels and fishing operations. On October 6, 2017, the USCG formally reviewed the proposed rule of this action and concurred with the approach to provide clarity on the applicability on their requirements.

HMS Charter/Headboat Permit Commercial Sale Endorsement

This final rule creates a “commercial sale” endorsement that can be placed on the existing HMS Charter/Headboat permit. Under this action, HMS Charter/Headboat permit holders will be prohibited from selling any catch of HMS unless they first obtain a “commercial sale” endorsement on their permit. Only those HMS Charter/Headboat permit holders with the endorsement will be permitted to sell Atlantic tunas, swordfish, or sharks if they also have the additionally required commercial shark permit.

This final rule clarifies that any HMS Charter/Headboat vessel issued a Charter/Headboat permit with a commercial sale endorsement will be categorized as a commercial fishing vessel under USCG criteria, and therefore could be subject to USCG commercial fishing vessel safety requirements. A vessel issued an HMS Charter/Headboat permit without a “commercial sale” endorsement will not be categorized as a commercial fishing vessel and should not be subject to

the USCG commercial fishing vessel safety requirements. HMS Charter/Headboat permit holders with the commercial sale endorsement allowing the sale of tunas or swordfish must adhere to the applicable Atlantic Tunas General Category or General Commercial Swordfish permit possession limits and restrictions; any landings will be applied against the appropriate commercial quota. HMS Charter/Headboat permit holders that sell or intend to sell sharks must obtain the commercial sale endorsement on their permit as well as a commercial shark permit. This final rule would only change the permit category under which certain vessels are fishing. It will not affect quotas, gear types, or time/area restrictions, and neither increase or decrease fishing effort or affect fishing timing nor implement other measures that will potentially have any environmental effects.

Response to Comments

During the public comment period, NMFS held a public hearing via webinar. Two members of the public provided comments during the hearing. Additionally, NMFS received 14 written comments. All written comments can be found at <http://www.regulations.gov/>. The summarized comments and NMFS' response to those comments can be found below.

Comment 1: NMFS received comments, including from the South Atlantic Fishery Management Council, in support of the HMS Charter/Headboat permit commercial sales endorsement considered in the proposed rule. We also received a comment stating a commercial sale endorsement would not be useful since a lot of charter/headboat fishing occurs in state waters. Another commenter requested clarification on the cost of the commercial sales endorsement.

Response: NMFS believes that the commercial sales endorsement will effectively

delineate between HMS Charter/Headboat permit holders that intend to sell HMS catch and those that do not. This clarification should facilitate USCG's application of commercial fishing vessel safety requirements. Regarding the comment that charter/headboat fishing occurs primarily in state waters, and the apparent concern that USCG requirements therefore would not apply nor be "useful," we note that as a condition of the HMS Charter/Headboat permit, permit holders are required to abide by federal HMS regulations regardless of where fishing occurs, including in state waters, unless state regulations are stricter. With respect to Atlantic tunas, NMFS manages the tuna fisheries to the shore even if a vessel holds no Federal permit, except in the States of Maine, Connecticut, and Mississippi. Regarding the cost, the cost of the HMS Charter/Headboat permit with and without the commercial sale endorsement will be the same; there will be no additional cost to obtain the commercial sales endorsement.

Comment 2: The Atlantic States Marine Fisheries Commission (ASMFC) submitted a comment stating the HMS Charter/Headboat permit commercial sale endorsement could make it more difficult to differentiate between recreational and commercial fishing activities, particularly in the coastal shark fishery. ASMFC also stated that State commercial fishing permits already identify those individuals that are able to sell sharks.

Response: NMFS disagrees that the HMS Charter/Headboat permit commercial sale endorsement would make it more difficult to differentiate between recreational and commercial fishing activities. Instead, the commercial sale endorsement will effectively identify HMS Charter/Headboat permit holders that intend to sell HMS catch. HMS Charter/Headboat permit holders that do not obtain the commercial sale endorsement will clearly not be engaging in commercial fishing. As detailed in the background information section above, approximately 93

percent of HMS Charter/Headboat permit holders do not sell HMS catch. These permit holders are unlikely to obtain the commercial sale endorsement; thus, the vast majority of HMS charter/headboat activity would be easily categorized as recreational. Furthermore, State commercial fishing permits do not authorize HMS Charter/Headboat permit holders to sell sharks. HMS Charter/Headboat permit holders that intend to sell sharks must obtain a Federal Atlantic commercial shark permit in addition to the commercial sale endorsement created in this action. Furthermore, the action is specifically taken with regard to categorization for USCG regulatory purposes.

Comment 3: NMFS received comments expressing concern that defining a charter/headboat as a commercial vessel for the entire year is overly burdensome on the owner and captain. Instead, commenters stated that commercial fishing vessel safety requirements should be enforced on a trip-by-trip basis and that when an HMS Charter/Headboat permit holder intends to sell HMS catch, that trip should be categorized as a commercial trip, subject to the USCG commercial fishing vessel safety requirements. Commenters stated that if an HMS Charter/Headboat permit holder is on a for-hire trip, that trip should be categorized as a non-commercial trip and not be subject to the USCG commercial fishing vessel safety requirements. Commenters included examples of hardships, such as requiring safety drills with clients and requesting customers' clothing sizes to ensure immersion suits are properly sized. One commenter stated that NMFS should require proof of a USCG commercial fishing vessel safety sticker when applying for the HMS Charter/Headboat permit commercial sales endorsement and should conduct a review of compliance of HMS Charter/Headboat vessels with commercial fishing vessel safety exam requirements. Another commenter stated that all commercial vessels

should be subject to the same commercial fishing vessel safety requirements regardless of vessel size or where fishing occurs.

Response: The purpose of this action is to clarify which HMS Charter/Headboat permitted vessels are authorized to sell Atlantic HMS and thus are appropriately categorized as commercial fishing vessels for purposes of the USCG commercial safety requirements. Doing so will facilitate USCG's appropriate application of commercial fishing vessel safety requirements. The mandatory USCG safety requirements arguably may have been overly broad as currently applied because it is difficult to identify which HMS Charter/Headboat permit holders engage in commercial fishing and, therefore, should appropriately be subject to the requirements. This action is not intended to address, nor otherwise consider, the effectiveness of USCG commercial fishing vessel safety requirements. Regarding the comment that NMFS should require compliance with USCG regulations before issuing an HMS Charter/Headboat permit and should conduct a review of compliance with commercial fishing vessel safety exam requirements, NMFS may consider requiring proof of compliance (e.g., submission of sticker number) as a condition of obtaining the endorsement in the future, after additional consultation with USCG. NMFS will coordinate with USCG Commercial Safety Exam program staff to conduct a review of compliance of HMS permitted vessels with CFVS exam requirements. The proper application of USCG commercial fishing vessel safety requirements based on trip type, vessel size, or fishing location is outside the purview of NMFS. NMFS will share these comments and concerns with USCG Commercial Fishing Vessel Safety program staff.

Comment 4: NMFS also received a comment suggesting increased reporting requirements for vessels landing and selling bigeye, albacore, and yellowfin tunas and to prohibit the sale of

HMS caught on charter/headboats while engaged in a for-hire trip.

Response: This comment is outside the scope of this rulemaking, which focuses on overly burdensome and unnecessary application of USCG commercial vessel requirements to HMS vessels that do not sell or intend to sell their catch. However, NMFS will consider these suggestions regarding increased reporting requirements and whether to propose further regulations modifying HMS charter/headboat commercial sale provisions in the future, as appropriate. Any such new management measures and regulations would be presented in a proposed rule, and the public would have an opportunity to provide comment.

Changes from the Proposed Rule

The final rule contains no changes from the proposed rule.

Classification

The Assistant Administrator for Fisheries (AA) has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law.

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

For the reasons described in the preamble, this final rule is expected to be deregulatory under Executive Order 13771.

Paperwork Reduction Act (PRA)

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been approved by OMB under control number 0648-0327. Public reporting burden for Atlantic HMS Permit Family of Forms is estimated to average 34 minutes

per respondent for initial permit applicants, and 10 minutes for permit renewals, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov*, or fax to 202-395-7285.

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

Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) was prepared for this rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA) and a summary of the analyses completed to support the action. NMFS did not receive any public comment on the IRFA. The full FRFA is available from NMFS (see **ADDRESSES**). A summary is provided below.

Statement of the Need For And Objectives Of This Final Rule

A description of the action and the legal basis for this action are contained in the Background section of the preamble and in the **SUMMARY** of this final rule.

Description and Estimate of the Number of Small Entities to Which the Final Rule Will Apply

Section 604(a)(4) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule will apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including for-hire

charter/headboat businesses. For-hire charter/headboat business fit into the “Scenic and Sightseeing Transportation, Water” industry under NAICS code 487210. SBA has established that the small entity size standard for that industry is \$7.5 million in average annual receipts.

Provision is made under SBA’s regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency’s obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the Federal Register (FR), which NMFS did on December 29, 2015 (80 FR 81194, December 29, 2015). In this final rule effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes.

NMFS considers all HMS Charter/Headboat permit holders (3,594 as of October 2016) to be small entities because these vessels have reported annual gross receipts of less than \$11 million for commercial fishing or earn less than \$7.5 million from for-hire fishing trips.

NMFS has determined that this rule will apply to the small businesses associated with the approximately seven percent of HMS Charter/Headboat permit holders that also commercially fish for swordfish and tuna. Based on the most recent number of permit holders, NMFS estimates that this rule will apply to approximately 252 HMS charter/headboat vessel owners. NMFS has determined that this action would not likely directly affect any small organizations or small government jurisdictions defined under the RFA.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities Which Would Be Subject to the Requirements of the Report or Record

Section 604(a)(5) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. This rule will create a commercial sale endorsement for the HMS Charter/Headboat permit. Under the rule, HMS Charter/Headboat permit holders will be prohibited from selling any catch of HMS unless they obtain a commercial sale endorsement on their permit. The commercial sale endorsement could be added to the Charter/Headboat permit at the time of the permit application or renewal, or anytime thereafter. Only Charter/Headboat permit holders with the endorsement will be allowed to sell HMS although they would not be obligated to sell any HMS. There will be no additional charge for the commercial sale endorsement above the cost of the HMS Charter/Headboat permit; the endorsement will add less than a minute more of labor effort to the normal HMS Charter/Headboat permit process. Those vessels issued an HMS Charter/Headboat permit with a commercial sale endorsement will be categorized as a commercial vessel for the purposes of USCG commercial fishing vessel safety requirements.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and the Reason that Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect Small Entities was Rejected

One of the requirements of an FRFA is to describe any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities. The analysis shall discuss significant alternatives such as: 1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; 2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; 3) use of performance rather than design standards; and 4) exemptions from coverage of the rule, or any part thereof, for small entities.

These categories of alternatives are described at 5 U.S.C. 603 (c)(1)-(4). NMFS examined each of these categories of alternatives. Regarding the first and fourth categories, NMFS cannot establish differing compliance or reporting requirements for small entities or exempt small entities from coverage of the rule or parts of it because all of the businesses impacted by this rule are considered small entities and thus the requirements are already designed for small entities. NMFS examined alternatives that fall under the second category, which requires agencies to consider whether they can clarify, consolidate, or simplify compliance and reporting requirements under the rule for small entities. NMFS does examine alternatives that fall under the second category described above that clarify which HMS charter/headboat vessels should be considered commercial fishing vessels for USCG safety requirements. The use of a performance standard, the third category, to determine whether the USCG commercial fishing safety gear requirements would apply would be too difficult to effectively monitor for enforcement, so they were not considered by NMFS. Thus, NMFS has considered the significant alternatives to the rule and focused on simplifying compliance and

reporting requirements associated with the charter/headboat commercial sale provision and USCG commercial fishing safety gear requirements in order to minimize any significant economic impact of the rule on small entities.

NMFS considered four different alternatives to separate the commercial sale provision from the HMS Charter/Headboat permit, and thus relieve some HMS Charter/Headboat permit holders from the changes in USCG commercial fishing vessel safety requirements. Alternative 1, the status quo/no action alternative, would make no changes to current HMS regulations. Alternative 2, the preferred alternative, would create an endorsement for the HMS Charter/Headboat permit that allows commercial sale of Atlantic tunas and swordfish. Alternative 3 would remove the commercial sale provision of the HMS Charter/Headboat permit. Alternative 4 would create two separate HMS Charter/Headboat permits; one that allows commercial sale of Atlantic tunas and swordfish, and one that does not.

Under the “no action” Alternative 1, NMFS would maintain the current regulations regarding the Atlantic HMS Charter/Headboat permit. Under current regulations at 635.4(b), permit holders taking fee-paying passengers to fish for HMS (i.e. charter boats or headboats) must obtain the HMS Charter/Headboat permit. Since HMS Charter/Headboat permits allow the commercial sale of Atlantic tunas and swordfish, the vessels would now be subject to USCG commercial fishing vessel safety requirements, regardless of whether the permit holder intends to sell HMS. However, without a change to the HMS Charter/Headboat permit regulations, USCG will consider all HMS charter/headboat vessels as commercial fishing vessels that must adhere to the to USCG commercial fishing vessel safety requirements. HMS Charter/Headboat permitted vessels were previously subject to the USCG safety regulations for uninspected passenger

vessels of less than 100 gross tons and carrying six or less passengers, which are less extensive and less costly.

Under the USCG commercial fishing vessel safety requirements, many Atlantic HMS charter/headboats would have to comply with four rule requirements for survival craft, records keeping, examinations and certificates of compliance, and classing of vessels.

The survival craft requirement establishes that all fishing industry vessels operating beyond 3 nautical miles must carry survival craft that will meet a new performance standard for primary lifesaving equipment. The use of “lifeboats or liferafts” are required for commercial vessels, whereas strictly for-hire vessels are only required to have “a survival craft that ensures that no part of an individual is immersed in water.” This means that lifefloats and buoyant apparatus will no longer be accepted as survival craft on any commercial fishing vessel operating beyond 3 nautical miles once the most recent USCG guidance is fully enforced. Some HMS Charter/Headboat permitted vessels would incorrectly be identified as commercial vessels, subject to the more stringent lifeboat/liferaft requirements. USCG estimates that the maximum initial cost of this requirement per vessel would be \$1,740 and have a recurring annual cost of \$300. The records provision requires the individual in charge of a vessel operating beyond 3 nautical miles to maintain a record of lifesaving and fire equipment maintenance. It would be incumbent upon the master/individual in charge of the vessel to maintain these records onboard. The USCG estimates this record keeping requirement would cost \$18 annually per vessel.

The examinations and certificates of compliance provision requires a dockside safety examination at least once every 5 years for vessels, such as HMS charter/headboats that engage in commercial fishing, operating beyond 3 nautical miles with the first exam statutorily required

by October 15, 2015. A “certificate of compliance” will be issued to a vessel successfully completing the exam. Voluntary exams will continue to be promoted for vessel operating inside 3 nautical miles. USCG estimates that the maximum initial cost of this requirement per vessel will be \$600 and have a recurring cost of \$600.

The classing of vessels provision requires the survey and classification of a fishing vessel that is at least 50 feet overall in length, was built after July 1, 2013, and operates beyond 3 nautical miles. It is unlikely that this requirement will impact many Atlantic HMS charter/headboat vessels because the vessels are typically less than 50 feet overall in length.

In sum, all 3,594 Atlantic HMS Charter/Headboat permit holders would face an initial per vessel cost of \$2,358. The annual cost savings per vessel in subsequent years would be approximately \$300 for the survival craft, \$18 for record keeping, and \$120 ($\$600/5$ yrs) for examinations and certificates of completion. The total annual recurring cost saving per vessel would be \$438 for these three requirements. These costs could be higher for some individual vessels that are too small or have too little storage space for the survival craft requirement because those vessels might require extensive modifications to accommodate the storage space for the gear.

Under Alternative 2, the preferred alternative, NMFS would modify the regulations so that the HMS Charter/Headboat permit alone does not allow commercial sale and also create an endorsement for the HMS Charter/Headboat permit that allows commercial sale of Atlantic tunas and swordfish. Currently, charter/headboat vessels are able, though not obligated, to sell swordfish and tunas with an HMS Charter/Headboat permit. Consequently, vessels that hold an HMS Charter/Headboat permit are categorized as commercial fishing vessels subject to USCG

commercial vessel fishing safety requirements if they also possess a state commercial sale permit, regardless of whether the permit holder sells or intends to sell HMS. Under Alternative 2, NMFS would create a “commercial sale” endorsement for the HMS Charter/Headboat permit. Under this action, HMS Charter/Headboat permit holders would be prohibited from selling any catch of HMS unless they apply for a commercial sale endorsement to be added to their permit. The commercial sale endorsement could be added to the Charter/Headboat permit at the time of the permit application or renewal. Only charter/headboat vessels with the endorsement would be permitted to sell HMS although they would not be obligated to sell any HMS. Those vessels holding an HMS Charter/Headboat permit without a commercial sale endorsement would not be categorized as a commercial fishing vessel and would not be subject to the USCG commercial safety gear requirements. Those vessels that hold an HMS Charter/Headboat permit with a “commercial sale” endorsement would be categorized as commercial vessels for the purposes of USCG commercial fishing safety requirements.

The cost savings associated with implementing a commercial endorsement option for Atlantic HMS Charter/Headboat permits would be that approximately 93 percent of the permit holders would not have to comply with the USCG commercial fishing vessel safety requirements, because Atlantic HMS Charter/Headboat permit holders would not be considered commercial fishing vessels unless they were issued the commercial endorsement. These vessels would have no costs associated with the USCG commercial fishing vessel safety requirements. This would result in a reduction in costs per vessel initially of approximately \$1,740 for the survival craft, \$18 for record keeping, and \$600 for examinations and certificates of completion. The total initial costs saved per vessel would be \$2,358. The annual cost savings per vessel in

subsequent years would be approximately \$300 for the survival craft, \$18 for record keeping, and \$120 (\$600/5 yrs) for examinations and certificates of completion. The total annual recurring cost savings per vessel would be \$438 for these three requirements. In addition to the reduced costs associated with complying with the USCG commercial fishing vessel safety requirements for those HMS Charter/Headboat permit holders that do not intend to obtain the endorsement to fish commercially, most Atlantic HMS Charter/Headboat permit holders would have to do nothing different when obtaining their permits unless they want to commercially sell tunas or swordfish.

The approximately 7 percent of Atlantic Charter/Headboat permit holders that want to continue selling tunas and swordfish in addition to complying with the USCG commercial fishing vessel safety requirements, would need to obtain an endorsement for the commercial sale of Atlantic tunas and swordfish. This would likely add less than a minute to the time it takes to obtain the Atlantic HMS Charter/Headboat permit and it would not add to the cost of obtaining the permit. HMS charter/headboat permit holders who sell sharks must obtain a commercial shark permit in addition to an endorsement on an HMS Charter/Headboat permit. NMFS would incur some costs associated with altering the online permit application to accommodate the endorsement, along with some customer service changes.

Under Alternative 3, NMFS would remove the commercial sale provision of the HMS Charter/Headboat permit. Currently, charter/headboat vessels are able, though not obligated, to sell swordfish and tunas as a condition of the HMS Charter/Headboat permit, and may sell sharks if they also have a commercial shark permit. Consequently, vessels that hold an HMS Charter/Headboat permit are currently being categorized by USCG as commercial fishing vessels

and subject to USCG commercial fishing vessel safety requirements if they also hold a state commercial sale permit, regardless of whether the permit holder sells or intends to sell HMS. Under Alternative 3, NMFS would remove the provision that allows commercial sales under the HMS Charter/Headboat permit. Thus, holding an HMS Charter/Headboat permit would no longer categorize a vessel as a commercial fishing vessel for the purposes of USCG regulations. Charter/headboat vessel owners or operators that wish to engage in commercial sale of tunas and swordfish would instead need to obtain an Atlantic tunas General category and/or Swordfish General Commercial permit. The Atlantic Tunas General category and Swordfish General Commercial permits could be held in conjunction with the HMS Charter/Headboat permit. Those vessels with an HMS Charter/Headboat permit that do not intend to sell HMS and do not possess an Atlantic Tunas General category, Swordfish General Commercial, or commercial shark permit (which permit commercial sale) would not be subject to USCG commercial fishing vessel safety requirements.

The benefits of Alternative 3 versus the No Action alternative would be identical to those of Alternative 2. Approximately 93 percent of the permit holders would not have to face the costs associated with the USCG commercial fishing safety requirements, because Atlantic HMS Charter/Headboat permit holders would not be considered to commercially fish. The costs for the fleet would be approximately \$594,216 initially, and then \$231,336 annually thereafter, which are significantly lower than the costs for the fleet under No Action. The 7 percent that wish to engage in commercial sale of tunas and swordfish would instead need to obtain an Atlantic tunas General category and/or Swordfish General Commercial permit. This would cost them \$20 to obtain either the Atlantic Tunas General category permit or the Swordfish General

Commercial permit. For the approximately 252 vessel owners that might obtain these \$20 permits, the total cost would be \$5,040 to \$10,080 annually depending on whether they obtain one or both permits. In addition, vessel owners may need to expend a bit more time to complete the application for these additional permits. NMFS would incur costs associated with the substantial permits site and customer service changes that would be required for this change. NMFS prefers Alternative 2 over Alternative 3 because a commercial sale endorsement requirement more closely matches current fishing practices and would minimize disruptions. Currently, HMS Charter/Headboat permit holders can sell some HMS and Alternative 2 would allow them to continue by simply obtaining an endorsement on their Charter/Headboat permit. Alternative 3 would be more disruptive since it would require fishermen to obtain additional permits. NMFS would need to develop new regulatory text to describe these new requirements and fishery participants would have to learn and adapt to these changes

Under Alternative 4, NMFS would create two separate Atlantic HMS Charter/Headboat permits; one that allows commercial sale of Atlantic tunas and swordfish, and one that does not. Currently, charter/headboat vessels are able, though not obligated, to sell swordfish and tunas as a condition of the HMS Charter/Headboat permit. Consequently, vessels that hold an HMS Charter/Headboat permit could be categorized as commercial fishing vessels and subject to USCG commercial fishing vessel safety requirements, regardless of whether the permit holder sells or intends to sell HMS. Under Alternative 4, NMFS would create two separate HMS Charter/Headboat permits; one that would allow commercial sale of HMS, and one that would not. Those vessels holding an HMS Charter/Headboat permit that does not allow commercial sale would not be categorized as a commercial fishing vessel and would not be subject to the

USCG commercial fishing vessel safety requirements. Those vessels that hold an HMS Charter/Headboat permit that allows commercial sale would be categorized as commercial vessels for the purposes of USCG commercial fishing vessel safety requirements.

The benefits of Alternative 4 versus the No Action alternative would be identical to those of Alternative 2. Approximately 93 percent of the permit holders would not have to face the costs associated with the USCG commercial fishing safety requirements, since Atlantic HMS Charter/Headboat permit holders would not be considered commercial fishing. The costs for the fleet would be approximately \$594,216 initially, and then \$231,336 annually thereafter, which is significantly lower than the costs for the fleet under No Action. Under this alternative, each of the 3,594 Atlantic HMS Charter/Headboat permit holders would have to determine which type of Charter/Headboat permit they wish to obtain for the year, and all of charter/headboat vessel owners would have to learn the new permit process. Unlike Alternative 3, there would be no additional costs associated with obtaining a commercial permit, because under this alternative, each would pick either the no-sale HMS Charter/Headboat permit or the commercial sale Charter/Headboat permit. NMFS would incur costs associated with the substantial permits site and customer service changes that would be required for this change. NMFS would need to develop new regulatory text to describe these two new permits and fishery participants would have to learn of and adapt to these changes.

List of Subjects in 50 CFR Part 635

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

Dated: December 1, 2017.

Alan D. Risenhoover,

Acting 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 § 635.2, add a new definition for “Charter/headboat commercial sale endorsement” in alphabetical order to read as follows:

§ 635.2 Definitions.

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Charter/headboat commercial sale endorsement means an authorization added to an HMS Charter/Headboat permit that is required for vessels that sell or intend to sell Atlantic tunas, sharks, and swordfish, provided that all other requirements in this part are also met.

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3. In § 635.4:
 - a. Revise paragraph (a)(5);
 - b. Add paragraph (b)(3);
 - c. Revise paragraphs (d)(1) and (2);
 - d. Remove the introductory text of paragraph (f); and
 - e. Revise paragraphs (f)(1), (f)(2), and (m)(2).

The addition and revisions read as follows:

§635.4 Permits and fees.

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(a) * * *

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

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(b) * * *

(3) The owner of a charter boat or headboat that intends to sell Atlantic tunas or swordfish must obtain a commercial sale endorsement for the vessel's HMS Charter/Headboat permit. The owner of a charter boat or headboat that intends to sell Atlantic sharks must obtain a commercial sale endorsement for the vessel's HMS Charter/Headboat permit at the time of

permit renewal or when the permit is obtained and must also obtain any applicable Atlantic commercial shark permits. A vessel owner that has obtained an HMS Charter/Headboat permit without a commercial sale endorsement is prohibited from selling any Atlantic HMS.

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(d) * * *

(1) The owner of each vessel used to fish for or take Atlantic tunas commercially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas, HMS Angling, HMS Charter/Headboat, or an HMS Commercial Caribbean Small Boat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit or permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, Purse Seine, or Trap category of the Atlantic Tunas permit, a valid HMS Charter/Headboat permit with a commercial sale endorsement, or an HMS Commercial Caribbean Small Boat permit.

* * * * *

(f) *Swordfish vessel permits.* (1) Except as specified in paragraphs (n) and (o) of this section, the owner of a vessel of the United States used to fish for or take swordfish

commercially from the management unit, or on which swordfish from the management unit are retained or possessed with an intention to sell, or from which swordfish are sold, must obtain an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, or one of the following swordfish permits: A swordfish directed limited access permit, swordfish incidental limited access permit, swordfish handgear limited access permit, or a Swordfish General Commercial permit. These permits cannot be held in combination with each other on the same vessel, except that an HMS Charter/Headboat permit with a commercial sale endorsement may be held in combination with a swordfish handgear limited access permit on the same vessel. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are the HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section (and only when on a non for-hire trip), the Swordfish General Commercial permit issued under paragraph (f) of this section, a swordfish limited access permit issued consistent with paragraphs (l) and (m) of this section, or permits issued under paragraphs (n) and (o) of this section.

* * * * *

(m) * * *

(2) *Shark and swordfish permits.* A vessel owner must obtain the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section and/or a Federal commercial smoothhound permit issued under paragraph (e) of this section; or

an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, if The vessel is used to fish for or take sharks commercially from the management unit; sharks from the management unit are retained or possessed on the vessel with an intention to sell; or sharks from the management unit are sold from the vessel. A vessel owner must obtain the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, a Swordfish General Commercial permit issued under paragraph (f) of this section, an Incidental HMS Squid Trawl permit issued under paragraph (n) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, which authorizes a Charter/Headboat to fish commercially for swordfish on a non for-hire trip subject to the retention limits at §635.24(b)(4) if: The vessel is used to fish for or take swordfish commercially from the management unit; swordfish from the management unit are retained or possessed on the vessel with an intention to sell; or swordfish from the management unit are sold from the vessel. The commercial retention and sale of swordfish from vessels issued an HMS Charter/Headboat permit with a commercial sale endorsement is permissible only when the vessel is on a non for-hire trip. Only persons holding non-expired shark and swordfish limited access permit(s) in the preceding year are eligible to renew those limited access permit(s). Transferors may not renew limited access permits that have been transferred according to the procedures in paragraph (l) of this section.

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4. In § 635.19, revise paragraph (d)(4) to read as follows:

§ 635.19 Authorized gears.

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(d) * * *

(4) Persons on a vessel issued a permit with a shark endorsement under § 635.4 may possess a shark only if the shark was taken by rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit with a commercial sale endorsement (with or without a shark endorsement) and a Federal Atlantic commercial shark permit may possess sharks taken by rod and reel, handline, bandit gear, longline, or gillnet if the vessel is engaged in a non for-hire fishing trip and the commercial shark fishery is open pursuant to § 635.28(b).

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5. In § 635.22, revise the introductory text of paragraph (f), and paragraphs (f)(1) and (2) to read as follows:

§ 635.22 Recreational retention limits.

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(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 an HMS Charter/Headboat permit with a commercial sale endorsement under § 635.4(b) and only when on a non for-hire trip; a directed, incidental or handgear limited access swordfish permit under § 635.4(e) and (f); a Swordfish General Commercial permit under § 635.4(f); an Incidental HMS Squid Trawl permit under § 635.4(n); or an HMS Commercial Caribbean Small boat permit under § 635.4(o).

(1) When on a for-hire trip as defined at § 635.2, 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. When such vessels have been issued a commercial sale endorsement and are on a non for-hire trip, they must comply with the commercial retention limits for swordfish specified at § 635.24(b)(4).

(2) When on a for-hire trip as defined at §635.2, 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. When such vessels have been issued a commercial sale endorsement and are on a non for-hire trip, they may land no more than the commercial retention limits for swordfish specified at § 635.24(b)(4).

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6. In § 635.23, revise paragraph (c)(3) to read as follows:

§ 635.23 Retention limits for bluefin tuna.

* * * * *

(c) * * *

(3) When fishing other than in the Gulf of Mexico and when the fishery under the General category has not been closed under § 635.28, a person aboard a vessel that has been issued an HMS Charter/Headboat permit with a commercial sale endorsement may fish under either the retention limits applicable to the General category specified in paragraphs (a)(2) and (3) of this section or the retention limits applicable to the Angling category specified in paragraphs (b)(2) and (3) of this section. The size category of the first BFT retained will determine the fishing category applicable to the vessel that day. A person aboard a vessel that

has been issued an HMS Charter/Headboat without a commercial sale endorsement permit may fish only under the retention limits applicable to the Angling category.

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7. In § 635.24, add introductory text to paragraph (b)(4), and revise paragraph (b)(4)(ii) to read as follows:

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

* * * * *

(b) * * *

(4) Persons aboard a vessel that has been issued a Swordfish General Commercial permit or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip) are subject to the regional swordfish retention limits specified at paragraph (b)(4)(iii) of this section, which may be adjusted during the fishing year based upon the inseason regional retention limit adjustment criteria identified in paragraph (b)(4)(iv) of this section.

* * * * *

(ii) Vessels that have been issued a Swordfish General Commercial permit or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip), as a condition of these permits, may not possess, retain, or land any more swordfish than is specified for the region in which the vessel is located.

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8. In § 635.27, revise paragraph (a)(1)(i) introductory text, and paragraphs (c)(1)(i)(A) and (B) to read as follows:

§ 635.27 Quotas.

(a) * * *

(1) * * *

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit with a commercial sale endorsement has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold under the General category quota is 466.7 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed swordfish limited access permit, a swordfish handgear limited access permit, a HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial open access permit, or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip) has been issued or is required to have been issued is counted against the directed fishery quota. The total baseline annual fishery quota, before any adjustments, is 2,937.6 mt dw for each fishing year. Consistent with applicable ICCAT recommendations, a portion of the total baseline annual fishery quota may be used for transfers to another ICCAT contracting party. The annual directed category quota is calculated

by adjusting for over- or under harvests, dead discards, any applicable transfers, the incidental category quota, the reserve quota and other adjustments as needed, and is subdivided into two equal semi-annual periods: one for January 1 through June 30, and the other for July 1 through December 31.

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental swordfish limited access permit, an incidental HMS Squid Trawl permit, an HMS Angling permit, or an HMS Charter/Headboat permit (and only when on a for-hire trip) has been issued, or a swordfish from the North Atlantic stock caught after the effective date of a closure of the directed fishery from a vessel for which a swordfish directed limited access permit, a swordfish handgear limited access permit, a HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial open access permit, or an HMS Charter/Headboat permit with a commercial sale endorsement (when on a non for-hire trip) has been issued, is counted against the incidental category quota. The annual incidental category quota is 300 mt dw for each fishing year.

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9. In § 635.31, revise paragraphs (a)(1) and (c)(6) to read as follows:

§635.31 Restrictions on sale and purchase.

(a) * * *

(1) A person that owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit with a commercial sale endorsement; a valid General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas; or a valid HMS Commercial Caribbean Small Boat

permit issued under this part, and the appropriate category has not been closed, as specified at §635.28(a). However, no person may sell a bluefin tuna smaller than the large medium size class. Also, no large medium or giant bluefin tuna taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may be sold (see §635.23(c)). A person may sell Atlantic bluefin tuna only to a dealer that has a valid permit for purchasing Atlantic bluefin tuna issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

* * * * *

(c) * * *

(6) A dealer issued a permit under this part may not first receive silky sharks, oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from an owner or operator of a fishing vessel with pelagic longline gear on board, or from the owner of a fishing vessel issued both a HMS Charter/Headboat permit with a commercial sale endorsement and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

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10. In § 635.71, revise paragraph (a)(2) and add paragraph (a)(62) to read as follows:

§635.71 Prohibitions.

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(a) * * *

(2) Fish for, catch, possess, retain, land, or sell Atlantic HMS without the appropriate valid vessel permit with the appropriate endorsements, LAP, EFP, scientific research permit, display permit, chartering permit, or shark research permit on board the vessel, as specified in §§ 635.4 and 635.32.

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(62) A vessel owner or operator that has an HMS Charter/Headboat permit without a commercial sale endorsement is prohibited from selling any Atlantic HMS.

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[FR Doc. 2017-26275 Filed: 12/5/2017 8:45 am; Publication Date: 12/6/2017]