

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 10/31/2008

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Suzanne Hilding
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 07/30/2008

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200807-0648-004
AGENCY ICR TRACKING NUMBER:
TITLE: Highly Migratory Species Vessel Logbooks and Cost-Earnings Data Reports
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0371

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 10/31/2011

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	151,356	30,611	76,000
New	145,117	29,459	72,679
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	-6,239	-1,152	-3,321
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official:

Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Highly Migratory Species Vessel Trip Reports with Catch	88-191	Trip summary forms and instructions	
HMS Trip reports without catch and no-trip reports	88-191	Trip summary forms and instructions	
Cost-earnings data trip reports and annual expenditures form	88-191, NA	Trip summary forms and instructions, Annual expenditure form	

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
HIGHLY MIGRATORY SPECIES VESSEL LOGBOOKS
AND COST-EARNINGS DATA REPORTS
OMB CONTROL NO. 0648-0371**

INTRODUCTION

This statement is submitted in support of a renewal of an information collection subject to the Paperwork Reduction Act that has been previously approved by Office of Management and Budget (OMB). This renewal would continue the successful Highly Migratory Species (HMS) Vessel Logbook program. Adjustments in this renewal would: 1) decrease the overall number of respondents based on recent information, 2) decrease the number of Atlantic Tunas, shark, swordfish and HMS Charter/Headboat permit holders based on recent information, 3) increase the number of Dolphin/Wahoo commercial and Charter/Headboat permit holders, and 4) decrease the burden estimate associated with the cost-earnings and logbook forms. The legislative authority to collect data from the various sectors of the economy that harvest marine resources in the exclusive economic zone is the Magnuson-Stevens Fishery Conservation and Management Act (**Magnuson-Stevens Act**) and the **Atlantic Tunas Convention Act** (ATCA). Under this dual authority, the Secretary of Commerce has promulgated rules that require specific types of record keeping and data submissions.

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

Logbook forms

The National Marine Fisheries Service (NMFS) proposes to renew the information collection requirements of the Atlantic HMS Vessel Logbook program. This program is necessary to allow NMFS to manage Atlantic HMS consistent with legal mandates in the Magnuson-Stevens Act, ATCA, National Environmental Policy Act (NEPA), and others. Without the information collected through this mandatory logbook program, NMFS will not have the information needed to conduct stock assessment, monitor quotas, or prevent overfishing. Based on recent information regarding the number of permit holders, NMFS is decreasing the estimated number of respondents for the charter/headboat (from 4,167 to 3,941), Atlantic tuna fisheries (24,575 to 24,500), shark fisheries (610 to 527), and swordfish fishery (400 to 340), and increasing the number of respondents for dolphin/wahoo commercial and charter/headboat fisheries (from 106 to 193). This information collection would require vessel logbooks for 10 percent of all Atlantic Tunas (General, Harpoon, and Purse Seine Categories) and HMS Angling permit holders and 100 percent for all shark, swordfish, HMS charter/headboat, and dolphin/wahoo commercial and charter/headboat permit holders.

In 1999, NMFS issued a Fishery Management Plan for Atlantic swordfish, sharks and tunas (HMS FMP), an amendment to the FMP for Atlantic Billfish (Billfish FMP Amendment), and re-issued HMS regulations in a consolidated form at **50 CFR part 635**. In implementing the HMS FMP and the Billfish FMP Amendment, NMFS undertook a comprehensive approach to data collection for all HMS fisheries and made logbook programs existing at that time mandatory for all HMS permit holders if selected. While this was already true for shark and swordfish vessels

and tuna vessels that took swordfish and sharks, it was not true for tuna vessels that used gear types other than longline (e.g., rod and reel, harpoon, purse seine) or for charter/headboats. To improve data collection on fishing effort and catch in the tuna fisheries, NMFS selected ten percent of all permitted tuna vessels for the logbook reporting program including a portion from all gear categories. Additionally, all charter/headboat vessels fishing for HMS were selected for the logbook program. The HMS FMP and Billfish FMP were consolidated in 2006 which also maintained these data collection requirements. NMFS proposes to maintain these selection rates and has provided new estimates of burden hours based on new information regarding the number of permit holders. However, any selected tuna vessels or HMS charter/headboats already reporting through the Northeast Regional Office Multispecies logbook (OMB Control No.: 0648-0212) or other Southeast Regional Office logbooks (OMB Control No. 0648-0016) could continue to use those logbooks to meet the HMS requirement.

Under 50 CFR part 635.5, selected vessel operators are required to complete logbook forms within 24 hours of a set and submit the forms no later than the seventh day after the sale of the off-loaded catch from a trip. Selected vessels include all shark, swordfish, charter/headboats, dolphin/wahoo, and approximately 10 percent of all tuna vessels. The forms submitted consist of a fishing report (catch, discards, effort and fishing area data), or a no-fishing report if no fishing took place during the monthly reporting period. The 24 hour requirement results in more timely and accurate reporting of catch and bycatch in HMS fisheries. It also facilitates enforcement of catch restrictions both at sea and at the dock.

The U.S. fishery sectors that fish directly/indirectly for Atlantic tuna, shark, swordfish, and billfish that are impacted by the Consolidated HMS FMP record keeping requirements are as follows:

- For-hire Charterboats
- For-hire Headboats
- Longline Vessels
- Private/Recreational Angling Vessels
- Commercial Handgear Vessels
- Purse Seine Vessels
- Harpoon Vessels
- Gillnet Vessels
- Vessels using other gear

The HMS logbook is also used to report catches of dolphin and wahoo by commercial and charter/headboat fisheries.

The logbook package is distributed to all selected vessels and includes an instruction sheet, no-fishing reports, trip summary forms and costs-earnings forms (combined, see below), annual expenditure form, and pre-addressed postage-paid envelopes. Copies of tally sheets from dealers are required for all trips from which fish are sold. The logbook collects the following information: name and address of owner; vessel name and permit number; fishing location; gear; measures of effort; and number and disposition of catch (discarded-dead, alive, tagged, or kept) for each HMS caught. Information on the number and size is used to assess total and average weight of the target species being harvested. The effort expended allows estimation of Catch Per Unit Effort (CPUE), a crucial component of scientific stock assessments. Additionally,

information on discards is needed to account for total mortality and to evaluate bycatch reduction efforts required under the Magnuson-Stevens Act.

There are several forms used to report catch and effort data. A set form is provided for the fishermen to record (and submit) the catch and effort information for daily trips or, as applicable, for sets (deployment and retrieval of gear as for nets, longlines). To provide the information on the entire trip, fishermen are provided a trip summary form (combined with cost-earnings form). This form eliminates the need to record certain information that is redundant for every set or day of the fishing trip, e.g., the start and ending dates for the trip, the unloading site, etc. Cost-earnings data will be collected from a random selection of approximately 20 percent of the shark, swordfish, and charter/headboat fleet and 10 percent of the Atlantic Tunas and HMS Angling permit holders.

The HMS reporting regulations also require fishermen to include a copy of the unloading weigh-out receipt (i.e., tally sheet) for each trip where fish are sold. This receipt is provided by the seafood dealer as a normal business practice and does not constitute any additional reporting burden. However, because each species is weighed individually and the individual weights are listed on the tally sheet, these data provide the size frequency data that are a fundamental part of a stock assessment for these species. If the tally sheets were not provided, NMFS would have to use a very costly on-site sampling program to collect the same size frequency data.

This logbook program supplements data that are collected in the NMFS Marine Recreational Fisheries Statistics Survey (MRFSS), the For-Hire Survey (FHS), the Large Pelagic Survey (LPS), the Automated Landings Reporting System (ALRS), and the commercial landing cards for Atlantic bluefin tuna. Each of these information collections is discussed in detail below in relation to each of the applicable fisheries.

For-Hire Charterboats (All HMS)

The MRFSS is a survey designed to provide regional and state-wide estimates of recreational catch for the entire spectrum of marine fish species in the Atlantic. It was not designed to account for the unique characteristics of HMS recreational fisheries, although information on these species is frequently obtained by the survey. The MRFSS combines dockside intercept surveys with a random-dial telephone survey, restricted to coastal counties from Maine through Louisiana. The MRFSS does not cover the State of Texas nor does it cover the headboat fisheries from Virginia through Louisiana. Therefore, complete data about the headboat sector of the fishery are not collected under the MRFSS.

The ALRS collects data on total landings of recreationally-caught bluefin tuna (i.e., not sold). In 1997, NMFS instituted a mandatory catch reporting system to supplement monitoring of the recreational fishery for bluefin tuna. Although this call-in requirement is an integral part of the recreational monitoring system, it has not replaced traditional survey methods for data collection in the recreational fishery.

Important distinctions between the MRFSS, FHS, LPS, and Automated Catch Reporting System (ACRS) data collection activities and the charterboat logbook program are that the data are collected from different people for each individual program, and the data are collected over different time frames. Dock samplers, under contract to NMFS for the MRFSS, intercept anglers

as they have completed their charterboat fishing trips, and collect catch information from those anglers. Dock samplers also under contract to NMFS for the FHS; intercept vessel captains or the crew of charter vessels for the total catch data. Conversely, the LPS samplers only interview vessel captains or the crew of vessels with HMS charter headboat (CHB) permits for the total catch data. The ACRS collects only recreational bluefin tuna landing data, not incorporating catch, effort, or other HMS data.

In many fisheries, CPUE measures provide an important indication of stock size. Because charter vessels participate extensively in HMS fisheries, it is critical that effort and CPUE data be provided in order for a comprehensive stock assessment to be prepared. It should also be noted that CPUE data for this sector of the fishery has provided time series data to calculate an index of abundance for several HMS, and has been an integral part of the annual stock assessments for these species. Due to concern about respondent burden, the aforementioned survey techniques do not collect all data elements that might help to standardize effort and CPUE indices, yet they are the sole source of information at this time. Logbooks provide a more comprehensive data set.

The charter logbook collects information similar to that currently collected from the billfish tournament reporting form and the pelagic logbook used for commercial gear. All collected information is kept confidential. Vessels are required to complete the HMS logbook if their vessel is selected and they are notified in writing; NMFS selects all HMS longline and charter/headboat permitted vessels and 10 percent of Atlantic Tuna and HMS Angling permitted vessels. NMFS is evaluating the use of logbook data from charterboats, rather than survey data, for use in stock assessments.

For-Hire Headboats (All HMS)

Headboat fishing is considered recreational fishing, and like the charterboat sector, the logbook program collects effort and CPUE data from this small and specialized sector of the recreational fishing industry. However, an HMS Charter/Headboat permit is considered a commercial permit for the purposes of Atlantic tunas because the owner/operator is allowed to sell any tuna caught, subject to catch regulations. In the southeast, unlike the charterboat sector, sampling from headboat trips are not included in the MRFSS, however, it is included in ACRS. Total catch and effort for all HMS headboat fishing activities are collected from the headboat logbook program. The need for good quality, representative CPUE and species composition data from this sector of the recreational fishery is the primary reason that this logbook program was implemented. The headboat logbook collects information similar to that of the charter logbooks which are described above.

Longline Vessels (Tuna, shark, swordfish)

The objective of the logbook program for this fishery is to provide detailed, comprehensive data on catches, discards, effort and fishing location from fishermen that catch HMS, either as the primary (i.e., target) species or as secondary or incidental catch. The data collected is an integral part of the annual stock assessment for species. Because the variability in the amount of catches between longline sets is significant, scientists need the data recorded for individual sets. This

includes vessels in the shark and swordfish fisheries along with the Atlantic tunas incidental fishery. All permit holders are selected; NMFS provides all materials necessary for reporting.

Private/Recreational Vessels (Tuna only)

NMFS currently conducts statistical surveys of portions of the recreational fisheries. The primary survey vehicles of the recreational sector conducted by NMFS are the MRFSS and LPS. In addition, census data on landings of bluefin tuna are obtained through the ACRS (see charter vessel discussion). The MRFSS is designed to provide estimates of recreational catch for the entire spectrum of marine fish species in the Atlantic ranging from Maine through Louisiana. It was not designed to account for the unique characteristics of HMS recreational fisheries, although information on these species is frequently obtained by the survey. The LPS was originally designed to estimate the annual recreational catches of bluefin tuna from Virginia through New England, and the LPS collects catch information on other HMS at certain times and in certain areas. The purpose of the logbook is to provide detailed, comprehensive data on catches, landings, discards, effort and fishing location from fishermen that target HMS. Ten percent of current recreational tuna permit holders will be chosen at random to complete the logbook for one season. Selection will be stratified by geographic area and permit type (Atlantic HMS Angling and Atlantic Tunas or General Category). Those chosen will be notified by NMFS prior to the season opening. NMFS also provides all materials necessary for reporting. The logbook supplements and enhances these surveys to provide more detail than currently collected through the surveys.

The objective of the logbook program for this fishery is to provide detailed, comprehensive data on catches, effort and fishing location from fishermen that catch HMS as the primary (i.e., target) species. (Note, harpoon and hook and line fishermen complete one logbook report per trip, which is usually a day in duration). All permit holders are selected; NMFS provides all materials necessary for reporting.

Purse Seine Vessels (Tuna only)

The objective of the logbook program for the purse seine fishery is to provide detailed, comprehensive data on catches, discards, effort and fishing location from fishermen that catch HMS as a target species. This data will supplement and enhance the data currently collected through dealer landing reports. The ACRS, LPS, MRFSS, and FHS do not apply to purse seine vessels.

Harpoon Vessels (Tuna, shark, and swordfish)

This program enables NMFS to more accurately monitor the Harpoon fishery by collecting information pertaining to the species targeted and effort expended which may allow an estimation of CPUE. Information from Harpoon category vessels are not currently used for CPUE, particularly due to the lack of data on several important factors that affect fishing success. Detailed logbook information enhances NMFS' ability to create a CPUE index by enabling standardization of effort. The LPS, MRFSS, and FHS do not apply to harpoon vessels.

Gillnet Vessels (Shark)

The objective of the logbook program for this fishery is to provide detailed, comprehensive data on catches, discards, effort and fishing location from fishermen that catch shark, as the primary (i.e., target) species. The data collected is an integral part of the annual stock assessment for HMS because the variability in the amount of catches between drift gillnet sets is significant, and scientists need the data recorded for individual sets. This collection affects vessels in the directed shark fishery. The LPS, MRFSS, and FHS do not apply to shark gillnet vessels.

Indications from several stock assessments are that many shark species are being overfished. CPUE and good data on total effort will greatly assist NMFS to further manage these stocks. Logbook data also provide better data on the catches of individual species of sharks. Prior to the implementation of the logbook program, landings (purchases) data that were reported by seafood dealers were the only data available on the quantity of sharks that were being harvested. Landings data are usually reported by generic categories, i.e., sharks, and not by individual species. Thus, logbooks are providing better data on species composition.

Dolphin/Wahoo Commercial and Charter/Headboat

Prior to 2004, there was no Federal permit and, therefore, no reporting requirements for dolphin and wahoo. Logbooks are a source of comprehensive and accurate data necessary for estimating fishing mortality. Without sufficient data, it was difficult to determine the stock status of dolphin and wahoo. Some data was available because some vessels reported dolphin and wahoo if the vessel held another Federal permit, such as the South Atlantic snapper-grouper, king mackerel, or swordfish permits. Some commercial fishermen that specifically targeted dolphin and wahoo did not have any Federal permits and were not reporting catches of dolphin and wahoo. These “directed” fishermen probably have a higher CPUE than fishermen that catch dolphin and wahoo incidentally with other species, which made it important to collect the CPUE data from the fishermen catching, but not reporting, their fishing activity for dolphin and wahoo.

Once the dolphin/wahoo Federal permit was in place, all vessels targeting dolphin/wahoo were required to submit a logbook. Dolphin/wahoo permit holders that do not hold any other type of Federal permit are required to report their catch in the HMS logbook. The HMS logbook was selected to minimize the number of Federal logbooks and dolphin and wahoo were already listed in the HMS logbook. Those vessels already reporting in another Federal logbook do not have any additional reporting burden as long as the dolphin and wahoo catches were recorded in the other Federal logbook.

Cost-earnings form

NMFS proposes to continue the information collection requirements of the HMS Vessel Logbook such that the economic portion of the Trip Summary Form would be mandatory for selected vessels. NMFS will collect the cost-earnings data from a random selection of approximately 20 percent of the shark, swordfish, and charter/headboat fleet and 10 percent of the Atlantic Tuna and HMS Angling permit holders who were selected to report in the catch report forms. If selected, owners and operators of vessels with Federal permits for highly migratory species (tunas, swordfish, and sharks) must maintain and submit a trip expense and earnings report within 30 days of completing the fishing trip. The information on the cost-

earnings form includes the price and amount of fuel, bait, lightsticks, ice, and groceries used per trip, the total cost of the trip, the number of crew, the shares the owner, captain, and crew obtained from the trip, and for charter/headboats only, the number of passengers, the total fare receipts, and total costs for consumer goods and concession goods. NMFS also proposes to continue collecting economic data through an Annual Expenditures Form, which would be mandatory for selected vessels.

Mandatory submission of the economic data is needed to accurately assess the economic impacts of proposed fishery management regulations on fishermen and their communities as required by NEPA, Executive Order (E.O.) 12866, the Regulatory Flexibility Act (RFA), and National Standards 7 and 8 of the Magnuson-Stevens Fishery Conservation and Management Act. When the cost-earnings summary was initiated in 1996, there was a relatively high voluntary response rate (approximately 24 percent of all trips). However, in one year, the overall response rate fell to approximately 11 percent. In 1999, the overall response rate was approximately 10 percent. Additionally, analysis of the data revealed that self-selection resulted in an uneven data collection, with little to no information existing for some areas and a lot of information for other areas. In sum, a voluntary program resulted in a data collection that could not be used to represent all segments of the fleet.

Mandatory collection of trip-specific cost-earnings data was implemented in 2002 on a trip level and annual level. Overall, trip level economic data improves estimates of profitability and cash-flow; necessary elements for the regulatory impact analyses required by RFA and E.O. 12866. In addition, it improves estimates of the net benefits associated with different fishing areas, which is crucial for assessing effects of area and seasonal closures on fishermen. This economic information allows NMFS to better achieve resource conservation goals while mitigating economic impact on the fishermen, the vessel services sector, and dependent communities.

Additional impetus for mandatory economic data collection has resulted from the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA to make compliance with the analytical requirements subject to judicial review, and the subsequent revision of NMFS' guidelines for economic analysis of fishery management actions, which focuses on the profitability of firms over both the short- and long-term. Analyses that can fully withstand legal challenges can only be performed with representative firm level economic data.

For some data, it is not necessary to collect information on a per-trip basis. Thus, the Annual Expenditures Form includes information such as the cost of repairs and maintenance, all fishing supplies, insurance, purchase of capital, boat dockage, loan payments, and business taxes. This form must be completed by fishermen who were selected for the cost-earnings reports. Fishermen will be required to submit the annual form by April 15 of the following calendar year so that they can use their accounting records as organized during the preparation of their income tax returns.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The information requested on logbooks will be used by various offices of NMFS, Regional Fishery Management Council staff, the United States (U.S.) Coast Guard, and state fishery agencies under contract to NMFS to develop, implement, and monitor fishery management strategies. Analyses and summarizations of logbook and cost-earnings data are used by NMFS, the Regional Councils, the Departments of State and Commerce, OMB, the fishing industry, Congressional staff and the public, to answer questions about the nature of our fisheries resources. Information on endangered species or marine mammals and their incidental take is required from those fisheries where such interactions are likely to occur. These data will help NMFS meet its requirements under the Marine Mammal Protection Act and the Endangered Species Act. If reports of such occurrences are common, NMFS can proceed to minimize the harvest of such species through the promulgation of regulations.

The data will serve as input for a variety of analyses, such as: biological opinions and stock assessments; E.O. 12866 regulatory impact analyses; quota and allocation selections and monitoring; economic profitability profiles; trade and import tariff decisions; and identification of ecological interactions among species.

The logbook evolved as a means of collecting data from specific user groups within fisheries that are managed under Federally implemented FMPs. For HMS, the Southeast Fisheries Science Center (SEFSC) has the responsibility for both preparation of stock assessments (estimation of maximum sustainable yield and/or other indexes of biomass) and collection of the scientific data that are required to perform the assessments. A secondary data collection responsibility is to provide information for HMS that is necessary to routinely monitor and evaluate the conditions in the fisheries under Federal management.

Similar data elements are required for most of the logbooks, although a few variables may be specific to one fishery or type of management technique controlling harvest.

a) Information such as name, signature, and address of operator and owner is used to identify the respondent and the legal entity controlling the fishing practices of the vessel. This latter requirement is essential in monitoring the compliance of the reporting requirement, where revocation of the operator's permit or fines is involved. Because many vessels are owned by corporations, identification of owner and operator on the logbook form allows NMFS to sanction the company as well as the individual vessel operator as necessary or required by the regulations. Information on the permit is obviously essential to monitoring reporting compliance.

b) Data on date of departure, date returned, days fished, duration of tows or sets, units of gear and mesh size used are all designed to quantify actual fishing effort. Fishing effort is needed to standardize differences in productivity among vessels or fishing grounds by establishing a rate catch per unit time. These data allow comparisons over time, area and gear type of catches made by a variety of harvesters. Comparisons of catch and CPUE over time are significant indicators of the biological status of the fisheries. Declining CPUE, especially if data on fishing effort are sufficiently detailed to adjust for changes in effort, can provide critical information on the status

of the stock, i.e., that the level of harvest is beyond the level that is sustainable by growth and reproduction of the stock.

c) Area fished loran bearing, depth of fishing, latitude and longitude are variables that are used to establish fishing locations. This information is related to other oceanographic and biological information to predict species availability and likely future abundance. For example, location of capture can be correlated to sea surface temperature measured by satellite to predict possible migration patterns. In addition, area or zone fished is used to cross reference locations where fishing is not permissible (such as closed areas).

d) Species information such as landings, discards, and sizes of fish is the basic measure of fishing success from which fishermen, biologists, and economists infer conclusions about the status of the fishery. Landings information is also needed because controlling the quantity of fish harvested is often the means for ensuring that harvests can be replenished over time.

e) Name of buyer, dealer number, and port of landing are data used to cross reference the quantity of fish caught with the quantity that is handled (processed) by the market. The important cross reference is between the total amount of catch, and the respective sizes of individual fish. It would be impossible for fishermen to measure individual fish as they are being caught and stored on board the vessels. However, many species of fish, especially the large pelagics, are individually weighed by the dealers and these weights are recorded as part of the sales transactions. By knowing the dealer that purchased the fish, cross references can be made between data submitted by the dealers and the data from the logbooks. Combining the data in this manner provides greater precision on the CPUE estimates and more information on the sizes of catches by location and time.

f) Cost-earnings information has been and will continue to be used by various NMFS' economists, Regional Fishery Management Council staff, and state fishery agencies under contract to NMFS to develop, implement, and monitor fishery management strategies. These data will be used to assess community impacts, conduct cost-benefit analyses, and, in particular, develop regulatory impact analyses of proposed regulations as required by the RFA and suggested in NMFS' guidelines for economic analyses. Note that under the RFA definition, all fishing operations in HMS fisheries are defined as small entities.

The data elements collected on the cost-earnings trip summary form include variable trip costs (fuel, bait, ice, light sticks, groceries, etc.), total shared costs and total costs. The specific form and instructions to be used are included in this submission.

The data elements collected on the Annual Expenditures Form include fishing gear, repair and maintenance expenses, insurance, dockage, etc. The specific form and instructions to be used are included in this submission.

Although the information collected is not expected to be disseminated directly to the public, it may be used in the development or review of fishery management plans, and is therefore subject to National Oceanic and Atmospheric Administration (NOAA)'s Information Quality Guidelines. As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and

electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

No improved information technology has been identified as a practical means for reducing the burden on the public. In the future, NMFS hopes to evaluate the use of electronic logbooks linked to vessel monitoring systems (VMS). Since the cost-earnings forms are a relatively small part of a larger data submission, there will be no change/improvement in the reporting process at this time.

4. Describe efforts to identify duplication.

The Magnuson-Stevens Act's operational guidelines require each FMP and regulatory amendment to evaluate existing state and Federal laws that govern the fisheries in question, and the findings are made part of each FMP or regulatory amendment. Each Regional Fishery Management Council membership is comprised of state and Federal officials responsible for resource management in their area. These evaluations enable NMFS to identify other collections that may be gathering the same or similar information. In addition, each FMP undergoes extensive public comment periods where potential applicants review the proposed information collection requirements. Therefore, NMFS is aware of all similar collections.

Detailed information on CPUE, effort and species composition by gear and area may be available from other sources. Some states have logbook programs to collect similar information as required in the Federal HMS logbook. Anyone filling out state logbooks with similar data fields would not be required to complete and submit a Federal logbook under this collection. The state logbook would suffice in lieu of the Federal, although a copy of the state logbook would need to be submitted to NMFS.

Likewise, selected respondents who indicate that they are participating in other Federal logbook programs under other FMPs, would be exempt from the requirements of this collection, provided copies of the other logbook are submitted on a timely basis. The number of dolphin/wahoo permits in Table 1 are vessels that do not hold a Federal permit for another Federal fishery; therefore these permit holders are not reporting in any other Federal logbook.

Some owners of tuna vessels selected for logbook coverage may participate in the bluefin tuna fishery. Bluefin tuna landings must be reported through the automated catch reporting system approved under OMB Control No. 0648-0328, thus there would be some duplication. However, the ACRS report is limited to harvest of bluefin tuna while the logbook would collect information on fishing effort and catch of all species. Therefore, the level of duplication would be extremely small and is warranted due to the need to collect real-time harvest information for bluefin tuna.

Trip expense data is not being collected by another state or Federal office for any gear group included in the HMS fishery. To the extent that vessels with HMS permits are reporting via other Federal fisheries logbooks (e.g., NE Multispecies Control No. 0648-0212) and cost-earnings information is collected, vessel operators will be relieved of the duplicative requirements.

The Atlantic Coastal Cooperative Statistics Program (ACCSP) is conducting a pilot program that will collect economic information from randomly selected commercial fishermen who have volunteered to be part of the study. This pilot study will collect fixed and variable cost information for fishing businesses. More information about the ACCSP can be found at <http://www.accsp.org>. This program currently does not focus on HMS fishermen, does not collect information on a per trip basis, and is done voluntarily. As described above, voluntarily given information is not adequate to conduct the analyses required under NEPA, E.O. 12866, or RFA.

Individuals with an authorized exempted fishing permit are required to submit an interim and annual report for catches made while conducting the exempted activities. These catches must also be reported in the permit holder's logbook. This duplication in effort is necessary to monitor the exempted activities and to ensure compliance with the exempted activities. The catches made while engaged in the exempted fishing activity must also be recorded in the logbook to accurately monitor the level of harvest for quota managed species.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

All of the applicants are considered small businesses; separate requirements based on size of business will not be developed. Individuals participating in other Federal fisheries with similar logbook requirements are not required to submit two logbooks. Likewise, state logbooks with similar data fields would not be required to complete and submit a Federal logbook under this collection. National Marine Fisheries Service annually provides the permit holders with the HMS logbook at no additional cost. The burden to the permit holder is minimized by providing postage- paid envelopes. The logbooks and cost earning forms are bound with carbon copies, so there are no photocopying costs associated with the record keeping requirements. The carbon copies allow the permit holder to keep a copy for their own financial records. Additionally, the individuals required to submit the cost-earning report are randomly selected, therefore the same individuals may not need to submit the detailed cost-earnings information each year.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

The consequence of not having information on level of effort, gear type used, number and species of fish kept, number and species of fish discarded is to increase the uncertainty involved in managing HMS fisheries and the inability to comply with domestic and international obligations.

The consequence of not having a core set of economic data at the trip level is to increase the uncertainty associated with how fishermen will respond behaviorally to changes in regulations, fishing conditions, and/or market conditions. Moreover, without this information, it is impossible to assess the economic impacts from a proposed regulation or to select the policy

alternative that achieves a management goal at the lowest possible cost to the fisherman. To accurately capture fisherman behavior and assess economic impacts, it is necessary to have economic information at the trip level since fishing operations, choice of fishing grounds, gear modifications, and targeting and marketing strategies change over the course of the season due to changes in species abundance across fishing sites and market demand across seasons and regions. This is especially true for the HMS fisheries in which individual vessel activity may range throughout the Gulf of Mexico, Caribbean Sea, and off the Atlantic coast of Southeast, Mid-Atlantic, and New England states.

Another consequence of not having representative trip-level economic data could be judicial remand of conservation regulations challenged on grounds of inadequate analysis of economic impact to individual firms.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The reporting regulations require selected vessels to complete logbooks within 24 hours of making a set (or a trip for single day trips) and to submit all forms, except the cost-earnings form, no later than the seventh day after the sale of the catch off-loaded from a trip. It is critical that these data be timely. For fisheries that are significantly overfished and therefore subject to catch quotas, it is important to monitor fishing mortality. Also, the re-issuance of permits is predicated on compliance with the reporting requirements, and timely data are needed to determine whether fishermen are complying on a regular basis. Quality control of the logbook data is improved when the review and verification process is as close as possible to the actual time that fishing occurred.

The frequency of collection requirements for the cost-earnings form are the same under mandatory submission of the form as is under the voluntary submission. It is necessary to collect this information more often than quarterly because trip-specific information is required and recall bias is a concern if the information is recorded long after the trip. The information requested is readily available at the end of each trip after the vessel is offloaded and settlement with the fish dealer is completed. Thus, selected fishermen will be required to submit the cost-earnings form 30 days after the catch is off-loaded from a trip. For information that is not readily available at the end of each trip, fishermen will be asked to submit an Annual Expenditures Form.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice soliciting public comment was published on February 25, 2008 (73 FR 10003). No public comments were received related to this proposed information collection.

9. Explain any decisions to provide payments or gifts to respondents, other than

remuneration of contractors or grantees.

There are no payments or other remunerations to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

All data that are submitted to the NMFS will be treated in accordance with NOAA Administrative Order 216-100, Confidential Fisheries Statistics and this assurance is included on the forms. In addition, logbook data are considered to be in an entrepreneurial capacity and are protected under the Trade Secrets Act. It is Agency policy not to release confidential data, other than in aggregate form, as the Magnuson-Stevens Act protects (in perpetuity) the confidentiality of those submitting data. Whenever data are requested, the Agency ensures that information identifying the pecuniary business activity of a particular vessel is not identified.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No questions of a sensitive nature will be asked.

12. Provide an estimate in hours of the burden of the collection of information.

Previously, 9,133 hours had been approved for the cost-earnings summary, based on expected compliance with a voluntary information collection, and 21,478 hours had been approved for the catch reports of the HMS Vessel Logbook, a mandatory information collection, based on the expected number of permit holders. The estimated number of respondents covered under this submission has decreased slightly since the last submission. The number of Atlantic Tunas permit holders has decreased from 24,575 to 24,500, while the HMS Charter/Headboat permit holders decreased from 4,167 to 3,941. The number of shark and swordfish permit holders decreased from 610 to 527 and 400 to 340, respectively. All swordfish permit holders are also required to hold a shark permit, however, they would only be required to complete the forms once per trip. The number of dolphin/wahoo commercial and charter/headboat permits not reporting under any other Federal permit, increased slightly from 106 to 193.

The estimated time to complete the cost-earnings data reports continues to take 30 minutes as was estimated previously. For some sectors, predominantly swordfish, tuna, and shark longline fishermen, the reporting burden estimate may be as high as 30 minutes per response. In other sectors, however, the reporting burden estimate could be significantly less. In the recreational Atlantic tunas fishery, for example, the burden is estimated at 10 minutes per trip because there is no labor information to be reported. However, because it is difficult to separate out those fishermen who use longlines and target tunas, swordfish, or sharks, NMFS submits a reporting burden estimate of **30 minutes for all fishermen**¹. At a maximum, it should take 30 minutes to complete the cost-earnings data trip summary report.

¹ Some permits are issued by species, not by gear type. That is, a swordfish permit holder may be a longline fisherman, rod and reel fisherman, or harpoon fisherman. There is a similar situation for shark permit holders, whereas tuna fishermen are issued permits by gear type.

NMFS will collect the cost-earnings data from a random selection of approximately 20 percent of the shark, swordfish, and charter/headboat fleet and 10 percent of the Atlantic Tuna and HMS Angling permit holders who were selected to report in the catch report forms. This random selection of fishermen would be stratified across all statistical areas and would be based on information provided when renewing permits and reported the previous year in logbooks. In other words, fishermen who were not active or did not have an HMS permit in the previous year would not be selected to report on the cost-earnings and annual expenditure forms.

Our estimated time of 30 minutes (0.5 hours) to complete the annual form was based on the presumption that fishermen would already have organized their expenses for end-of-year tax purposes.

The number of respondents, the estimated number of responses, the time per response and the total burden estimate for completing the additional economic questions on the trip and annual reporting forms are shown in Table 1. The estimates below are based on recently available permit holder information. The difference in estimated burden hours from those previously approved to those proposed here is outlined in Table 2.

We request a decrease of 184 hours (8,949 hours, down from 9,133 hours previously approved) for the cost-earnings and annual expenditure burden estimate and a decrease of 966 (20,512 hours, down from 21,478 hours previously approved) for the catch report portion. These decreases result in a net decrease of 1,151 hours and a revised total of 29,460 hours (Table 2).

The decreased burden estimate is reflective of the slight decreases in HMS permits, specifically HMS charter/headboat permits, and an increase in dolphin/wahoo commercial and charter headboat permits. The estimated burden hours by gear group are provided below. The estimated number of trips is based upon past activity by each gear group. For the purposes of this burden estimate, it is assumed that the HMS logbook will be completed on all of the trips selected, which is a higher response rate than is likely to occur. Note that some charter/headboats and shark vessels have the option of completing a regional logbook in lieu of the HMS logbook to the extent their participation in these fisheries also requires a logbook submission. Additionally, some charter/headboat permit holders also hold a shark or swordfish permit and some shark permit holders hold a swordfish permit. Thus, estimates for charter/headboat and shark burden hours can be considered a maximum.

Table 1. Summary of reporting requirements and estimated reporting burden estimates for respondents in HMS fisheries and Dolphin/Wahoo only permit holders.

	Fishery					Total
	Tunas	Sharks	Swordfish	HMS Charter/Headboats	Dolphin/Wahoo - commercial & CHB	
Number of permit holders	24,500	527	340	3,941	193	29,501
Selection for logbooks	10%	100%	100%	100%	100%	7,451
# of Respondents	2,450	527	340	3,941	193	
# of Trip Summary Reports w/Catch	24,500	5,270	6,800	59,115	1,930	97,615
	2,450 @ 10 trips/yr	527 @ 10 trips /yr	340 @ 20 trips/yr	3,941 @ 15 trips/yr	193 @ 10 trips/yr	
<i>Burden hours @ 12min/ trip summary report</i>	4,900	1,054	1,360	11,823	386	19,523
# Reports w/o Catch	4,900	NA	NA	19,705	NA	24,605
	2,450 @ 2 trips/yr			3,941 @ 5 trips/yr		
No-Fishing Reports	NA	3,162	680	NA	1158	5,000
		527 @ 6 months/yr	340 @ 2 months/yr		193 @ 6 months/yr	
<i>Burden hours @ 2 min/no catch or no fishing report</i>	163	106	23	657	39	988
Selection for cost-earnings data trip reports and annual expenditures form	10% of those selected for logbooks	20%	20%	20%	NA	
# of Respondents	245	106	68	788		1,207
# of Cost-earnings data Trip Reports	2,450	1,060	1,360	11,820	NA	16,690
	245 @ 10 trips/yr	106 @ 10 trips/yr	68 @ 20 trips/yr	788 @ 15 trips/yr		
<i>Burden hours @ 30 min/cost-earnings trip report</i>	1,225	530	680	5,910	NA	8,345
# of Annual Expenditures Forms	245	106	68	788	NA	1,207
<i>Burden hours @ 30 min/annual expenditures form</i>	123	53	34	394	NA	604
Total burden hours for Catch reports, including no catch or no fishing reports	5,063	1,160	1,383	12,480	425	20,511
Total burden hours for Cost-earnings and annual expenditures forms	1,348	583	714	6,304	NA	8,949
Total for Logbook Collection	6,411	1,743	2,097	18,784	425	29,460

Table 2. The difference in previously approved burden estimates and current burden estimates.

	Estimated Burden Hours
Revised burden hours for cost-earnings data reports	8,949
Revised burden hours for catch report forms	20,511
Total:	29,460
Previously approved burden hours for cost-earnings data reports	9,133
Previously approved burden hours for catch report forms	21,478
Total:	30,611
Net Decrease	1,151

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

Currently, all forms are provided to fishermen with pre-addressed postage paid envelopes. While NMFS intends to continue to provide postage paid envelopes, it is possible that NMFS may discontinue paying postage in the future due to funding or other constraints. Additionally, while NMFS provides postage paid envelopes, it is possible that respondents could run out of envelopes or lose the envelopes and pay for postage on their own. Thus, for the purpose of this submission, it is assumed that all postage costs will be paid by the respondents. Previously, NMFS estimated that the cost of postage for all respondents would be \$75,678.00 (assuming an average cost of 50 cents for 151,356 reports). Due to adjustments in the number of permit holders, the estimated number of reports has decreased to 145,117. Assuming an average of 50 cents for postage, these results in a total estimated cost of postage of \$72,559.00, a decrease of \$3,119.00.

The logbook and cost-earnings forms are bound with carbon copies so there are no photocopy costs associated with the recordkeeping requirement for those forms. As the annual expenditures form is not carbon copied, there could be a minor cost of 10 cents to copy the form. The previous annual cost incurred for the annual expenditures form was \$120.90 (1,209 reports times \$0.10). Due to the slight decrease in the number of permit holders, the cost for the annual expenditures form has decreased only marginally (by \$0.20) to \$120.70 (1,207 reports times \$0.10).

Postage and copying costs result in a total annual cost for the entire program of \$72,680; a decrease of \$3,119.20 (\$3,119.00) from the previous combined cost of postage (\$75,678) and copying (\$120.90 (\$121.00)). These estimated costs should be considered a maximum cost because, as indicated above, NMFS currently provides postage paid envelopes.

14. Provide estimates of annualized cost to the Federal government.

Cost to the Federal government was previously estimated to be \$185,000 per year including printing costs, labor for sight review and data entry, form development, and program management costs. There are no incremental printing costs associated with this revision to logbook collection as all forms are provided with all logbooks regardless of the requirement to complete the cost-earnings summary. There are no incremental printing costs associated with the annual expenditure form which is two pages, including instructions. Agency costs would remain unchanged since there is no increase for data entry and analysis for additional information. Total

cost to the Federal government is therefore estimated to be \$185,000.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

All changes are due to adjustments in estimates.

NMFS proposes a decrease of 1,151 hours to the total net annual burden hours. The decrease in burden hours is attributed to the decreased number of permit holders. The total number of permit holders decreased from 29,858 to 29,501. The largest decrease occurred with the HMS Charter/Headboat permits, decreasing by 226 permits (4,167 to 3,941).

NMFS previously estimated that 106 vessels were targeting dolphin and wahoo and did not hold another Federal permit. A final rule (69 FR 30235) implementing the Dolphin/Wahoo FMP required all commercial and charter/headboat vessels targeting dolphin and wahoo to obtain a permit. After implementation, the number of commercial and charter/headboat vessels with a dolphin/wahoo permit increased to 193.

Previously, NMFS estimated 133,092 reports for the logbook forms. Based on new estimates of the number of permit holders, NMFS now estimates the number of reports for logbook forms to be 127,220, for a decrease of 5,872 reports. This amounts to a cost decrease for the logbook forms of \$2,936.00 (5,872 reports times \$0.50 for postage).

Previously, NMFS estimated 17,055 cost-earnings reports. Based on new estimates of the number of permit holders, NMFS now estimates the submission of 16,690 cost-earnings reports, for a decrease of 365 reports. This amounts to a cost decrease the cost-earnings forms of \$183.00 (365 reports times \$0.50 for postage).

Additionally, NMFS previously estimated the submission of 1,209 annual expenditure forms. With the decreased number of permit holders, NMFS now estimates 1,207 annual expenditure forms, for a decrease of 2. This results in cost decreases of \$1.20 (2 less reports times \$0.50 for postage; plus 2 less reports times \$0.10 for photocopying).

These revised estimates result in a total cost decrease of \$3,119.00 (\$2,936.00 + \$183.00 + \$1.20).

NOTE: Rounding down of hours and costs in ROCIS resulted in a further decrease of 1 hour and \$1.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The results from this collection are not planned for statistical publication but will be used as empirical input for analyses conducted for management and scientific purposes. Data would be released to the public only in summary or tabular form.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

As regional logbooks (e.g., OMB Control No. 0648-0016) are used as the HMS vessel logbook in order to reduce duplication for vessels involved in regional fisheries, the expiration date assigned to this collection would not be displayed on logbooks already displaying another expiration date.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

No exceptions are requested. However, regional logbooks (e.g., OMB Control No. 0648-0016) are used as the HMS vessel logbook in order to reduce duplication for vessels involved in regional fisheries. Therefore, the OMB control number assigned to this collection (OMB Control No.: 0648-0371) would not be displayed on logbooks already displaying another valid control number.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.

This collection of information will employ statistical methods to reduce the respondent burden and the data processing cost to the government. As indicated in the response to #12 in Section A, certain fisheries would be subject to a census while others would have a sample drawn at random. The selection rates apply both to the logbook in general (set forms and trip forms) and to the cost-earnings form (attached to trip summary forms).

As indicated in Response # 12 in Section A, all swordfish, shark, charter/headboat, and dolphin/wahoo permit holders would be selected for logbooks while only 10 percent of Atlantic Tunas and HMS Angling permit holders would be selected for logbooks. The larger population of tuna vessels (recreational and commercial combined) affords a representative sample at a 10 percent selection rate for each. In response to comments from fishermen, NMFS is proposing a 20 percent selection rate for the cost-earnings and annual expenditures forms in the commercial shark, commercial swordfish, and charter/headboat fisheries (not required for dolphin/wahoo permit holders). This rate should provide NMFS with a representative sample of the fishery as a whole. The stratified random selection process for Atlantic Tuna and HMS Angling permit holders and for the cost-earnings forms is based on information reported in logbooks the previous year, as described in Question 2.

Table 1 in Part A indicates the affected universe. Out of almost 30,000 permit holders, under this program, 7,451 would be required to submit logbooks and 1,207 would be required to submit

the cost-earnings and annual expenditure forms. Compliance with the catch reports or logbooks is high because they are linked to permit renewal. That is, permits cannot be renewed until logbooks and/or cost-earnings reports are submitted for the year. Often these reports are not submitted in a timely manner but are submitted prior to renewing the permit.

2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.

The sample universes are the fleet for tuna, shark, swordfish, and charter/headboat permit holders, for which we have the entire population or universe of vessels from the HMS permit data file from which to choose. The sample universe also includes any dolphin/wahoo permit holder that does not hold another Federal permit.

The random sample for selection from the tuna fishery is stratified according to the following criteria:(1) state of homeport and (2) level of landings (high-liner vs. not active). The HMS logbook form contains sufficient information to determine whether or not a vessel harvested beyond or within the Exclusive Economic Zone, i.e. U.S. offshore or on the high seas. Sampling designs for other commercial fishery surveys suggests that overall vessel length provides a reliable indicator of whether a vessel is capable of fishing on the high seas. A vessel's homeport state is recorded in the HMS permit database. The sample size for selection for tuna vessels is designed to achieve a 95 percent level of precision (significance). For any strata with less than three vessels, the vessel numbers in these strata is increased to three since NMFS' policy is not to disclose information for anything less than three vessels. The stratified random sample is determined using the Neyman Allocation Method with a finite population correction. This method is being used by Dale Squires (NMFS) in the following collection: "Economic Performance Data Surveys For West Coast Commercial Fisheries Programmatic Clearance (OMB Control Number 0648-0369) for the Cost and Earnings Survey of the Troll Albacore and Swordfish Fisheries."

The random sample for the collection of cost-earnings data from the shark, swordfish, and charter/headboat fleet would be stratified according to: (1) location of fishing in the previous year within designated statistical areas and (2) level of activity (landings versus no landings/held a permit or did not hold a permit). The HMS logbook form contains sufficient information to determine where a vessel was fishing and the level of activity in the previous year. Numerous analyses of logbook data have already designated the statistical areas. These same areas would be used in the random sample. Sample size for selection of these vessels would be designed to ensure adequate representation across the fleet and across all areas. For areas where few HMS vessels fish (e.g., Sargasso or Northeast Distant areas), areas would be combined to ensure a large enough sample so data can be disclosed. Sample fleet for selection of the cost-earnings data would then be averaged to produce information representative of the group. There are not expected to be any unusual problems requiring sampling procedures more specialized than those indicated above.

3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.

In order to maximize the response rate, brochures have been developed and circulated to educate fishermen in various sectors about reporting requirements. NMFS has also published compliance guides to remind fishermen of their obligations. Non-responders are typically contacted first by phone and then are notified by the NMFS Office of Law Enforcement of their delinquency and issued a written warning ("fix-it" notice). If there continues to be no response, citations could be issued. For the censused population, a small percentage of non-responders is not likely to decrease the reliability of the data given the number of vessels and trips. For the sampled population, however, the reliability of the data could suffer if delinquency rates prove to be high. In such a case, data between years could be combined to provide biennial estimates.

4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.

Logbooks have been used in this fishery since the 1980s and have proven an effective method of collecting data when used with observers. Before implementation mandatory collection, NMFS tested a voluntary program. The voluntary program was ineffective for meeting management needs.

5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.

NMFS, Office of Science and Technology (sampling design/analysis):

Dr. Rita Curtis (301) 713-2328

NMFS, Southeast Fishery Science Center (data collection):

Dr. Victor G. Restrepo (305) 361-4000

NMFS, Office of Science and Technology (data analysis)

Dr. Guillermo Diaz (301) 713-2367

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMIN.
NATIONAL MARINE FISHERIES SERVICE

2007

TRIP SUMMARY FORMS

FISHING VESSEL LOGBOOK RECORD
ATLANTIC HIGHLY MIGRATORY SPECIES
FISHERIES

YOU ARE ADVISED THAT DISCLOSURE OF THE INFORMATION REQUESTED IN THIS REPORT IS MANDATORY FOR THE PURPOSE OF MANAGING THE FISHERIES IN ACCORDANCE WITH THE ATLANTIC TUNAS CONVENTION ACT (16 U.S. 971 ET. SEQ.) AND THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976 (16 U.S.C. 1801 ET. SEQ.). FAILURE TO REPORT MAY RESULT IN CIVIL OR CRIMINAL SANCTIONS.

NAME OF VESSEL : _____

PERMIT NUMBER : _____

Instructions for the Trip Summary form

NOTE: All data provided are CONFIDENTIAL and will be used to determine the effects of existing and proposed management policies on fishery participants. Consistent and accurate reporting is critical for achieving the benefits of conservation and management of Atlantic Highly Migratory Species fisheries.

If you have any questions, please contact the Logbook Program at (305) 361-4581, or Ms. Debra Abercrombie at (305) 361-4480, or alternatively, visit our website (<http://www.sefsc.noaa.gov/fls.jsp>). For additional logbook supplies, include a written request with your logbook submission. All forms must be mailed (**faxes are no longer accepted**) to NATIONAL MARINE FISHERIES SERVICE, P.O. BOX 491740, MIAMI, FL, 33149. Postage-paid envelopes are included with logbook supplies.

Please print all requested information clearly. A form with incomplete or unclear information may delay processing and not be credited towards your compliance. This lack of compliance may result in your permit renewal being denied. Monthly reporting for individuals holding a Swordfish and Shark permit will be considered complete and in compliance with the regulations only if:

- 1.) (a.) Trip Summaries for each trip completed during the month;
(b.) individual Set Records for each set made during the trip(s); and
(c.) Tally Sheet showing the individual weights of all fish sold; OR
- 2.) a "No Fishing" report is provided.

The following instructions should be followed when **Fishing** was conducted during a calendar month:

Please use a ballpoint pen and print clearly to record the following on the Blue Page. The blue page (Trip Summary Form) is a continuation of the set form and is mandatory for all permitted vessels. These forms must be mailed within 7 days from last offloading date. Faxes are no longer accepted:

- **Vessel Name and Vessel Number:** U.S. Coast Guard vessel identification number or state registration number as recorded on permit.
- **Contact Name, Telephone Number, and Signature:** Printed name, telephone number, and signature of the person completing the form (normally, this would be the captain for the trip, although the vessel owner may complete the Trip Summary and Trip Expense and Payment Summary form).
- **Operator Name:** Name of the operator (captain) of the vessel for the trip.
- **NHID Number:** Please put the NHID Number of the operator for the trip. The NHID Number is a unique identifier ("New Hampshire Identifier") assigned by NMFS to each operator who has attended the "Handling and Release Workshop." The number is required on these forms once the operator has completed the workshop.
- **Port & State of Departure:** Location of port from which the trip commenced.
- **Port & State of Landing:** Location of port that vessel arrived in.
- **Dealer Name(s):** List of names of dealers purchasing the harvest. If the catch was not sold to a dealer, please write in 'PERSONAL USE.' If there was no catch, please write in 'NO CATCH.'
- **State Trip Ticket #:** For states with trip ticket programs, include the ticket # from your sales receipt next to the appropriate dealer name.
- **Date of Departure:** Calendar date (month/day) on which the trip was started. Use current year logbooks only.
- **Date of First Set:** Calendar date (month/day) of first set made on trip.
- **Date of Last Set:** Calendar date (month/day) of last set made on trip.
- **Date of Landing:** Calendar date (month/day) the vessel arrived back at port. This can be different from the offloading date.
- **First Date of Offload:** Calendar date (month/day) that vessel began offloading fish. Use current year logbooks only.
- **Number of Sets:** Number of times the fishing gear was set out during the trip.
- **Number of Crew Members:** Number of persons paid as crew (excluding captain).

Remove the blue page, attach corresponding set forms and tally sheet, and mail within 7 days after last offloading date.

The Green Page (Trip Expense and Payment Summary) is mandatory only if your vessel has been selected and you have been notified in writing by NOAA Fisheries that this information is required of you. The form is voluntary for all other vessels, and these vessels are encouraged to supply this information. For selected vessels, the following information must be mailed within 30 days after last offloading date. Faxes are no longer accepted:

- **Fuel:** Price per gallon paid for fuel used during trip. (*If you did not refuel for the trip, record price paid when fuel was last purchased.*); indicate gallons actually **used** during the trip. (*Exclude fuel purchased but not used.*)
- **Bait:** Record price per pound and the amount of bait purchased. If no bait is purchased, then record a zero.
- **Light Sticks:** Record price per light stick and number of light sticks **used** during the trip (*If a light stick was re-used, only count it once.*)
- **Ice:** Indicate the price per unit. Also indicate the **Quantity of Ice** purchased and circle the correct unit size.
- **Ice Maker:** Indicate if an ice maker is used on the vessel by marking 'Yes' or 'No.'
- **Grocery expenses:** Indicate grocery costs (food, toiletries, etc.).
- **Other Trip Costs:** Other costs incurred for this trip form (for example, docking/offloading fees (if separate from broker fee), crew travel/lodging, fishing supplies). **Exclude** items listed elsewhere on this trip summary.

- **Total Trip Sales:** Record the amount of gross revenue received from dealer(s) for the fish sold during the trip.
- **Crew Shares:** Crew share is compensation based upon percentage of net revenues. If you did not use crew share compensation on a trip, then calculate payments as percentage of (*estimated*) gross revenues (i.e., Total Trip Sales). The sum of the Owner Share, Captain Share, and Crew Share Average times the number of crew members, should total 100%.
 - **Owner Share:** Percentage of net revenue (*gross revenue less total shared costs*) paid to owner.
 - **Captain Share:** Percentage of net revenue paid to captain.
 - **Crew Share:** Average percent share of net revenue paid to crew, excluding captain.
 - **Was Crew Share Compensation Used:** Indicate 'yes' or 'no'.
 - **Was the Owner on Board:** Indicate 'yes' or 'no'.
- **Total Shared Costs:** Record the sum of all costs incurred for this trip that are subtracted from gross revenues (i.e., Total Trip Sales) prior to calculating crew share payments, **including** (*estimated*) shared gear, repair and maintenance costs. If vessel does not use crew shares, record zero.

The following instructions should be followed if **No Fishing** occurred during a calendar month:

If your vessel **did not fish** during a given calendar month, a No Fishing Reporting Form located at the back of this logbook must be completed and submitted no later than seven days after the end of that month. These reports **must be mailed as faxes are no longer accepted**. Please note the following for No Fishing Reports:

- A separate form must be completed for each month that no fishing occurred.
- Please do not submit one form for multiple months.
- Do not submit more than one form for each month.
- Put a check by each permit for the fishery(ies) that no fishing occurred.
- Multiple fisheries can be reported on one form.
- Do not check fisheries for which you do NOT have a permit.

PAPERWORK REDUCTION ACT STATEMENT: Atlantic highly migratory species (HMS) vessel logbooks provide information on fishing effort, target catch and bycatch in the fisheries for tunas, sharks and swordfish. This is the basis for quota monitoring and stock assessment and is used to meet international obligations to report fishery statistics to the International Commission for the Conservation of Atlantic Tunas. Collection of economic information through vessel logbooks provides current data on costs and earnings for vessels participating in the Atlantic HMS fisheries and aids NMFS in assessment of impacts of fishery regulations. Public reporting burden for this information collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and reviewing completed collection of information, is estimated to average: 12 minutes per response for set form (daily report); 30 minutes per response for the trip expense and earnings summary; 2 minutes per response for no-fishing report; and 30 minutes per response for annual expenditures form. Send comments regarding this burden estimate or any other aspect of this information collection, including suggestions for reducing this burden to: National Marine Fisheries Service, F/SF1, 1315 East West Highway, Silver Spring MD 20910. Providing requested information on the trip summary form is mandatory, if selected, for managing the Atlantic HMS fisheries in accordance with Atlantic Tunas Convention Act (16 U.S.C. 971 et seq.) and Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.). In accordance with NOAA Administrative Order 216-100, it is agency policy not to release confidential information, other than in aggregate form. Notwithstanding any other provision of law, no person is required to respond, nor shall any person be subject to a penalty for failure to comply with information collection subject to requirements of Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. This is an approved information collection under OMB #0648-0371 that expires July 31, 2008.

**2007 ATLANTIC HIGHLY MIGRATORY SPECIES LOGBOOK
TRIP SUMMARY FORM**

OMB 0648-0371 Exp 07/31/2008
Version Date 09/06
NOAA Form 88-191

Please Use <u>Blue or Black Ink</u> only	<i>NMFS Use Only:</i>	Received Date:	Schedule Number:
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Vessel Name: _____ Vessel Number:

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<p>Contact Name (Please Print): _____</p> <p>Contact Phone No.: () - _____</p> <p><i>I certify that the information contained on this form is accurate and complete to the best of my knowledge.</i></p> <p>Contact's Signature: _____</p> <p>Operator's Name (Please Print): _____</p>	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%;"></td> <td style="width:15%; text-align: center;">Month</td> <td style="width:15%;"></td> <td style="width:15%; text-align: center;">Day</td> <td style="width:15%;"></td> <td style="width:15%; text-align: center;">Year</td> </tr> <tr> <td>Date of Departure:</td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td>Date of First Set:</td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td>Date of Last Set:</td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td>Date of Landing:</td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td>Date of Offload:</td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> </table>		Month		Day		Year	Date of Departure:						Date of First Set:						Date of Last Set:						Date of Landing:						Date of Offload:					
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Date of Landing:																																					
Date of Offload:																																					

NHID Number:

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Port & State of Departure: _____

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Port & State of Landing: _____

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Number of Sets:

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Number of Crew Members:
(excluding captain)

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<p>Dealer Name(s):</p> <p>1.) _____</p> <p>2.) _____</p> <p>3.) _____</p>	<p>State Trip Ticket Number(s):</p> <p>1.) _____</p> <p>2.) _____</p> <p>3.) _____</p>
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**2007 ATLANTIC HIGHLY MIGRATORY SPECIES LOGBOOK
TRIP SUMMARY FORM**

OMB 0648-0371 Exp 07/31/2008
Version Date 09/06
NOAA Form 88-191

Please Use <u>Blue or Black Ink</u> only	<i>NMFS Use Only:</i>	Received Date:	Schedule Number:
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Vessel Name: _____ Vessel Number:

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Contact Name (Please Print): _____ Date of Departure:

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 / 2007

Contact Phone No.: () - _____ Date of First Set:

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 / 2007

I certify that the information contained on this form is accurate and complete to the best of my knowledge.

Date of Last Set:

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 / 2007

Contact's Signature: _____ Date of Landing:

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 / 2007

Operator's Name (Please Print): _____ Date of Offload:

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 / 2007

NHID Number:

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 Number of Sets:

--	--

Port & State of Departure: _____

--	--

 Number of Crew Members:

--	--

(excluding captain)

Port & State of Landing: _____

--	--

Dealer Name(s):	State Trip Ticket Number(s):
1.) _____	1.) _____
2.) _____	2.) _____
3.) _____	3.) _____

TRIP EXPENSE & PAYMENT SUMMARY (Mandatory if selected; otherwise voluntary)

	Unit Cost		Quantities Used (Whole numbers only)									
Fuel	Price per Gallon \$ <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> . <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>						Gallons Used <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>					
Bait	Price per Pound \$ <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> . <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>						Pounds of Bait (Dead, Frozen) <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>					
Light Sticks	Price per Stick \$ <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> . <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>						Light Sticks Used <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>					
Ice	Price per Unit \$ <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> . <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>						Quantity of Ice <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> Please circle one: Tons Blocks Lbs					
Ice Maker	Yes <input type="checkbox"/> No <input type="checkbox"/>											
Grocery Expenses			\$ <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> . <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>									
Other Trip Costs (Other costs incurred on this trip, excluding items listed elsewhere on this trip summary form. See instructions.)			\$ <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> . <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>									

Total Trip Sales	\$ <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> . <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>								
Crew Shares:	Owner: <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> %				Was crew share compensation used? Yes <input type="checkbox"/> No <input type="checkbox"/>				
	Captain: <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> %				Was the owner on board? Yes <input type="checkbox"/> No <input type="checkbox"/>				
	Crew: <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> %								
Total Shared Costs (Includes only those costs subtracted from gross revenues to calculate crew payments. See instructions.)	\$ <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> . <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>								

NO FISHING REPORTING FORM

OMB 00648-0016 Exp 12/31/2009
Version Date 09/06

NMFS Use Only: Opened:	Schedule #
---------------------------	------------

Vessel ID. NO. [][][][][][][][][] Vessel Name: _____

During the entire month of [][] , year [][][][] this vessel DID NOT FISH in the fisheries checked below:

- > more than one fishery may be checked
- > DO NOT check any fishery if your vessel does not have a permit for it
- > **Use Black Ink**

- Atlantic Highly Migratory Species (swordfish/tunas)
- South Atlantic Snapper-Grouper
- Gulf of Mexico Reef Fish
- Shark
- King Mackerel
- Spanish Mackerel
- Atlantic Dolphin/Wahoo

Signature: _____ Phone: () _____ - _____



MAIL THIS COPY TO NMFS, P.O. BOX 491500, MIAMI, FL 33149-9916



NO FISHING REPORTING FORM

OMB 00648-0016 Exp 12/31/2009
Version Date 09/06

NMFS Use Only: Opened:	Schedule #
---------------------------	------------

Vessel ID. NO. [][][][][][][][][] Vessel Name: _____

During the entire month of [][] , year [][][][] this vessel DID NOT FISH in the fisheries checked below:

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- South Atlantic Snapper-Grouper
- Gulf of Mexico Reef Fish
- Shark
- King Mackerel
- Spanish Mackerel
- Atlantic Dolphin/Wahoo

Signature: _____ Phone: () _____ - _____



MAIL THIS COPY TO NMFS, P.O. BOX 491500, MIAMI, FL 33149-9916



UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMIN.
NATIONAL MARINE FISHERIES SERVICE

2007

SET FORMS

FISHING VESSEL LOGBOOK RECORD
ATLANTIC HIGHLY MIGRATORY SPECIES
FISHERIES

YOU ARE ADVISED THAT DISCLOSURE OF THE INFORMATION REQUESTED IN THIS REPORT IS MANDATORY FOR THE PURPOSE OF MANAGING THE FISHERIES IN ACCORDANCE WITH THE ATLANTIC TUNAS CONVENTION ACT (16 U.S. 971 ET. SEQ.) AND THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976 (16 U.S.C. 1801 ET. SEQ.). FAILURE TO REPORT MAY RESULT IN CIVIL OR CRIMINAL SANCTIONS.

NAME OF VESSEL : _____

PERMIT NUMBER : _____

SET FORM INSTRUCTIONS

This form is to be used to report fishing activity for Atlantic highly migratory species permits. Under current regulations, all fishermen are responsible for submitting a logbook for every fishing trip. Set forms must be filled out within 48 hours of that day's activities or before offloading, whichever is sooner.

Please print all requested information clearly. A form with incomplete or unclear information may delay processing and not be credited towards your compliance. This lack of compliance may result in your permit renewal being denied. **Monthly reporting for individuals holding a Swordfish and Shark permit will be considered complete and in compliance with the regulations only if:** 1.) the (a.) Trip Summaries for each trip completed during the month, (b.) individual Set Records for each set made during the trip(s), and (c.) Tally Records for all fish sold are provided; or 2.) a "No Fishing" report is provided.

If a permitted vessel did NOT fish during a calendar month, a No Fishing Reporting Form must be completed. No Fishing Reporting Forms are located in the back of the Trip Summary Logbook, behind the trip report forms. Please note the following for No Fish Reports:

- A separate form must be completed for each month that no fishing occurred;
- Please do not submit one form for multiple months.
- Do not submit more than one form for each month.
- Put a check by each permit for the fishery(ies) that no fishing occurred.
- Multiple fisheries can be reported on one form.
- Do not check fisheries for which you do NOT have a permit.

Please mail **original** (faxed forms are not accepted) set forms, along with the **original** Trip Summary Form and weigh out slips (tally records), or a No Fishing Reporting Form in the pre-addressed envelopes provided. The address is as follows:

**National Marine Fisheries Service
Logbook Program
P.O. Box 491740
Key Biscayne, Florida 33149-9915**

Set forms must be completed within 48 hours of that day's activities or before offloading, whichever is sooner. Reports should be postmarked no later than the 7th day after offloading all Atlantic Highly Migratory Species, or (7) days after the end of a month which you are reporting no fishing activity. **Faxed reports are no longer accepted.**

When additional forms or envelopes are needed, please include a note with your logbook submission or call the Logbook Program at the number listed below. Include your name, address and your vessel identification number. Alternatively, you can visit our website at <http://www.sefsc.noaa.gov/fls.jsp>. If you have any questions, please contact the Logbook Program at (305) 361-4581, or Ms. Debra Abercrombie at (305) 361-4480.

DESTROY OLD UNUSED FORMS. USE ONLY CURRENT YEAR FORMS.

Please use a separate log sheet for each gear used and for each set. If using multiple gears, multiple set forms will be required for a day's fishing. If using a gear that is not fished in sets, use only one sheet for each day of fishing.

- **Official Vessel Number** - Enter the official US Coast Guard documentation number or state registration number for the vessel as it appears on the permit.
- **Signature** – The captain must sign each set form to verify accuracy of information.
- **Target** - Designate the primary Target species. Multiple species may be checked.
- **Gear** - Record the gear used for the set. **Please note that when fishing with multiple gears,** a separate form must be used for each gear type. If a gear is being used that is not fished in sets, then only one set form is required for each day of fishing activity.
- **Begin Set Date** – Enter the month and date that the set began. **BE CERTAIN THAT A CURRENT LOGBOOK IS BEING USED.**
- **Begin Haulback Date** – Enter the month and date that the haulback began.
- **Begin Set** – Enter the time the set began. Designate **AM** or **PM**. Do not use Military time.
- **End Set** – Enter the time when the set had been placed. Designate **AM** or **PM**.

- Enter Times when using longlines for:
 - **Begin Haulback** - Enter the time that haulback began. Designate **AM** or **PM**.
 - **End Haulback** - Enter the time when haulback of the gear had been completed.
- **Latitude and Longitude** – Record the location at the start of each set to the nearest degree and minute, and the **Surface Water Temperature**, in degrees Fahrenheit.
- Enter the following data for each set if using **Longline** gear:
 - **Number of hooks** per set
 - **Number of hooks between floats**
 - **Number of light sticks**
 - **Length of Mainline** (in miles)
 - **Average Length of Gangions** (in fathoms)
 - **Average Length of Floatline** (in fathoms)
 - Indicate whether **“J” Hooks or Circle Hooks** were used
 - Indicate what **size hooks** were used: 16/0, 18/0, or other size (using space provided)
 - Indicate whether **offset hooks** were used: Yes or No
 - Indicate the **Bait Type** used: Dead, Live, or Artificial
 - Indicate if the **Bait Used** was Squid, Mackerel, or ‘Other’
- Enter the following data for each set if using **Hook and Line** (This would include all hook and line gear except Pelagic Longline and Bottom Longline):
 - **Total Number of Hooks**
 - **Average Number of Hooks**
 - Indicate whether **“J” Hooks or Circle Hooks** were used
 - Indicate what **size hooks** were used: 11/0, 12/0, or other size (using space provided)
 - **Number of Buoys deployed** (if applicable)
 - Indicate the **Bait Type** used: Dead, Live, or Artificial
 - Indicate if the **Bait Used** was Squid, Mackerel, or ‘Other’
- Record numbers of **SWORDFISH and TUNA, SHARKS, AND ‘OTHER SPECIES’ KEPT AND THROWN BACK**. Write down the numbers of fish that were kept (**No. Kept**) for each species. For the fish that were thrown back, please specify the number of those that were **Alive** and the number thrown back **Dead**. For **Est. Lbs Kept**, write down the estimated dressed weight of fish kept for each species. For catches of species not listed on the form, print the species name in the blank spaces and record the requested catch information.
- Record numbers of **PROTECTED SPECIES** involved with the fishing gear:
 - **Total Number Involved**. Write down the total number of each protected species that were hooked and/or entangled with the fishing gear for the period of the report.
 - **Number Injured**. Write down the number of each protected species that were injured while in, or by, the fishing gear.
 - **Number Dead**. Write down the number of each protected species that were observed to be dead while in, or by, the fishing gear.
 - **If another species is encountered** that is not listed, write the species name in the space provided.

Mail all set forms with the corresponding Trip Summary form and tally sheet(s) within 7 days after the last offloading date to NATIONAL MARINE FISHERIES SERVICE, P.O. BOX 491740, MIAMI, FL, 33149.

Retain the second copy of set forms for your records.

PAPERWORK REDUCTION ACT STATEMENT: Atlantic highly migratory species vessel logbooks provide information on fishing effort, target catch and bycatch in the fisheries for tunas, sharks and swordfish. This information is the basis for quota monitoring and stock assessment and is used to meet international obligations to report fishery statistics to the International Commission for the Conservation of Atlantic Tunas. Public reporting burden for this information collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completed & reviewing the collection of information, is estimated to average: 12 minutes per response for the set form (daily report); 30 minutes per response for the trip expense and earnings summary; 2 minutes per response for the no-fishing report; and 30 minutes per response for the annual expenditures form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Highly Migratory Species Management Division, National Marine Fisheries Service, F/SF1, 1315 East West Highway, Silver Spring, MD 20910. Providing the requested information in the vessel logbook is mandatory, if selected, and is necessary for managing the Atlantic highly migratory species fisheries in accordance with the Atlantic Tunas Convention Act (16 U.S.C. 971 et seq.) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.). In accordance with NOAA Administrative Order 216-100, it is agency policy not to release confidential fisheries statistics, other than in aggregate form. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. This is an approved information collection under OMB #0648-0371 and expires July 31, 2008.

2007 ATLANTIC HIGHLY MIGRATORY SPECIES LOGBOOK - Set Form

OMB 0648-0371 Exp 07/31/2008
Version Date 09/06
NOAA Form 88-191

Please Use Black or Blue Ink only

Official Vessel Number: Signature: _____
I certify that the information contained on this form is accurate and complete to the best of my knowledge. NMFS Use Only:

TARGET: Swordfish Yellowfin Bigeye Mixed Tuna Sharks Dolphin Other (list) _____

GEAR SECTION NOTE: If fishing multiple gears, use separate forms for each gear type (See instructions).

GEAR: Pelagic Longline Bottom Longline Handline Harpoon Gillnet, Drift Gillnet, Other Rod & Reel Bandit Otter Trawl Squid Trawl Buoy Other (list) _____

Set:	Begin Set Date: <input type="text"/> / <input type="text"/> / 2007	Begin Set Time: <input type="text"/> : <input type="text"/> Oam Opm	End Set Time: <input type="text"/> : <input type="text"/> Oam Opm	If the <u>Longline Haulback</u> took more than 24 hours, then check here: <input type="radio"/>
Haulback:	Begin Haulback Date: <input type="text"/> / <input type="text"/> / 2007	Begin Haulback Time: <input type="text"/> : <input type="text"/> Oam Opm	End Haulback Time: <input type="text"/> : <input type="text"/> Oam Opm	

Latitude at beginning of set: North Longitude at beginning of set: West Surface Water Temp: °F Date Received: (NMFS Use Only)

LONGLINE:				USE SEPARATE FORMS FOR EACH TYPE OF GEAR	HOOK & LINE:	
Please do not use decimals or ranges. Use whole numbers only.					Use whole numbers only.	
Number of:	Length of:	Hook:	Bait Type:	Hook:	No. Buoys Deployed (if applicable)	Bait:
Hooks <input type="text"/>	Mainline (nm) <input type="text"/>	Type? <input type="radio"/> "J" <input type="radio"/> Circle	<input type="radio"/> Dead <input type="radio"/> Live <input type="radio"/> Artificial	Total No. <input type="text"/>	<input type="text"/>	Type: <input type="radio"/> Dead <input type="radio"/> Live <input type="radio"/> Artificial
Hooks between Floats <input type="text"/>	Average Gangion (fm) <input type="text"/>	Size? <input type="radio"/> 16/0 <input type="radio"/> 18/0 <input type="radio"/> Other size	Bait Used: <input type="radio"/> Squid <input type="radio"/> Mackerel <input type="radio"/> Other	Avg No. <input type="text"/>		Used: <input type="radio"/> Squid <input type="radio"/> Other <input type="radio"/> Mackerel
Light Sticks <input type="text"/>	Average Floatline (fm) <input type="text"/>	Offset? <input type="radio"/> Yes <input type="radio"/> No		Type? <input type="radio"/> "J" <input type="radio"/> Circle		Size? <input type="radio"/> 11/0 <input type="radio"/> 12/0 <input type="radio"/> Other size(s)

SWORDFISH and TUNA				SHARKS			
No. Kept	No. Thrown Back		Est. Lbs. Kept	No. Kept	No. Thrown Back		Est. Lbs. Kept
	Alive	Dead			Alive	Dead	
Swordfish				PELAGIC SHARK			
Bonito Tuna				Blue			
Bluefin Tuna				Mako, Longfin			
Skipjack Tuna				Mako, Shortfin			
Yellowfin Tuna				Oceanic Whitetip			
Blackfin Tuna				Porbeagle			
Albacore Tuna				Thresher, Bigeye			
Bigeye Tuna				Thresher, Common			

OTHER SPECIES				COASTAL SHARK			
White Marlin				Bignose			
Blue Marlin				Blacktip			
Sailfish				Dusky			
Spearfish				White			
Escolar				Hammerhead			
Dolphin (Mahi)				Night			
Wahoo				Sandbar			
King Mackerel				Sharpnose			
Greater Amberjack				Silky			
Banded Rudderfish				Spinner			
				Tiger			

PROTECTED SPECIES							
	Involved	Injured	Dead		Involved	Injured	Dead
Leatherback				Pilot Whale			
Loggerhead				Risso's Dolphin			
Sm. tooth Sawfish				Other Species: _____			

2008 Atlantic Highly Migratory Species ANNUAL EXPENDITURES Form

Boat Registration or Vessel Documentation Number:

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ANNUAL FISHING EXPENDITURES																						
Repair & Maintenance Expenses (include gear, engine, electronics, etc.)	\$	<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> </tr> </table>																				
Fishing Supplies	\$	<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> </tr> </table>																				
Drydock / Haulout Expense	\$	<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> </tr> </table>																				
Purchases of Capital (including engine, electronics, hydraulic reel, etc.)	\$	<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> </tr> </table>																				
Insurance: Hull	\$	<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> </tr> </table>																				
P&I	\$	<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> </tr> </table>																				
Boat Dockage/Rent and Utility Expenses	\$	<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> </tr> </table>																				
Commercial Fishing Licenses & Permits	\$	<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> </tr> </table>																				
Vessel Boat Loan Payments	\$	<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> </tr> </table>																				
Relocation Expenses	\$	<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> </tr> </table>																				
OTHER BUSINESS EXPENSES PAID BY VESSEL																						
Business taxes paid by vessel (include property and income taxes)	\$	<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> </tr> </table>																				
Office Expenses (rent, accounting, legal, phone, etc.)	\$	<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> </tr> </table>																				
Other annual or one-time-only expenditures paid by vessel (include business travel expenses, health insurance, vehicle loan/lease payments, etc.)	\$	<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> <td style="width: 25px;"></td> </tr> </table>																				

I certify that the information contained on this form is accurate and complete to the best of my knowledge:

Signature of person completing report _____

Printed name of person signing report _____

Phone Number (____) _____

PAPERWORK REDUCTION ACT STATEMENT: Collection of economic information through vessel logbooks provides current data on the costs and earnings for vessels participating in the Atlantic highly migratory species fisheries and aids NMFS in the assessment of impacts of fishery regulations. Public reporting burden for the trip expense and payment annual summary is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completed & reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: National Marine Fisheries Service, F/SF1, 1315 East West Highway, Silver Spring MD 20910. Providing the requested information in the trip summary is mandatory for managing the Atlantic tuna fisheries in accordance with the Atlantic Tunas Convention Act (16 U.S.C. 971 et seq.) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.). In accordance with NOAA Administrative Order 216-100, it is agency policy not to release confidential information, other than in aggregate form. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. This is an approved information collection under OMB #0648-0371 and expires July 31, 2008.

Instructions for completing the 2008 Atlantic Highly Migratory Species ANNUAL EXPENDITURES Form

NOTE: All data provided are **CONFIDENTIAL** and will be used to determine the effects of existing and proposed management policies on fishery participants. Consistent and accurate reporting is critical for achieving the benefits of conservation and management of Atlantic Highly Migratory Species fisheries. The trip expense and payment data are not mandatory unless your vessel has been selected and you have been notified in writing by NMFS that this information is required of you. Vessels not selected are encouraged to supply the information on a voluntary basis. If your vessel has been selected, this form must be completed and submitted to NMFS by April 15 of the following year. Please send this form to the following address:

NOAA Fisheries/National Marine Fisheries Service, Southeast Fisheries Science Center, Logbook Program, P.O. Box 491740, Key Biscayne, Florida 33149-9915.

Annual Fishing Expenditures

Repair/Maintenance: Record all repair and maintenance expenses paid in 2008. This includes gear repairs or maintenance (e.g., replacement of longline hauler), engine repairs, and electronic repairs but excludes dry dock expenses and trip specific gear maintenance expenses recorded on trip summary forms.

Fishing supplies (hooks, line, gloves, buoys, etc.) purchased for use on more than one fishing trip. Exclude expenses for trip specific fishing supplies recorded on trip summary forms.

Drydock expense: Record all dry dock expenses paid in 2008.

Purchases of Durable Equipment: Record total purchases of equipment (electronics, ice makers, engines, longline reel, etc.) excluding trip specific gear expenses recorded on trip summary forms.

Insurance premiums: Record hull and P&I insurance-related expenditures paid in 2008.

Commercial Fishing Licenses & Permits: Record total cost of all local/state/federal licenses and permits purchased for 2008 operations.

Vessel Boat Loan Payments: Total annual boat loan payments.

Relocation Expenses: Record expenses incurred moving vessel to new ports of operation throughout the year including fuel expenditures, housing costs, moving expenses, etc. Do not include costs already reported on the trip summary form if the relocation occurred as part of a fishing trip.

Other Business Expenses Paid by Vessel

Business Taxes: Record total local/state/federal taxes paid by vessel in 2008, including income, property, etc.

Office Expenses: Record total office expenses paid by vessel in 2008, including (share of) office rent, accounting and legal expenses, telephone, utilities, etc.

Other annual or one-time-only expenditures paid by vessel: Include business travel expenses, health insurance, vehicle loan/lease payments, etc.)

e-CFR Data is current as of July 7, 2008

Title 50: Wildlife and Fisheries

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

Subpart D—National Standards

§ 600.340 National Standard 7—Costs and Benefits.

(a) *Standard 7.* Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) *Necessity of Federal management —(1) General.* The principle that not every fishery needs regulation is implicit in this standard. The Magnuson-Stevens Act requires Councils to prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. For example, the need to collect data about a fishery is not, by itself, adequate justification for preparation of an FMP, since there are less costly ways to gather the data (see §600.320(d)(2)). In some cases, the FMP preparation process itself, even if it does not culminate in a document approved by the Secretary, can be useful in supplying a basis for management by one or more coastal states.

(2) *Criteria.* In deciding whether a fishery needs management through regulations implementing an FMP, the following general factors should be considered, among others:

- (i) The importance of the fishery to the Nation and to the regional economy.
- (ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.
- (iii) The extent to which the fishery could be or is already adequately managed by states, by state/Federal programs, by Federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Magnuson-Stevens Act.
- (iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.
- (v) The economic condition of a fishery and whether an FMP can produce more efficient utilization.
- (vi) The needs of a developing fishery, and whether an FMP can foster orderly growth.
- (vii) The costs associated with an FMP, balanced against the benefits (see paragraph (d) of this section as a guide).

(c) *Alternative management measures.* Management measures should not impose unnecessary burdens on the economy, on individuals, on private or public organizations, or on Federal, state, or local governments. Factors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative.

(d) *Analysis.* The supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost/benefit analysis.

Rather, an evaluation of effects and costs, especially of differences among workable alternatives, including the status quo, is adequate. If quantitative estimates are not possible, qualitative estimates will suffice.

(1) *Burdens.* Management measures should be designed to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities that are consistent with ensuring wise use of the resources and reducing conflict in the fishery. The type and level of burden placed on user groups by the regulations need to be identified. Such an examination should include, for example: Capital outlays; operating and maintenance costs; reporting costs; administrative, enforcement, and information costs; and prices to consumers. Management measures may shift costs from one level of government to another, from one part of the private sector to another, or from the government to the private sector. Redistribution of costs through regulations is likely to generate controversy. A discussion of these and any other burdens placed on the public through FMP regulations should be a part of the FMP's supporting analyses.

(2) *Gains.* The relative distribution of gains may change as a result of instituting different sets of alternatives, as may the specific type of gain. The analysis of benefits should focus on the specific gains produced by each alternative set of management measures, including the status quo. The benefits to society that result from the alternative management measures should be identified, and the level of gain assessed.

e-CFR Data is current as of July 7, 2008

Title 50: Wildlife and Fisheries

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

Subpart D—National Standards

§ 600.345 National Standard 8—Communities.

(a) *Standard 8.* Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to:

- (1) Provide for the sustained participation of such communities; and
- (2) To the extent practicable, minimize adverse economic impacts on such communities.

(b) *General.* (1) This standard requires that an FMP take into account the importance of fishery resources to fishing communities. This consideration, however, is within the context of the conservation requirements of the Magnuson-Stevens Act. Deliberations regarding the importance of fishery resources to affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP. Where the preferred alternative negatively affects the sustained participation of fishing communities, the FMP should discuss the rationale for selecting this alternative over another with a lesser impact on fishing communities. All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative.

(2) This standard does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community.

(3) The term “fishing community” means a community that is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew, and fish processors that are based in such communities. A fishing community is a social or economic group whose members reside in a specific location and share a common dependency on commercial, recreational, or subsistence fishing or on directly related fisheries-dependent services and industries (for example, boatyards, ice suppliers, tackle shops).

(4) The term “sustained participation” means continued access to the fishery within the constraints of the condition of the resource.

(c) *Analysis.* (1) FMPs must examine the social and economic importance of fisheries to communities potentially affected by management measures. For example, severe reductions of harvests for conservation purposes may decrease employment opportunities for fishermen and processing plant workers, thereby adversely affecting their families and communities. Similarly, a management measure that results in the allocation of fishery resources among competing sectors of a fishery may benefit some communities at the expense of others.

(2) An appropriate vehicle for the analyses under this standard is the fishery impact statement required by section 303(a)(9) of the Magnuson-Stevens Act. Qualitative and quantitative data may be used, including information provided by fishermen, dealers, processors, and fisheries organizations and associations. In cases where data are severely limited, effort should be directed to identifying and gathering needed data.

(3) To address the sustained participation of fishing communities that will be affected by management measures, the analysis should first identify affected fishing communities and then assess their differing levels of dependence on and engagement in the fishery being regulated. The analysis should also specify how that assessment was made. The best available data on the history, extent, and type of participation of these fishing communities in the fishery should be incorporated into the social and economic information presented in the FMP. The analysis does not have to contain an exhaustive listing of all communities that might fit the definition; a judgment can be made as to which are primarily affected. The analysis should discuss each alternative's likely effect on the sustained participation of these fishing communities in the fishery.

(4) The analysis should assess the likely positive and negative social and economic impacts of the alternative management measures, over both the short and the long term, on fishing communities. Any particular management measure may economically benefit some communities while adversely affecting others. Economic impacts should be considered both for individual communities and for the group of all affected communities identified in the FMP. Impacts of both consumptive and non-consumptive uses of fishery resources should be considered.

(5) A discussion of social and economic impacts should identify those alternatives that would minimize adverse impacts on these fishing communities within the constraints of conservation and management goals of the FMP, other national standards, and other applicable law.

e-CFR Data is current as of July 8, 2008

Title 50: Wildlife and Fisheries

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

Subpart A—General

§ 635.1 Purpose and scope.

(a) The regulations in this part govern the conservation and management of Atlantic tunas, Atlantic billfish, Atlantic sharks, and Atlantic swordfish under the authority of the Magnuson-Stevens Act and ATCA. They implement the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, and the Fishery Management Plan for Atlantic Billfishes. The Atlantic tunas regulations govern conservation and management of Atlantic tunas in the management unit. The Atlantic billfish regulations govern conservation and management of Atlantic billfish in the management unit. The Atlantic swordfish regulations govern conservation and management of North and South Atlantic swordfish in the management unit. North Atlantic swordfish are managed under the authority of both ATCA and the Magnuson-Stevens Act. South Atlantic swordfish are managed under the sole authority of ATCA. The shark regulations govern conservation and management of sharks in the management unit, solely under the authority of the Magnuson-Stevens Act. Sharks are managed under the authority of the Magnuson-Stevens Act.

(b) Under section 9(d) of ATCA, NMFS has determined that the regulations contained in this part with respect to Atlantic tunas are applicable within the territorial sea of the United States adjacent to, and within the boundaries of, the States of New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana and Texas, and the Commonwealths of Puerto Rico and the Virgin Islands. NMFS will undertake a continuing review of State regulations to determine if regulations applicable to Atlantic tunas, swordfish or billfish are at least as restrictive as regulations contained in this part and if such regulations are effectively enforced. In such case, NMFS will file with the Office of the Federal Register for publication notification of the basis for the determination and of the specific regulations that shall or shall not apply in the territorial sea of the identified State.

§ 635.2 Definitions.

[Link to an amendment published at 73 FR 35827, June 24, 2008.](#)

In addition to the definitions in the Magnuson-Stevens Act, ATCA, and §600.10 of this chapter, the terms used in this part have following meanings. If applicable, the terms used in this part supercede those used in §600.10:

Archival tag means a device that is implanted or affixed to a fish to electronically record scientific information about the migratory behavior of that fish.

ATCA Certificate of Eligibility (COE) means the certificate that must accompany any applicable shipment of fish pursuant to a finding under 16 U.S.C. 971d (c)(4) or (c)(5).

Atlantic HMS means Atlantic tunas, billfish, sharks, and swordfish.

Atlantic Ocean, as used in this part, includes the North and South Atlantic Oceans, the Gulf of Mexico, and the Caribbean Sea.

Atlantic shark identification workshop certificate means the document issued by NMFS, or its designee, indicating that the person named on the certificate has successfully completed the Atlantic shark identification workshop.

BAYS means Atlantic bigeye, albacore, yellowfin, and skipjack tunas as defined in §600.10 of this part.

BFT landings quota means the portion of the ICCAT BFT catch quota allocated to the United States against which landings of BFT are counted.

Billfish Certificate of Eligibility (COE) means a certificate that accompanies a shipment of billfish indicating that the billfish or related species, or parts thereof, are not from the respective Atlantic Ocean management units.

Bottom longline means a longline that is deployed with enough weights and/or anchors to maintain contact with the ocean bottom.

BSD tag means a numbered tag affixed to a BFT issued by any country in conjunction with a catch statistics information program and recorded on a BSD.

Buoy gear means a fishing gear consisting of one or more floatation devices supporting a single mainline to which no more than two hooks or gangions are attached.

Caudal keel means the horizontal ridges along each side of a fish at the base of the tail fin.

CFL (curved fork length) means the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

Charleston Bump closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 34°00' N. lat. near Wilmington Beach, NC, and proceeding

due east to connect by straight lines the following coordinates in the order stated: 34°00' N. lat., 76°00' W. long.; 31°00' N. lat., 76°00' W. long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 31 °00' N. lat. near Jekyll Island, GA.

Circle hook means a fishing hook originally designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular, or oval, shape.

CK means the length of a fish measured along the body contour, i.e., a curved measurement, from the point on the cleithrum that provides the shortest possible measurement along the body contour to the anterior portion of the caudal keel. The cleithrum is the semicircular bony structure at the posterior edge of the gill opening.

Convention means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro, Brazil, on May 14, 1966, 20 U.S.T. 2887, TIAS 6767, including any amendments or protocols thereto, which are binding upon the United States.

Conventional tag means a numbered, flexible ribbon that is implanted or affixed to a fish that is released back into the ocean that allows for the identification of that fish in the event it is recaptured.

Corrodible Hook means a fishing hook composed of any material other than stainless steel.

Dealer tag means the numbered, flexible, self-locking ribbon issued by NMFS for the identification of BFT sold to a permitted dealer as required under §635.5(b)(2)(ii).

Dehooking device means a device intended to remove a hook embedded in a fish in order to release the fish with minimum damage.

Designated by NMFS means the address or location indicated in a letter to permit holders or in a letter accompanying reporting forms.

DeSoto Canyon closed area means the area within the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 30°00' N. lat., 88°00' W. long.; 30°00' N. lat., 86°00' W. long.; 28°00' N. lat., 86°00' W. long.; 28°00' N. lat., 84°00' W. long.; 26°00' N. lat., 84°00' W. long.; 26°00' N. lat., 86°00' W. long.; 28°00' N. lat., 86°00' W. long.; 28°00' N. lat., 88°00' W. long.; 30° 00' N. lat., 88°00' W. long.

Display permit means a permit issued in order to catch and land HMS for the purpose of public display pursuant to §635.32.

Division Chief means the Chief, Highly Migratory Species Management Division, NMFS (F/SF1), 1315 East-West Highway, Silver Spring, MD, 20910; (301) 713-2347.

Downrigger means a piece of equipment attached to a vessel and with a weight on a cable that is in turn attached to hook-and-line gear to maintain lures or bait at depth while trolling. The downrigger has a release system to retrieve the weight by rod and reel or by manual, electric, or hydraulic winch after a fish strike on the hook-and-line gear.

Dress means to process a fish by removal of head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass.

Dressed weight (dw) means the weight of a fish after it has been dressed.

East Florida Coast closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 31 °00' N. lat. near Jekyll Island, GA, and proceeding due east to connect by straight lines the following coordinates in the order stated: 31°00' N. lat., 78°00' W. long.; 28°17'10" N. lat., 79°11'24" W. long.; then proceeding along the outer boundary of the EEZ to the intersection of the EEZ with 24°00' N. lat.; then proceeding due west to 24°00' N. lat., 81 °47' W. long.; and then proceeding due north to intersect the inner boundary of the U.S. EEZ at 81 °47' W. long. near Key West, FL.

EFP means an exempted fishing permit issued pursuant to §600.745 of this chapter or to §635.32.

Eviscerated means a fish that has only the alimentary organs removed.

Export, for purposes of this subpart, means to effect exportation.

Exportation has the same general meaning as 19 CFR 101.1 and generally refers to a severance of goods from the mass of things belonging to one country with the intention of uniting them to the mass of things belonging to some foreign country. For purposes of this subpart, a shipment between the United States and its insular possessions is not an export.

Exporter, for purposes of this subpart, is the principal party in interest, meaning the party that receives the primary benefit, monetary or otherwise, of the export transaction. For exports from the United States, the exporter is the U.S. principal party in interest, as identified in Part 30 of title 15 of the CFR. An exporter is subject to the requirements of this subpart, even if exports are exempt from statistical reporting requirements under Part 30 of title 15 of the CFR.

Finlet means one of the small individual fins on a tuna located behind the second dorsal and anal fins and forward of the tail fin.

First transaction in the United States means the time and place at which a fish is filleted, cut into steaks, or processed

in any way that physically alters it after being landed in or imported into the United States.

Fishing record means all records of navigation and operations of a fishing vessel, as well as all records of catching, harvesting, transporting, landing, purchasing, or selling a fish.

Fishing vessel means any vessel engaged in fishing, processing, or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

Fishing year means —

(1) For Atlantic tunas and swordfish, before January 1, 2008 — June 1 through May 31. On or after January 1, 2008 — January 1 through December 31.

(2) For Atlantic billfish, On or after January 1, 2007 — January 1 through December 31.

(3) For sharks — January 1 through December 31.

Floatation device means any positively buoyant object rigged to be attached to a fishing gear.

Floatline means a line attached to a buoyant object that is used to support the mainline of a longline at a specific target depth.

For-hire trip means a recreational fishing trip taken by a vessel with an Atlantic HMS Charter/Headboat permit during which paying passenger(s) are aboard; or, for uninspected vessels, trips during which there are more than three persons aboard, including operator and crew; or, for vessels that have been issued a Certificate of Inspection by the U.S. Coast Guard to carry passengers for hire, trips during which there are more persons aboard than the number of crew specified on the vessel's Certificate of Inspection.

Freeboard is defined as the working distance between the top rail of the gunwale to the water's surface, and will vary based on the vessel design.

Gangion means a line that serves to attach a hook, suspended at a specific target depth, to the mainline of a longline.

Giant BFT means an Atlantic BFT measuring 81 inches (206 cm) CFL or greater.

Handgear means handline, harpoon, rod and reel, bandit gear, buoy gear, or speargun gear.

Handline means fishing gear that is attached to, or in contact with, a vessel; that consists of a mainline to which no more than two hooks or gangions may be attached; and that is released and retrieved by hand rather than by mechanical means.

High-flyer means a flag, radar reflector or radio beacon transmitter, suitable for attachment to a longline to facilitate its location and retrieval.

Highly migratory species (HMS) means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in appendix A to this part); white marlin; blue marlin; sailfish; and longbill spearfish.

Importer, for purposes of this subpart, means the principal party responsible for the import of product into a country. For imports into the United States, and for purposes of this subpart, "importer" means the consignee as identified on entry documentation or any authorized, equivalent electronic medium required for release of shipments, or any authorized equivalent entry documentation from the customs authority of the United States or the separate customs territory of a U.S. insular possession. If a consignee is not declared, then the importer of record is considered to be the consignee.

LAP means a limited access permit issued pursuant to §635.4.

Large coastal shark (LCS) means one of the species, or a part thereof, listed in paragraph (a) of table 1 in appendix A to this part.

Large medium BFT means a BFT measuring at least 73 inches (185 cm) and less than 81 inches (206 cm) CFL.

Large school BFT means a BFT measuring at least 47 inches (119 cm) and less than 59 inches (150 cm) CFL.

LJFL (lower jaw-fork length) means the straight-line measurement of a fish from the tip of the lower jaw to the fork of the caudal fin. The measurement is not made along the curve of the body.

Longline means fishing gear that is set horizontally, either anchored, floating, or attached to a vessel, and that consists of a mainline or groundline with three or more leaders (gangions) and hooks, whether retrieved by hand or mechanical means.

Madison-Swanson closed area means a rectangular-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 29°17' N. lat., 85°50' W. long.; 29° 17' N. lat., 85°38' W. long.; 29°06' N. lat., 85°38' W. long.; 29°06' N. lat., 85°50' W. long.; and 29°17' N. lat., 85°50' W. long.

Management unit means in this part:

(1) For Atlantic tunas, longbill spearfish, blue marlin and white marlin, means all fish of these species in the Atlantic Ocean;

- (2) For sailfish, means all fish of this species in the Atlantic Ocean west of 30° W. long.;
- (3) For North Atlantic swordfish, means all fish of this species in the Atlantic Ocean north of 5° N. lat.;
- (4) For South Atlantic swordfish, means all fish of this species in the Atlantic Ocean south of 5° N. lat.; and
- (5) For sharks, means all fish of the species listed in Table 1 of Appendix A to this part, in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea.

Mid-Atlantic Bight means the area bounded by straight lines connecting the mid-Atlantic states' internal waters and extending to 71° W. long. between 35° N. lat. and 43° N. lat.

Mid-Atlantic shark closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 35°41' N. lat. just south of Oregon Inlet, North Carolina, and connecting by straight lines the following coordinates in the order stated: 35° 41' N. lat., 75°25' W. long. proceeding due east to 35°41' N. lat., 74°51' W. long.; then proceeding southeast to 35°30' N. lat., 74°46' W. long.; then proceeding southwest, roughly following the 55 fathom mark, to 33°51' N. lat., 76°24' W. long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 33°51' N. lat., 77°53' W. long. near Cape Fear, North Carolina.

Net check refers to a visual inspection of a shark gillnet where the vessel operator transits the length of the gear and inspects it either with a spotlight or by pulling up the gear.

Non-ridgeback large coastal shark means one of the species, or a part thereof, listed in paragraph (a)(2) of table 1 in appendix A to this part.

North Atlantic swordfish or North Atlantic swordfish stock means those swordfish occurring in the Atlantic Ocean north of 5° N. lat.

Northeast Distant gear restricted area means the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00' N. lat., 60°00' W. long.; 55°00' N. lat., 60°00' W. long.; 55°00' N. lat., 20°00' W. long.; 35°00' N. lat., 20°00' W. long.; 35°00' N. lat., 60°00' W. long.

Northeastern United States closed area means the area bounded by straight lines connecting the following coordinates in the order stated: 40°00' N. lat., 74°00' W. long.; 40°00' N. lat., 68°00' W. long.; 39°00' N. lat., 68°00' W. long.; and 39°00' N. lat., 74°00' W. long.

Offset circle hook means a circle hook originally designed and manufactured so that the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

Operator, with respect to any vessel, means the master or other individual aboard and in charge of that vessel.

Pectoral fin means the fin located behind the gill cover on either side of a fish.

Pelagic longline means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom.

Pelagic shark means one of the species, or a part thereof, listed in paragraph (c) of table 1 in appendix A to this part.

PFCFL (pectoral fin curved fork length) means the length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

Prohibited shark means one of the species, or a part thereof, listed in paragraph (d) of table 1 in appendix A to this part.

Protected species safe handling, release, and identification workshop certificate means the document issued by NMFS, or its designee, indicating that the person named on the certificate has successfully completed the Atlantic HMS protected species safe handling, release, and identification workshop.

Restricted-fishing day (RFD) means a day, beginning at 0000 hours and ending at 2400 hours local time, during which a person aboard a vessel for which a General category permit for Atlantic Tunas has been issued may not fish for, possess, or retain a BFT.

Ridgeback large coastal shark means one of the species, or a part thereof, listed in paragraph (a)(1) of table 1 in appendix A to this part.

School BFT means a BFT measuring at least 27 inches (69 cm) and less than 47 inches (119 cm) CFL.

Shark means one of the oceanic species, or a part thereof, listed in Table 1 of Appendix A to this part.

Small coastal shark (SCS) means one of the species, or a part thereof, listed in paragraph (b) of table 1 in appendix A to this part.

Small medium BFT means a BFT measuring at least 59 inches (150 cm) and less than 73 inches (185 cm) CFL.

South Atlantic swordfish or south Atlantic swordfish stock means those swordfish occurring in the Atlantic Ocean

south of 5° N. lat.

Speargun fishing gear means a muscle-powered speargun equipped with a trigger mechanism, a spear with a tip designed to penetrate and retain fish, and terminal gear. Terminal gear may include, but is not limited to, trailing lines, reels, and floats. The term “muscle-powered speargun” for the purposes of this part means a speargun that stores potential energy provided from the operator’s muscles, and that releases only the amount of energy that the operator has provided to it from his or her own muscles. Common energy storing methods for muscle-powered spearguns include compressing air and springs, and the stretching of rubber bands.

Steamboat Lumps closed area means a rectangular-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 28°14' N. lat., 84°48' W. long.; 28° 14' N. lat., 84°37' W. long.; 28°03' N. lat., 84°37' W. long.; 28°03' N. lat., 84°48' W. long.; and 28°14' N. lat., 84°48' W. long.

Tournament means any fishing competition involving Atlantic HMS in which participants must register or otherwise enter or in which a prize or award is offered for catching or landing such fish.

Tournament operator means a person or entity responsible for maintaining records of participants and results used for awarding tournament points or prizes, regardless of whether fish are retained.

Trip limit means the total allowable take from a single trip as defined in §600.10 of this chapter.

Tuna or tuna-like means the Scombriformes (with the exception of families Trichiuridae and Gempylidae and the genus Scomber) and such other species of fishes that are regulated by ICCAT in the Atlantic Ocean.

Weighout slip means a document provided to the owner or operator of the vessel by a person who weighs fish or parts thereof that are landed from a fishing vessel. A document, such as a “tally sheet,” “trip ticket,” or “sales receipt,” that contains such information is considered a weighout slip.

Young school BFT means an Atlantic BFT measuring less than 27 inches (69 cm) CFL.

[64 FR 29135, May 28, 1999, as amended at 65 FR 47237, Aug. 1, 2000; 66 FR 8904, Feb. 5, 2001; 67 FR 45400, July 9, 2002; 67 FR 77436, Dec. 18, 2002; 68 FR 74784, Dec. 24, 2003; 69 FR 40754, July 6, 2004; 69 FR 67283, Nov. 17, 2004; 69 FR 70399, Dec. 6, 2004; 71 FR 58163, Oct. 2, 2006; 73 FR 31389, June 2, 2008]

§ 635.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in §600.705 of this chapter and in paragraphs (b) and (c) of this section.

(b) In accordance with regulations issued under the Marine Mammal Protection Act of 1972, as amended, it is unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in fisheries for HMS in the Atlantic Ocean, unless the vessel owner or authorized representative has complied with specified requirements including, but not limited to, registration, exemption certificates, decals, and reports, as contained in part 229 of this title.

(c) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§600.730, 600.735, and §600.740 of this chapter, respectively.

(d) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing or exempted educational activity, or for public display, as specified in §635.32.

[64 FR 29135, May 28, 1999, as amended at 68 FR 74784, Dec. 24, 2003]

§ 635.4 Permits and fees.

[Link to an amendment published at 73 FR 35827, June 24, 2008.](#)

[Link to an amendment published at 73 FR 38153, July 3, 2008.](#)

Information on permits and permit requirements may be obtained from the Division Chief or where otherwise stated in this part.

(a) *General*—(1) *Authorized activities*. Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities without the appropriate permit, unless otherwise authorized by NMFS in accordance with this part. In certain cases, additional permits may be required to authorize these same or related activities under federal, state or local jurisdictions.

(2) *Vessel permit inspection*. The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess Atlantic HMS when engaged in recreational fishing and to fish for, take, retain or possess Atlantic tunas, swordfish, or sharks when engaged in commercial fishing. The vessel operator must make such permit available for inspection upon request by NMFS or by a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection all required vessel permits.

(3) *Property rights*. Limited access vessel permits or any other permit issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the takings provision of the Fifth Amendment

of the U.S. Constitution. Rather, limited access vessel permits represent only a harvesting privilege that may be revoked, suspended, or amended subject to the requirements of the Magnuson-Stevens Act or other applicable law.

(4) *Dealer permit inspection.* A dealer permit issued under this section, or a copy thereof, must be available at each of the dealer's places of business. A dealer must present the permit or a copy for inspection upon the request of a NMFS-authorized officer.

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

(6) *Sanctions and denials.* A permit issued under this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(7) *Alteration.* A vessel or dealer permit that is altered, erased, mutilated, or otherwise modified is invalid.

(8) *Replacement.* NMFS may issue a replacement permit upon the request of the permittee. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (b) of this section, may be charged for issuance of the replacement permit.

(9) *Fees.* NMFS may charge a fee for each application for a permit or for each transfer or replacement of a permit. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified in the instructions provided with each application form. Each applicant must include the appropriate fee with each application or request for transfer or replacement. A permit will not be issued to anyone who fails to pay the fee.

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

(b) *HMS Charter/Headboat permits.* (1) The owner of a charter boat or headboat used to fish for, take, retain, or possess any Atlantic HMS must obtain an HMS Charter/Headboat permit. A vessel issued an HMS Charter/Headboat permit for a fishing year shall not be issued an HMS Angling permit or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(2) While persons aboard a vessel that has been issued an HMS Charter/Headboat permit are fishing for or are in possession of Atlantic HMS, the operator of the vessel must have a valid Merchant Marine License or Uninspected Passenger Vessel License, as applicable, issued by the U.S. Coast Guard pursuant to regulations at 46 CFR part 10. Such Coast Guard license must be carried on board the vessel.

(c) *HMS Angling permits.* (1) The owner of any vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed recreationally, must obtain an HMS Angling permit, except as provided in §635.4(c)(2). Atlantic HMS caught, retained, possessed, or landed by persons on board vessels with an HMS Angling permit may not be sold or transferred to any person for a commercial purpose. A vessel issued an HMS Angling permit for a fishing year shall not be issued an HMS Charter/Headboat permit or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(2) A vessel with a valid Atlantic Tunas General category permit issued under paragraph (d) of this section may fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has registered with NMFS' HMS Management Division as required under §635.5(d). When a vessel issued a valid Atlantic Tunas General category permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in paragraph (c)(3) of this section.

(3) A vessel issued an Atlantic Tunas General category permit fishing in a tournament, as authorized under §635.4(c)(2), shall comply with Atlantic Tunas General category regulations when fishing for, retaining, possessing, or landing Atlantic tunas.

(d) *Atlantic Tunas vessel permits.* (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 issued under paragraph (b) 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, or HMS Charter/Headboat 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 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 or a valid HMS Charter/Headboat permit.

(3) A vessel issued an Atlantic Tunas permit in any category for a fishing year shall not be issued an HMS Angling permit, HMS Charter/Headboat permit, or an Atlantic Tunas permit in any other category for that same fishing year, regardless of a change in the vessel's ownership.

(4) A person can obtain a limited access Atlantic Tunas Longline category permit for a vessel only if the vessel has been issued both a limited access permit for shark and a limited access permit, other than handgear, for swordfish. Limited access Atlantic Tunas Longline category permits may only be obtained through transfer from current owners consistent with the provisions under paragraph (l)(2) of this section.

(5) An owner of a vessel with an Atlantic Tunas permit in the Purse Seine category may transfer the permit to another purse seine vessel that he or she owns. In either case, the owner must submit a written request for transfer to NMFS, to an address designated by NMFS, and attach an application for the new vessel and the existing permit. NMFS will issue no more than 5 Atlantic Tunas Purse Seine category permits.

(e) *Shark vessel LAPs.* (1) The only valid Federal commercial vessel permits for sharks are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

(2) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of two types of commercial limited access shark permits: Shark directed limited access permit or shark incidental limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

(3) A commercial limited access permit for sharks is not required if the vessel is recreational fishing and retains no more sharks than the recreational retention limit, is operating pursuant to the conditions of a shark EFP, or that fishes exclusively within state waters.

(f) *Swordfish vessel LAPs.* (1) The owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: Swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

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

(3) A commercial Federal permit for swordfish is not required if the vessel is recreational fishing.

(4) Unless the owner has been issued a swordfish handgear permit, a limited access permit for swordfish is valid only when the vessel has on board a valid limited access permit for shark and a valid Atlantic Tunas Longline category permit issued for such vessel.

(g) *Dealer permits* —(1) *Atlantic tunas.* A person that receives, purchases, trades for, or barter for Atlantic tunas from a fishing vessel of the United States, as defined under §600.10 of this chapter, must possess a valid dealer permit.

(2) *Shark.* A person that receives, purchases, trades for, or barter for Atlantic sharks from a fishing vessel of the United States, as defined under §600.10 of this chapter, must possess a valid dealer permit.

(3) *Swordfish.* A person that receives, purchases, trades for, or barter for Atlantic swordfish from a fishing vessel of the United States, as defined under §600.10 of this chapter, must possess a valid dealer permit.

(h) *Applications for permits.* An owner of a vessel or a dealer must submit to NMFS, at an address designated by NMFS, a complete application and required supporting documents at least 30 days before the date on which the permit is to be made effective. Application forms and instructions for their completion are available from NMFS.

(1) *Atlantic Tunas, HMS Angling, and HMS Charter/Headboat vessel permits.* (i) An applicant must provide all information concerning his or her identification, vessel, gear used, fishing areas, fisheries participated in, the corporation or partnership owning the vessel, and income requirements requested by NMFS and included on the application form.

(ii) An applicant must also submit a copy of the vessel's valid U.S. Coast Guard documentation or, if not documented, a copy of its valid state registration and any other information that may be necessary for the issuance or administration of the permit as requested by NMFS. The owner must submit such information to an address designated by NMFS.

(iii) NMFS may require an applicant to provide documentation supporting the application before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (a)(7) of this section.

(2) *Limited access permits for swordfish and shark.* See paragraph (l) of this section for transfers of LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

(3) *Dealer permits.* (i) An applicant for a dealer permit must provide all the information requested on the application form necessary to identify the company, its principal place of business, and mechanisms by which the company can be

contacted.

(ii) An applicant must also submit a copy of each state wholesaler's license held by the dealer and, if a business is owned by a corporation or partnership, the corporate or partnership documents requested on the application form.

(iii) An applicant must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(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. In the case of a vessel permit for Atlantic tunas or an HMS Charter/Headboat permit, the vessel owner or operator must report the change by phone or internet to a number or website designated by NMFS. A new permit will be issued to incorporate the new information, subject to limited access provisions specified in paragraph (l)(2) of this section. For certain information changes, 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 31 st day after such change.

(j) *Permit issuance.* (1) NMFS will issue a permit within 30 days of receipt of a complete and qualifying application. An application is complete when all requested forms, information, and documentation have been received, including all reports and fishing or catch information required to be submitted under this part.

(2) NMFS will notify the applicant of any deficiency in the application, including failure to provide information or reports required to be submitted under this part. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(3) A vessel owner issued an Atlantic tunas permit in the General, Harpoon, or Trap category or an Atlantic HMS permit in the Angling or Charter/Headboat category under paragraph (b), (c), or (d) of this section may change the category of the vessel permit once within 10 calendar days of the date of issuance of the permit. After 10 calendar days from the date of issuance of the permit, the vessel owner may not change the permit category until the following fishing season, except during the period of January 1, 2008, through May 31, 2008, when one additional change is authorized.

(k) *Duration.* A permit issued under this section will be valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904, the vessel or dealership is sold, or any other information previously submitted on the application changes, as specified in paragraph

(i) of this section.

(l) *Transfer — (1) General.* A permit issued under this section is not transferable or assignable to

another vessel or owner or dealer; it is valid only for the vessel or owner or dealer to whom it is issued. If a person acquires a vessel or dealership and wants to conduct activities for which a permit is required, that person must apply for a permit in accordance with the provisions of paragraph (h) of this section or, if the acquired vessel is permitted in either the shark, swordfish, or tuna longline fishery, in accordance with paragraph (1)(2) of this section. If the acquired vessel or dealership is currently permitted, an application must be accompanied by the original permit, by a copy of a signed bill of sale or equivalent acquisition papers, and the appropriate workshop certificates as specified in §635.8.

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

(ii) Except as specified in paragraph (l)(2)(x) of this section, an owner may upgrade a vessel with a shark, swordfish, or tuna longline limited access permit, or transfer the limited access permit to another vessel, and be eligible to retain or renew a limited access permit only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications.

(A) The vessel baseline specifications are the respective specifications (length overall, gross registered tonnage, net tonnage, horsepower) of the first vessel that was issued an initial limited access permit or, if applicable, of that vessel's replacement owned as of May 28, 1999.

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

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

(iii) No person or entity may own or control more than 5 percent of the vessels for which swordfish directed, shark directed or tuna longline limited access permits have been issued.

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

(v) For swordfish, shark, and tuna longline limited access permit transfers to a different person, the transferee must submit a request to NMFS, at an address designated by NMFS, to transfer the original limited access permit(s), subject to the requirements specified in paragraphs (l)(2)(ii), (iii), and (x) of this section, if applicable. The following must accompany the completed application: The original limited access permit(s) with signatures of both parties to the transaction on the back of the permit(s) and the bill of sale for the permit(s). A person must include copies of both vessels' U.S. Coast Guard documentation or state registration for limited access permit transfers involving vessels.

(vi) For limited access permit transfers in conjunction with the sale of the permitted vessel, the transferee of the vessel and limited access permit(s) issued to that vessel must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit(s), subject to the requirements specified in paragraphs (l)(2)(ii), (iii), and (x) of this section, if applicable. The following must accompany the completed application: The original limited access permit(s) with signatures of both parties to the transaction on the back of the permit(s), the bill of sale for the limited access permit(s) and the vessel, and a copy of the vessel's U.S. Coast Guard documentation or state registration.

(vii) The owner of a vessel issued a limited access permit(s) who sells the permitted vessel but retains the limited access permit(s) must notify NMFS within 30 days after the sale of the change in application information in accordance with paragraph (i) of this section. If the owner wishes to transfer the limited access permit(s) to a replacement vessel, he/she must apply according to the procedures in paragraph (l)(2)(iv) of this section.

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark, and an Atlantic Tunas Longline category permit are required to retain swordfish for commercial purposes. Accordingly, a LAP for swordfish obtained by transfer without either a directed or incidental catch shark LAP or an Atlantic tunas Longline category permit will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(ix) As specified in paragraph (d)(4) of this section, a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark, and an Atlantic Tunas Longline category permit are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category permit obtained by transfer without either a directed or incidental catch swordfish or shark LAP will not entitle an owner or operator to use the permitted vessel to fish in the Atlantic tunas fishery with pelagic longline gear.

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

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

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

(C) Owners of directed or incidental swordfish limited access permit(s), directed or incidental shark limited access permit(s), and Atlantic Tunas Longline category permit(s) that are not assigned to a specific vessel may request transfer of these permits to a vessel in order to be eligible for the upgrading restrictions under paragraph (l)(2)(x). The transferee must submit complete applications, as specified in paragraphs (h),(i),(j), and (l)(1) of this section, according to the procedures at paragraphs (l)(2)(iv), (v), or (vi) of this section, as applicable, to an address designated by NMFS, so that the completed applications are received by NMFS by August 6, 2007. Vessels will not be eligible for the upgrading restrictions under paragraph (l)(2)(x) if applications are incomplete or received by NMFS after August 6, 2007.

(m) *Renewal* —(1) *General*. Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, or swordfish vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to §635.8, at an address

designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit are met, including those described in paragraph(l)(2) of this section, all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in §635.5 and §300.185 of this title, the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section, and the workshop requirements specified in §635.8 are met.

(2) *Shark, swordfish, and tuna longline LAPs.* The owner of a vessel of the U.S. that fishes for, possesses, lands or sells shark or swordfish from the management unit, takes or possesses such shark or swordfish as incidental catch, or that fishes for Atlantic tunas with longline gear must have the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section. Only persons holding a non-expired limited access permit(s) in the preceding year are eligible to renew a limited access permit(s). Transferors may not renew limited access permits that have been transferred according to the procedures of paragraph (l) of this section.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37703, July 13, 1999; 65 FR 47238, Aug. 1, 2000; 66 FR 30652, June 7, 2001; 67 FR 77436, Dec. 18, 2002; 68 FR 56787, Oct. 2, 2003; 69 FR 67283, Nov. 17, 2004; 71 FR 45436, Aug. 9, 2006; 71 FR 58164, Oct. 2, 2006; 72 FR 31708, June 7, 2007; 72 FR 33407, June 18, 2007]

§ 635.5 Recordkeeping and reporting.

[Link to an amendment published at 73 FR 35827, June 24, 2008.](#)

Information on HMS vessel and dealer reporting requirements may be obtained from the Division Chief or where otherwise stated in this part.

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

(2) *Weighout slips.* If an owner of a permitted vessel is required to maintain and submit logbooks under paragraph (a)(1) of this section, and Atlantic HMS harvested on a trip are sold, the owner or operator must obtain and submit copies of weighout slips for those fish. Each weighout slip must show the dealer to whom the fish were transferred, the date they were transferred, and the carcass weight of each fish for which individual weights are normally recorded. For fish that are not individually weighed, a weighout slip must record total weights by species and market category. A weighout slip for sharks prior to or as part of a commercial transaction involving shark carcasses or fins must record the weights of carcasses and any detached fins. The owner or operator must also submit copies of weighout slips with the logbook forms required to be submitted under paragraph (a)(1) of this section.

(3) *BFT not sold.* If a person who catches and lands a large medium or giant BFT from a vessel issued a permit in any of the commercial categories for Atlantic tunas does not sell or otherwise transfer the BFT to a dealer who has a dealer permit for Atlantic tunas, the person must contact a NMFS enforcement agent, at a number designated by NMFS, immediately upon landing such BFT, provide the information needed for the reports required under paragraph (b)(2)(i) of this section, and, if requested, make the tuna available so that a NMFS enforcement agent or authorized officer may inspect the fish and attach a tag to it. Alternatively, such reporting requirement may be fulfilled if a dealer who has a dealer permit for Atlantic tunas affixes a dealer tag as required under paragraph (b)(2)(ii) of this section and reports the BFT as being landed but not sold on the reports required under paragraph (b)(2)(i) of this section. If a vessel is placed on a trailer, the person must contact a NMFS enforcement agent, or the BFT must have a dealer tag affixed to it by a permitted Atlantic tunas dealer, immediately upon the vessel being removed from the water. All BFT landed but not sold will be applied to the quota category according to the permit category of the vessel from which it was landed.

(4) *Shark gillnet whale reporting.* The vessel operators of vessels that are shark gillnetting, as defined by 50 CFR 229.2, and that have been issued, or are required to have, shark directed or incidental limited access permits for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico are required to contact the NOAA Fisheries Southeast Regional Office, at a number designated by NOAA Fisheries, if a listed whale is taken, in addition to submitting all other reporting forms required by this part and 50 CFR part 229.

(5) *Chartering Arrangements.* (i) For the purposes of this section, a chartering arrangement means any contract, agreement, or commitment between a U.S. vessel owner and a foreign entity (e.g., government, company, person) by which the control, use, possession, or services of a vessel are secured, for a period of time for fishing targeting Atlantic HMS. Chartering arrangements under this part do not include bareboat charters under which a vessel enters into a fishing agreement with a foreign entity, changes registration to fish under another country's registration then, once the

agreed-upon fishing is completed, reverts back to the vessel's original registration.

(ii) Before fishing under a chartering arrangement, the owner of a fishing vessel subject to U.S. jurisdiction must apply for, and obtain, a chartering permit as specified in §635.32 (e) and (f). If a chartering permit is obtained, the vessel owner must submit catch information as specified in the terms and conditions of that permit. All catches will be recorded and counted against the applicable quota of the Contracting Party to which the chartering foreign entity is a member and, unless otherwise provided in the chartering permit, must be offloaded in the ports of the chartering foreign entity or offloaded under the direct supervision of the chartering foreign entity.

(iii) If the chartering arrangement terminates before the expiration of the charter permit, the vessel owner must notify NMFS immediately and in writing, upon termination of the chartering arrangement. Such notification requirements shall also apply to situations where the chartering arrangement is temporarily suspended and during intermittent periods where the vessel may be fishing under U.S. quotas for Atlantic HMS.

(b) *Dealers.* Persons who have been issued a dealer permit under §635.4 must submit reports to NMFS, to an address designated by NMFS, and maintain records as follows:

(1) *Atlantic HMS.* (i) Dealers that have been issued an Atlantic tunas, swordfish and/or sharks dealer permit under §635.4 must submit to NMFS all reports required under this section.

(ii) Reports of Atlantic tunas, Atlantic swordfish, and/or Atlantic sharks received by dealers from U.S. vessels, as defined under §600.10 of this chapter, on the first through the 15th of each month, must be postmarked not later than the 25th of that month. Reports of such fish received on the 16th through the last day of each month must be postmarked not later than the 10th of the following month. If a dealer issued an Atlantic tunas, swordfish or sharks dealer permit under §635.4 has not received any Atlantic HMS from U.S. vessels during a reporting period as specified in this section, he or she must still submit the report required under paragraph (b)(1)(i) of this section stating that no Atlantic HMS were received. This negative report must be postmarked for the applicable reporting period as specified in this section. This negative reporting requirement does not apply for bluefin tuna.

(iii) The reporting requirement of paragraph (b)(1)(i) of this section may be satisfied by a dealer if he or she provides a copy of each appropriate weighout slip or sales record, provided such weighout slip or sales record by itself or combined with the form available from NMFS includes all of the required information and identifies each fish by species.

(iv) The dealer may mail or fax such report to an address designated by NMFS or may hand-deliver such report to a state or Federal fishery port agent designated by NMFS. If the dealer hand-delivers the report to a port agent, a dealer must deliver such report no later than the prescribed postmark date for the reporting period.

(2) *Requirements for bluefin tuna —(i) Dealer reports —(A) Landing reports.* Each dealer with a valid Atlantic tunas permit issued under §635.4 must submit a completed landing report on a form available from NMFS for each BFT received from a U.S. fishing vessel. Such report must be submitted by electronic facsimile (fax) or, once available, via the Internet, to a number or a web address designated by NMFS not later than 24 hours after receipt of the BFT. A landing report must indicate the name and permit number of the vessel that landed the BFT and must be signed by the permitted vessel's owner or operator immediately upon transfer of the BFT. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number as listed on the permit are correctly recorded on the landing report and to verify that the vessel permit has not expired.

(B) *Bi-weekly reports.* Each dealer with a valid Atlantic tunas permit under §635.4 must submit a complete bi-weekly report on forms available from NMFS for BFT received from U.S. vessels. For BFT received from U.S. vessels on the 1st through the 15th of each month, the dealer must submit the bi-

weekly report form to NMFS, to be received by NMFS, not later than the 25th of that month. Reports of BFT received on the 16th through the last day of each month must be received by NMFS not later than the 10th of the following month.

(ii) *Dealer Tags.* NMFS will issue numbered dealer tags to each person issued a dealer permit for Atlantic tunas under §635.4. A dealer tag is not transferable and is usable only by the dealer to whom it is issued. Dealer tags may not be reused once affixed to a tuna or recorded on a package, container, or report.

(A) *Affixing dealer tags.* A dealer or a dealer's agent must affix a dealer tag to each BFT purchased or received from a U.S. vessel immediately upon offloading the BFT. If a vessel is placed on a trailer, the dealer or dealer's agent must affix the dealer tag to the BFT immediately upon the vessel being removed from the water. The dealer tag must be affixed to the BFT between the fifth dorsal finlet and the caudal keel.

(B) *Removal of dealer tags.* A dealer tag affixed to any BFT under paragraph (b)(2)(ii)(A) of this section or a BSD tag affixed to an imported bluefin tuna must remain on the fish until it is cut into portions. If the bluefin tuna or bluefin tuna parts subsequently are packaged for transport for domestic commercial use or for export, the number of the dealer tag or the BSD tag must be written legibly and indelibly on the outside of any package containing the tuna. Such tag number also must be recorded on any document accompanying the shipment of bluefin tuna for commercial use or export.

(3) *Recordkeeping.* Dealers must retain at their place of business a copy of each report required under paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2)(i) of this section for a period of 2 years from the date on which each report was required to be submitted.

(c) *Anglers.* All bluefin tuna, billfish, and North Atlantic swordfish non-tournament landings must be reported as specified under paragraphs (c)(1) or (c)(2) of this section, unless an alternative recreational catch reporting system has been established as specified under paragraph (c)(3) of this section. Tournament landings must be reported as specified under paragraph (d) of this section.

(1) *Bluefin tuna.* The owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all BFT landings under the Angling category quota designated at §635.27(a) through the NMFS automated catch reporting system within 24 hours of the landing. Such reports may be made by calling 1-888-872-8862 or by submitting the required information over the Internet at: www.nmfspermits.com.

(2) The owner, or the owner(s) designee, of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, and Atlantic sailfish, and all non-tournament and noncommercial landings of North Atlantic swordfish to NMFS by telephone to a number designated by NMFS, or electronically via the internet to an internet website designated by NMFS, or by other means as specified by NMFS, within 24 hours of that landing. For telephone landing reports, the owner, or the owner(s) designee, must provide a contact phone number so that a NMFS designee can call the vessel owner, or the owner(s) designee, for follow up questions and to confirm the reported landing. Regardless of how submitted, landing reports submitted to NMFS are not complete unless the vessel owner, or the owner(s) designee, has received a confirmation number from NMFS or a NMFS designee.

(3) *Alternative recreational catch reporting.* Alternative recreational catch reporting procedures may be established by NMFS with cooperation from states which may include such methodologies as telephone, dockside or mail surveys, mail in or phone-in reports, tagging programs, catch cards, or mandatory check-in stations. A census or a statistical sample of persons fishing under the recreational fishing regulations of this part may be used for these alternative reporting programs (after the programs have received Paperwork Reduction Act approval from OMB). Persons or vessel owners selected for reporting will be notified by NMFS or by the cooperating state agency of the requirements and procedures for reporting recreational catch. Each person so notified must comply with those requirements and procedures. Additionally, NMFS may determine that recreational landing reporting systems implemented by the states, if mandatory, at least as restrictive, and effectively enforced, are sufficient for recreational landing monitoring as required under this part. In such case, NMFS will file with the Office of the Federal Register for publication notification indicating that compliance with the state system satisfies the reporting requirements of paragraph (c) of this section.

(d) *Tournament operators.* For all tournaments that are conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, a tournament operator must register with the NMFS' HMS Management Division, at least 4 weeks prior to commencement of the tournament by submitting information on the purpose, dates, and location of the tournament to NMFS. A tournament is not registered unless the tournament operator has received a confirmation number from the NMFS' HMS Management Division. NMFS will notify the tournament operator in writing when a tournament has been selected for reporting. Tournament operators that are selected to report must maintain and submit to NMFS a record of catch and effort on forms available from NMFS. Tournament operators must submit the completed forms to NMFS, at an address designated by NMFS, postmarked no later than the 7th day after the conclusion of the tournament, and must attach a copy of the tournament rules.

(e) *Inspection.* Any person authorized to carry out enforcement activities under the regulations in this part has the authority, without warrant or other process, to inspect, at any reasonable time, catch on board a vessel or on the premises of a dealer, logbooks, catch reports, statistical records, sales receipts, or other records and reports required by this part to be made, kept, or furnished. An owner or operator of a fishing vessel that has been issued a permit under §635.4 or §635.32 must allow NMFS or an authorized person to inspect and copy any required reports and the records, in any form, on which the completed reports are based, wherever they exist. An agent of a person issued a permit under this part, or anyone responsible for offloading, storing, packing, or selling regulated HMS for such permittee, shall be subject to the inspection provisions of this section.

(f) *Additional data and inspection.* Additional data on fishing effort directed at Atlantic HMS or on catch of Atlantic HMS, regardless of whether retained, may be collected by contractors and statistical reporting agents, as designees of NMFS, and by authorized officers. A person issued a permit under §635.4 is required to provide requested information about fishing activity, and a person, regardless of whether issued a permit under §635.4, who possesses an Atlantic HMS is required to make such fish or parts thereof available for inspection by NMFS or its designees upon request.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999; 66 FR 30653, June 7, 2001; 66 FR 42804, Aug. 15, 2001; 67 FR 45400, July 9, 2002; 67 FR 77437, Dec. 18, 2002; 68 FR 714, Jan. 7, 2003; 68 FR 37773, June 25, 2003; 68 FR 74784, Dec. 24, 2003; 69 FR 67284, Nov. 17, 2004; 69 FR 70399, Dec. 6, 2004; 71 FR 58165, Oct. 2, 2006; 72 FR 56932, Oct. 5, 2007; 73 FR 31389, June 2, 2008]

§ 635.6 Vessel and gear identification.

(a) *Vessel number.* For the purposes of this section, a vessel's number is the vessel's official number issued by either by the U.S. Coast Guard or by the appropriate state agency.

(b) *Vessel identification.* (1) An owner or operator of a vessel for which a permit has been issued under §635.4, other than an HMS Angling permit, must display the vessel number—

(i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be clearly

visible from an enforcement vessel or aircraft.

(ii) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(iii) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) in length; at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) in length or less.

(2) The owner or operator of a vessel for which a permit has been issued under §635.4 must keep the vessel's number clearly legible and in good repair and ensure that no part of the vessel, its rigging, its fishing gear, or any other material on board obstructs the view of the vessel's number from an enforcement vessel or aircraft.

(c) *Gear identification.* (1) The owner or operator of a vessel for which a permit has been issued under §635.4 and that uses handline, buoy gear, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit number on each float attached to a handline, buoy gear, or harpoon, and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block letters or arabic numerals in a color that contrasts with the background color of the float or high-flyer.

(2) An unmarked handline, buoy gear, harpoon, longline, or gillnet, is illegal and may be disposed of in an appropriate manner by NMFS or an authorized officer.

[64 FR 29135, May 28, 1999, as amended at 66 FR 42804, Aug. 15, 2001; 67 FR 77437, Dec. 18, 2002; 71 FR 58166, Oct. 2, 2006]

§ 635.7 At-sea observer coverage.

(a) *Applicability.* NMFS may select for at-sea observer coverage any vessel that has an Atlantic HMS, tunas, shark or swordfish permit issued under §635.4 or §635.32. Vessels permitted in the HMS Charter/Headboat and Angling categories will be requested to take observers on a voluntary basis. When selected, vessels issued any other permit under §635.4 or §635.32 are required to take observers on a mandatory basis.

(b) *Selection of vessels.* NMFS will notify a vessel owner, in writing, when his or her vessel is selected for observer coverage. Vessels will be selected to provide information on catch, bycatch and other fishery data according to the need for representative samples.

(c) *Notification of trips.* The owner or operator of a vessel that is selected under paragraph (b) of this section must notify NMFS, at an address designated by NMFS, before commencing any fishing trip that may result in the incidental catch or harvest of Atlantic HMS. Notification procedures and information requirements such as expected gear deployment, trip duration and fishing area will be specified in a selection letter sent by NMFS.

(d) *Assignment of observers.* Once notified of a trip, NMFS will assign an observer for that trip based on current information needs relative to the expected catch and bycatch likely to be associated with the indicated gear deployment, trip duration and fishing area. If an observer is not assigned for a fishing trip, NMFS will issue a waiver for that trip to the owner or operator of the selected vessel, so long as the waiver is consistent with other applicable laws. If an observer is assigned for a trip, the operator of the selected vessel must arrange to embark the observer and shall not fish for or retain any Atlantic HMS unless the NMFS-assigned observer is aboard.

(e) *Requirements.* The owner or operator of a vessel on which a NMFS-approved observer is embarked, regardless of whether required to carry the observer, must comply with §§600.725 and 600.746 of this chapter and—

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999; 66 FR 17372, Mar. 30, 2001; 68 FR 63741, Nov. 10, 2003]

§ 635.8 Workshops.

[Link to an amendment published at 73 FR 38153, July 3, 2008.](#)

(a) *Protected species release, disentanglement, and identification workshops.* (1) Both the owner and operator of a vessel that fishes with longline or gillnet gear must be certified by NMFS, or its designee, as having completed a workshop on the safe handling, release, and identification of protected species before a shark or swordfish limited access vessel permit, pursuant to §635.4(e) and (f), is renewed in 2007. For the purposes of this section, it is a

rebuttable presumption that a vessel fishes with longline or gillnet gear if: longline or gillnet gear is onboard the vessel; logbook reports indicate that longline or gillnet gear was used on at least one trip in the preceding year; or, in the case of a permit transfer to new owners that occurred less than a year ago, logbook reports indicate that longline or gillnet gear was used on at least one trip since the permit transfer.

(2) NMFS, or its designee, will issue a protected species safe handling, release, and identification workshop certificate to any person who completes a protected species safe handling, release, and identification workshop. If an owner owns multiple vessels, NMFS will issue a certificate for each vessel that the owner owns upon successful completion of one workshop. An owner who is also an operator will be issued multiple certificates, one as the owner of the vessel and one as the operator.

(3) The owner of a vessel that fishes with longline or gillnet gear, as specified in paragraph (a)(1) of this section, is required to possess on board the vessel a valid protected species safe handling, release, and identification workshop certificate issued to that vessel owner. A copy of a valid protected species safe handling, release, and identification workshop certificate issued to the vessel owner for a vessel that fishes with longline or gillnet gear must be included in the application package to renew or obtain a shark or swordfish limited access permit.

(4) An operator that fishes with longline or gillnet gear as specified in paragraph (a)(1) of this section must possess on board the vessel a valid protected species safe handling, release, and identification workshop certificate issued to that operator, in addition to a certificate issued to the vessel owner.

(5) All owners and operators that attended and successfully completed industry certification workshops, held on April 8, 2005, in Orlando, FL, and on June 27, 2005, in New Orleans, LA, as documented by workshop facilitators, will automatically receive valid protected species safe handling, release, and identification workshop certificates issued by NMFS no later than December 31, 2006.

(b) *Atlantic shark identification workshops.* (1) As of December 31, 2007, all Federal Atlantic shark dealers permitted or required to be permitted pursuant to §635.4(g)(2), or a proxy for each place of business as specified in paragraph (b)(4) of this section, must be certified by NMFS, or its designee, as having completed an Atlantic shark identification workshop.

(2) NMFS, or its designee, will issue an Atlantic shark identification workshop certificate to any person who completes an Atlantic shark identification workshop.

(3) Dealers who own multiple businesses and who attend and successfully complete the workshop will be issued a certificate for each place of business that is permitted to receive sharks pursuant to §635.4 (g)(2).

(4) Dealers may send a proxy to the Atlantic shark identification workshops. If a dealer opts to send a proxy, the dealer must designate a proxy from each place of business covered by the dealer's permit issued pursuant to §635.4(g)(2). 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 covered by the shark dealer permit 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 Atlantic shark identification workshop certificate at each place of business. A copy of this certificate issued to the dealer or proxy must be included in the dealer's application package to obtain or renew a shark dealer permit. If multiple businesses are authorized to receive sharks under the dealer's permit, a copy of the workshop certificate for each business must be included in the shark dealer permit renewal application package.

(c) *Terms and conditions.* (1) Certificates, as described in paragraphs (a) and (b) of this section, are valid for three calendar years. All certificates must be renewed prior to the expiration date on the certificate.

(2) If a vessel fishes with longline or gillnet gear as described in paragraph (a) of this section, the vessel owner may not renew a shark or swordfish limited access permit, issued pursuant to §635.4(e) or (f), without submitting a valid protected species workshop certificate with the permit renewal application.

(3) A vessel that fishes with longline or gillnet gear as described in paragraph (a) of this section and that has been, or should be, issued a valid limited access permit pursuant to §635.4(e) or (f), may not fish unless a valid protected species safe handling, release, and identification workshop certificate has been issued to both the owner and operator of that vessel.

(4) An Atlantic shark dealer may not receive, purchase, trade, or barter for Atlantic shark unless a valid Atlantic shark identification workshop certificate is on the premises of each business listed under the shark dealer permit. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to §635.4(g)(2) unless a valid Atlantic shark identification workshop certificate has been submitted with permit renewal application. If the dealer is not certified, the dealer must submit a copy of a proxy certificate for each place of business listed on the shark dealer permit.

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

person.

(6) Vessel owners issued a valid protected species safe handling, release, and identification workshop certificate may request, in the application for permit transfer per §635.4(l)(2), additional protected species safe handling, release, and identification workshop certificates for additional vessels that they own. Shark dealers may request from NMFS additional Atlantic shark identification workshop certificates for additional places of business authorized to receive sharks that they own as long as they, and not a proxy, were issued the certificate. All certificates must be renewed prior to the date of expiration on the certificate.

(7) To receive either the protected species safe handling, release, and identification workshop certificate or Atlantic shark identification workshop certificate, persons required to attend the workshop must show a copy of their HMS permit, as well as proof of identification to NMFS or NMFS' designee at the workshop. If a permit holder is a corporation, partnership, association, or any other entity, the individual attending on behalf of the permit holder must show proof that he or she is the permit holder's agent and a copy of the HMS permit to NMFS or NMFS' designee at the workshop. For proxies attending on behalf of a shark dealer, the proxy must have documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer and must show a copy of the Atlantic shark dealer permit to NMFS or NMFS' designee at the workshop.

[71 FR 58166, Oct. 2, 2006]

Regulatory Flexibility Act

UNITED STATES CODE

{TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES

-PART I--THE AGENCIES GENERALLY

-CHAPTER 6--THE ANALYSIS OF REGULATORY FUNCTIONS

§ 601. Definitions

For purposes of this chapter--

- (1) the term "agency" means an agency as defined in section 551(1) of this title;
- (2) the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term "rule" does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefore or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;
- (3) the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;
- (4) the term "small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;
- (5) the term "small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register; and
- (6) the term "small entity" shall have the same meaning as the terms "small business", "small organization" and "small governmental jurisdiction" defined in paragraphs (3), (4) and (5) of this section.
- (7) the term "collection of information"--
 - (A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either--
 - (i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or
 - (ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and
 - (B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.
- (8) Recordkeeping requirement.--The term "recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records.

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853

95-354, 99-659, 101-627, 104-297

(a) **REQUIRED PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

109-479

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, economic information necessary to meet the requirements of this Act, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

109-479

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

16 U.S.C. 1853
MSA § 303

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

109-479

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

109-479

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;

109-479

(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

97-453, 99-659, 101-627, 102-251, 104-297

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

109-479

(2)(A) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure—

- (i) is based on the best scientific information available;
- (ii) includes criteria to assess the conservation benefit of the closed area;
- (iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and
- (iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—

- (A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);
- (B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and
- (C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

109-479

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;

109-479

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

- (A) present participation in the fishery;
- (B) historical fishing practices in, and dependence on, the fishery;
- (C) the economics of the fishery;
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries;
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities;
- (F) the fair and equitable distribution of access privileges in the fishery; and
- (G) any other relevant considerations;

16 U.S.C. 1853
MSA § 303

(7) require fish processors who first receive fish that are subject to the plan to submit data which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research;

109-479

(12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

(14)[sic]¹⁵ prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297

(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

¹⁵ So in original.

P.L. 109-479, sec. 104(b), MSA § 303 note

16 U.S.C. 1853 note

EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10)¹⁶—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

109-479

SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

16 U.S.C. 1853a

(a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) **NO CREATION OF RIGHT, TITLE, OR INTEREST.**—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

¹⁶ Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

- (A) the fishery has historically processed the fish outside of the United States; and
- (B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

- (I) be located within the management area of the relevant Council;
- (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and
- (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

- (B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—
- (i) traditional fishing or processing practices in, and dependence on, the fishery;
 - (ii) the cultural and social framework relevant to the fishery;
 - (iii) economic barriers to access to fishery;
 - (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
 - (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
 - (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]¹⁷ members contribute; and
- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

¹⁷ So in original.

(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the administrative and fiduciary soundness of the association; and
- (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

- (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
- (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

- (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
- (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

16 U.S.C. 1853a
MSA § 303A

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUND FISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

16 U.S.C. 1853a note, 1854
MSA §§ 303A note, 304

P.L. 109-479, sec. 106(e), MSA § 303A note

16 U.S.C. 1853a note

APPLICATION WITH AMERICAN FISHERIES ACT.—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

P.L. 104-297, sec. 108(i), MSA § 303 note

EXISTING QUOTA PLANS.—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

SEC. 304. ACTION BY THE SECRETARY

16 U.S.C. 1854

104-297

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

Presidential Documents

Title 3—

Executive Order 12866 of September 30, 1993

The President

Regulatory Planning and Review

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Statement of Regulatory Philosophy and Principles.*

(a) *The Regulatory Philosophy.* Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) *The Principles of Regulation.* To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

- (1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.
- (2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is

intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

Sec. 2. Organization. An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people.

(a) *The Agencies.* Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.

(b) *The Office of Management and Budget.* Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order.

(c) *The Vice President.* The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

Sec. 3. Definitions. For purposes of this Executive order: (a) "Advisors" refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; (7) the Assistant to the President for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.

(b) "Agency," unless otherwise indicated, means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(c) "Director" means the Director of OMB.

(d) "Regulation" or "rule" means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

(1) Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;

(2) Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;

(3) Regulations or rules that are limited to agency organization, management, or personnel matters; or

(4) Any other category of regulations exempted by the Administrator of OIRA.

(e) "Regulatory action" means any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices

of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) "Significant regulatory action" means any regulatory action that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Sec. 4. *Planning Mechanism.* In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law:

(a) *Agencies' Policy Meeting.* Early in each year's planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

(b) *Unified Regulatory Agenda.* For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and 41 U.S.C. 402 into these agendas.

(c) *The Regulatory Plan.* For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:

- (A) A statement of the agency's regulatory objectives and priorities and how they relate to the President's priorities;
- (B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;
- (C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order;
- (D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;
- (E) The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to OIRA by June 1st of each year.

(3) Within 10 calendar days after OIRA has received an agency's Plan, OIRA shall circulate it to other affected agencies, the Advisors, and the Vice President.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

(5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.

(6) The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.

(d) Regulatory Working Group. Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group ("Working Group"), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

(e) Conferences. The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

Sec. 5. Existing Regulations. In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not

duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances.

(b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

(c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

Sec. 6. Centralized Review of Regulations. The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

(a) **Agency Responsibilities.** (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

(3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:

(A) Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working days of receipt

of the list, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of OIRA may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section.

(B) For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:

- (i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and
- (ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law):

- (i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;
- (ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and
- (iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(D) In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rule-making proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.

(E) After the regulatory action has been published in the **Federal Register** or otherwise issued to the public, the agency shall:

- (i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);
- (ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

(F) All information provided to the public by the agency shall be in plain, understandable language.

(b) OIRA Responsibilities. The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

(1) OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section.

(2) OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods:

(A) For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA;

(B) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 45 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.

(4) Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

(A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;

(B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);

(ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and

(iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

(D) After the regulatory action has been published in the **Federal Register** or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.

(5) All information provided to the public by OIRA shall be in plain, understandable language.

Sec. 7. Resolution of Conflicts. To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President's decision with respect to the matter.

Sec. 8. Publication. Except to the extent required by law, an agency shall not publish in the **Federal Register** or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a

regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

Sec. 9. Agency Authority. Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

Sec. 10. Judicial Review. Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 11. Revocations. Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.



THE WHITE HOUSE,
September 30, 1993.

Administrative Management and Executive Secretariat

NAO 216-100

PROTECTION OF CONFIDENTIAL FISHERIES STATISTICS Eff: 7/18/94; Iss: 7/26/94

SECTION 1. PURPOSE.

. 01 This Order:

- a. prescribes policies and procedures for protecting the confidentiality of data submitted to and collected by the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS) as authorized or required by law;
- b. informs authorized users of their obligations for maintaining the confidentiality of data received by NMFS;
- c. provides for operational safeguards to maintain the security of data; and
- d. states the penalties provided by law for disclosure of confidential data.

SECTION 2. SCOPE.

This Order covers all confidential data received, collected, maintained, or used by NMFS.

SECTION 3. DEFINITIONS.

. 01 **Access to data** means the freedom or ability to use data, conditioned by a statement of nondisclosure and penalties for unauthorized use.

. 02 **Aggregate or summary form** means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

. 03 **Agreement** refers to all binding forms of mutual commitment under a stated set of conditions to achieve a specific objective.

. 04 **Assistant Administrator** means the Assistant Administrator for Fisheries, NOAA, or a designee authorized to have access to confidential data.

. 05 **Authorized Use/User.**

a. **Authorized use** is that specific use authorized under the governing statute, regulation, order, contract or agreement.

b. An **authorized user** is any person who, having the need to collect or use confidential data in the performance of an official activity, has read this Order and has signed a statement of nondisclosure affirming the user's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure.

. 06 **Confidential data** means data that are identifiable with any person, accepted by the Secretary, and prohibited by law from being disclosed to the public. The term "as used" does not convey data sensitivity for national security purposes [See Executive Order (E.O.) 12356 dated April 2, 1982].

. 07 **Data** refers to information used as a basis for reasoning, discussion, or calculation that a person may submit, either voluntarily or as required by statute or regulation.

. 08 **GC** means the Office of General Counsel, NOAA.

. 09 **Person** means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of such governments, including Regional Fishery Management Councils (Councils).

. 10 **Public** means any person who is not an authorized user.

. 11 **Region** means NMFS Regional field offices, Fisheries Science Centers, and associated laboratories.

. 12 **Source document** means the document, paper, or electronic format on which data are originally recorded.

. 13 **State employee** means any member of a State agency responsible for developing and monitoring the State's program for fisheries or Marine Mammal Protection Act (MMPA) program.

. 14 **Submitter** means any person or the agent of any person who provides data to NMFS either

voluntarily or as required by statute or regulation.

SECTION 4. POLICY.

For data subject to this Order, it is NMFS policy that:

- a. confidential data shall only be disclosed to the public if required by the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, or by court order. Disclosure of data pursuant to a subpoena issued by an agency of competent jurisdiction is a lawful disclosure. Disclosure pursuant to a subpoena must be approved by GC;
- b. individual identifiers shall be retained with data, unless the permanent deletion is consistent with the needs of NMFS and good scientific practice [See Section 6.02c]; and
- c. a notice is required on all report forms requesting data and must comply with 5 U.S.C. 552a(e)(3) and Paperwork Reduction Act requirements in NAO 216-8, Information Collections and Requirements Needing Office of Management and Budget Clearance. [See E.O. 12600 of June 23, 1987, for additional information regarding the rights of submitters to designate commercial confidential data at the time of submission.]

SECTION 5. OPERATIONAL RESPONSIBILITIES.

. 01 The Regional Director of each region (or, in the case of headquarters, each Office Director) has the responsibility to maintain the confidentiality of all data collected, maintained, and disclosed by the respective region.

. 02 Each region shall submit to the Assistant Administrator specific procedures governing the collection, maintenance, and disclosure of confidential data. These documents shall be compiled as regional handbooks following the guidelines and standards:

- a. handbooks are to be developed in detail to ensure the maintenance of confidential data on a functional basis in each region; and
- b. handbooks shall be coordinated through the National Data Management Committee (a NMFS group established by the Assistant Administrator to develop data management policies and procedures) and reviewed annually. The regional handbooks will address, at minimum, the contents of Sections 6-7.

SECTION 6. PROCEDURES.

. 01 **Data Collection.** To collect data, the Secretary may use Federal employees, contractor employees, or, pursuant to an agreement, State employees.

a. General Requirements.

1. Personnel authorized to collect Federal data must maintain all documents containing confidential data in secure facilities; and
2. may not disclose confidential data, whether recorded or not, to anyone not authorized to receive and handle such data.

b. Specific Requirements.

1. Each Federal or contractor employee collecting or processing confidential data will be required to read, date, and sign a statement of nondisclosure, that affirms the employee's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure of the data. Upon signature, the employee's name will be placed on record as an "authorized user," and the employee will be issued certification.
2. Data collected by a contractor must be transferred timely to authorized Federal employees; no copies of these data may be retained by the contractor. NMFS may permit contractors to retain aggregated data. A data return clause shall be included in the agreement. All procedures applicable to Federal employees must be followed by contractor employees collecting data with Federal authority.
3. Under agreements with the State, each State data collector collecting confidential data will sign a statement at least as protective as the one signed by Federal employees, which affirms that the signer understands the applicable procedures and regulations and the penalties for unauthorized disclosure.

.02 Maintenance.

- a. Maintenance is defined as the procedures required to keep confidential data secure from the time the source documents are received by NMFS to their ultimate disposition, regardless of format. [See National Institute of Standards and Technology "Computer Security Publications, List 91" for guidance.]
- b. Specific procedures in regional handbooks must deal with the following minimum security requirements, as well as any others that may be necessary because of the specific data, equipment, or physical facilities:
 1. the establishment of an office or person responsible for evaluating requests for access to data;

2. the identifications of all persons certified as authorized users. These lists shall be kept current and reviewed on an annual basis;
 3. the issuance of employee security rules that emphasize the confidential status of certain data and the consequences of unauthorized removal or disclosure;
 4. the description of the security procedures used to prevent unauthorized access to and/or removal of confidential data;
 5. the development of a catalog/inventory system of all confidential data received including: the type of source document; the authority under which each item of data was collected; any statutory or regulatory restriction(s) which may apply; and routing from the time of receipt until final disposition; and
 6. The development of an appropriate coding system for each set of confidential data so that access to data that identifies, or could be used to identify, the person or business of the submitter is controlled by the use of one or more coding system(s). Lists that contain the codes shall be kept secure.
- c. The permanent deletion of individual identifiers from a database shall be addressed on a case-by-case basis. Identifiers may only be deleted after:
1. future uses of data have thoroughly been evaluated, e.g., the need for individual landings records for allocating shares under an individual transferable quota program;
 2. consultation with the agency(s) collecting data (if other than NMFS), the relevant Council(s), and NMFS Senior Scientist; and
 3. concurrence by the Assistant Administrator has been received prior to deletion.

.03 Access to Data Subject to This Order.

- a. **General Requirements.** In determining whether to grant a request for access to confidential data, the following information shall be taken into consideration:

1. the specific types of data required;
2. the relevance of the data to the intended uses;
3. whether access will be continuous, infrequent, or one-time;
4. an evaluation of the requester's statement of why aggregate or nonconfidential summaries of data would not satisfy the requested needs; and
5. the legal framework for the disclosure, in accordance with GC and this Order.

- b. **Within NMFS.** NMFS employees requesting confidential data must have certification as being authorized users for the particular type of data requested.

- b. **Councils.** Upon written request by the Council Executive Director:

1. "authorized user" status for confidential data collected under the Magnuson Fishery Conservation and Management Act (Magnuson Act) may be granted to a Council for use by the Council for conservation and management purposes consistent with the approval of the Assistant Administrator as described in 50 CFR 603.5;
2. "authorized user" status for confidential data, collected under the Magnuson Act and MMPA, will be granted to Council employees who are responsible for Fishery Management Plan development and monitoring; and
3. Councils that request access to confidential data must submit, on an annual basis, a copy of their procedures for ensuring the confidentiality of data to the region, or in the case of intercouncil fisheries, regions. The procedures will be evaluated for their effectiveness and, if necessary, changes may be recommended. As part of this procedure, an updated statement of nondisclosure will be included for each employee and member who requires access to confidential data.

d. **States.**

1. Requests from States for confidential data shall be directed in writing to the NMFS office that maintains the source data.
2. Each request will be processed in accordance with any agreement NMFS may have with the State:
 - (a) confidential data collected **solely** under Federal authority will be provided to a State by NMFS only if the Assistant Administrator finds that the State has authority to protect the confidentiality of the data comparable to, or more stringent than, NMFS' requirements; and
 - (b) the State will exercise its authority to limit subsequent access and use of the data to those uses allowed by authorities under which the data was collected.

3. If the State has no agreement with NMFS for the collection and exchange of confidential data, the request shall be treated as a public request and disclosure may be denied subject to FOIA or the Privacy Act.

4. Where a State has entered into a cooperative exchange agreement with another State(s), NMFS will facilitate transfer or exchange of State collected data in its possession if:

- (a) NMFS has written authorization for data transfer from the head of the collecting State agency; and
- (b) the collecting State has provided NMFS a list of authorized users in the recipient State(s); and
- (c) the collecting State agrees to hold the United States Government harmless for any suit that may arise from the misuse of the data.

e. Contractors.

1. Pursuant to an agreement with NMFS, a NMFS contractor (including universities, Sea Grant investigators, etc.) may be granted "authorized user" status consistent with this Order if the use furthers the mission of NMFS.

2. The region will notify the contractor of its decision on access in writing within 30 calendar days after receipt of the request.

3. Contingent upon approval, the contractor will be provided with details regarding conditions of data access, any costs involved, formats, timing, and security procedures. If the request is denied, the reason(s) for denial will be given by the NMFS office involved. The denial will not preclude NMFS consideration of future requests from the contractor.

4. If access is granted, language in the agreement specifically dealing with confidentiality of data will be required. The language shall include all of the relevant portions of this Order and shall prohibit the further disclosure of the data. No data may be retained beyond the termination date of the agreement; and any disclosure of data derived from the accessed confidential data must be approved by NMFS.

5. Each agreement shall be reviewed by GC prior to its execution, and shall, to the extent possible, be consistent with the model agreement contained in Appendix D (Not included --WebEd).

f. Submitters. The Privacy Act allows for data to be released back to the submitter upon receipt and verification of a written request stating the data required.

04. Requests for Confidential Data. NMFS is authorized to collect data under various statutes [See Appendix A (Not include --WebEd)]. Two types of statutes govern the disclosure of confidential data collected by the Federal Government, those that contain specific and non-discretionary language within the Act, and those that provide overall guidance to the Federal Government. Sections of these Acts that deal with exceptions to disclosure may be found in Appendix B (Not included -- WebEd).

a. Magnuson Act and MMPA.

1. Data collected under 16 U.S.C. 1853 (a) or (b), and 16 U.S.C. 1383a (c),(d),(e),(f),or (h) will be handled in the following manner:

(a) data will only be disclosed to Federal employees and Council employees who are responsible for management plan development and monitoring; State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; a Council for conservation and management purposes [not applicable for MMPA data] or when required by court order. [See 50 CFR 229.10 and part 603];

(b) Council advisory groups are not permitted access to such confidential data [See 50 CFR 601.27(b)];

(c) requests from States that do not have an agreement with the Secretary will be processed in accordance with the Privacy Act or FOIA; and

(d) data collected by an observer under 16 U.S.C. 1853 (a) or (b) are not considered to have been "submitted to the Secretary by any person," and therefore are not confidential under Section 6.04.a of this Order. Data collected by an observer may be withheld from disclosure under the Privacy Act, or subsections (b)(3),(4),(5),(6), or (7) of FOIA.

2. Confidential data submitted to the Secretary under other Sections of the Magnuson Act or MMPA may only be disclosed in accordance with the Privacy Act or FOIA. Types of data and the collection authority may include among others:

(a) Processed Product Data -- 16 U.S.C. 1854(e);

(b) Fish Meal and Oil, Monthly -- 16 U.S.C. 1854(e);

(c) Data Collected Under State Authority and Provided to NMFS -- 16 U.S.C. 1854(e); and

(d) Tuna-Dolphin Observer Program -- 16 U.S.C. 1361 et seq.

b. **South Pacific Tuna Act.** Data collected under South Pacific Tuna Act 16 U.S.C. 973j is protected from disclosure to the public in accordance with section 973j(b).

c. **Other Statutes.** Confidential data collected under other NMFS programs as authorized by statutes other than South Pacific Tuna Act (16 U.S.C 973j), MMPA (16 U.S.C. 1361 et seq.), and Magnuson Act (16 U.S.C. 1801 et seq.), may only be disclosed to the public in accordance with the Privacy Act and FOIA. Types of data and the collection authority may include among others:

- (1) Monthly Cold Storage Fish Report -- 16 U.S.C. 742(a);
- (2) Market News Data -- 16 U.S.C. 742(a); and
- (3) Seafood Inspection Data -- 7 U.S.C. 1621 et seq.

d. Special Procedures.

1. **Cold Storage Summary Reports.** NMFS publishes monthly cold storage holdings of fishery products. Advance knowledge of the content of these reports could give those who trade in the products an opportunity to gain competitive advantage. Therefore, in addition to the confidential protection provided to individual reports, the monthly summary report will not be disclosed to the public until 3:00 p.m. Eastern Time of the official release date. Release dates for these data are published 1 year in advance in November, and can be obtained from the NMFS Fisheries Statistics Division.

2. **Surplus commodity purchases by USDA.** NMFS and the Department of Agriculture (USDA) have an interagency agreement relating to the purchase of surplus fishery products. NMFS is responsible for providing confidential data and recommendations to the USDA regarding these purchases. Advance knowledge of these data could cause a competitive advantage or disadvantage to the general public, fishing industry, and the program. Therefore, all NMFS personnel engaged in the surplus commodity purchase program will be required to sign a specific "USDA Responsibility Statement." A copy will be maintained in the Office of Trade Services.

3. **Agreements for Disclosure of Confidential Data.** A letter of agreement may authorize the disclosure of confidential data when both the Government and the submitter agree to disclosure of the data. The need to provide security for the data will vary depending on the type of data collected and the form of the disclosure. Disclosure can be undertaken if all the following conditions are met:

- (a) the person has agreed in writing to the disclosure and is aware that disclosure is irrevocable;
- (b) the recipient has been informed in writing of the sensitivity of the data; and
- (c) the wording of the agreement has been approved by GC.

.05 Disposal. NAO 205-1, NOAA Records Management Program, shall govern the disposition of records covered under this Order.

SECTION 7. PENALTIES.

.01 **Civil and Criminal.** Persons who make unauthorized disclosure of confidential data may be subject to civil penalties or criminal prosecution under:

- a. Trade Secrets Act (18 U.S.C. 1905);
- b. Privacy Act (5 U.S.C. 552a(i)(1));
- c. Magnuson Act (16 U.S.C. 1858); and
- d. MMPA (16 U.S.C. 1375).

.02 **Conflict of Interest.** Employees are prohibited by Department of Commerce employee conduct regulations [15 CFR part 0] and by ethics regulations applicable to the Executive Branch [5 CFR 2635.703] from using nonpublic information subject to this Order for personal gain, whether or not there is a disclosure to a third party.

.03 **Disciplinary Action.** Persons may be subject to disciplinary action, including removal, for failure to comply with this Order. Prohibited activities include, but are not limited to, unlawful disclosure or use of the data, and failure to comply with implementing regulations or statutory prohibitions relating to the collection, maintenance, use and disclosure of data covered by this Order.

SECTION 8. EFFECT ON OTHER ISSUANCES. None.

February 19, 2008.

David M. Spooner,
Assistant Secretary for Import
Administration.

[FR Doc. E8-3493 Filed 2-22-08; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Highly Migratory Species Vessel Logbooks and Cost- Earnings Data Reports

AGENCY: National Oceanic and
Atmospheric Administration (NOAA),
Commerce.

ACTION: Notice.

SUMMARY: The Department of
Commerce, as part of its continuing
effort to reduce paperwork and
respondent burden, invites the general
public and other Federal agencies to
take this opportunity to comment on
proposed and/or continuing information
collections, as required by the
Paperwork Reduction Act of 1995.

DATES: Written comments must be
submitted on or before April 25, 2008.

ADDRESSES: Direct all written comments
to Diana Hynek, Departmental
Paperwork Clearance Officer,
Department of Commerce, Room 6625,
14th and Constitution Avenue, NW.,
Washington, DC 20230 (or via the
Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT:
Requests for additional information or
copies of the information collection
instrument and instructions should be
directed to Joseph Desfosse, (301) 713-
2347 or Joseph.Desfosse@noaa.gov or
Margo Schulze-Haugen, (301) 713-2347
or Margo.Schulze-Haugen@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the
Magnuson-Stevens Fishery
Conservation and Management Act (16
U.S.C. 1801 *et seq.*), the National
Oceanic and Atmospheric
Administration's National Marine
Fisheries Service (NMFS) is responsible
for management of the nation's marine
fisheries. In addition, NMFS must
comply with the United States'
obligations under the Atlantic Tunas
Convention Act of 1975 (16 U.S.C. 971
et seq.), which implements the
International Commission for the
Conservation of Atlantic Tunas (ICCAT)
recommendations. NMFS collects
information via vessel logbooks to

monitor the U.S. catch of Atlantic
swordfish, sharks, marlins, and tunas in
relation to the quotas, thereby ensuring
that the United States complies with its
domestic and international obligations.
The information supplied through
vessel logbooks also provides the catch
and effort data necessary to assess the
status of highly migratory species and to
evaluate bycatch in each fishery.
International stock assessments for
tunas, swordfish, marlins, and some
species of sharks are conducted and
presented to the ICCAT periodically and
provide, in part, the basis for ICCAT
management recommendations which
become binding on member nations.
The domestic stock assessments for
most species of sharks are used as the
basis of managing these species.
Supplementary information on fishing
costs and earnings has been collected
via this vessel logbook program. This
economic information enables NMFS to
assess the economic impacts of
regulatory programs on small businesses
and fishing communities, consistent
with the National Environmental Policy
Act (NEPA), Executive Order 12866, the
Regulatory Flexibility Act, and other
domestic laws.

II. Method of Collection

Logbooks are being completed and
submitted in paper form.

III. Data

OMB Control Number: 0648-0371.

Form Number: NOAA Form 88-191.

Type of Review: Regular submission.

Affected Public: Business or other for-
profit organizations.

Estimated Number of Respondents:
7,451.

Estimated Time per Response: 10
minutes for cost/earnings summaries
attached to logbook reports; 30 minutes
for annual expenditure forms; 12
minutes for logbook catch reports; and
2 minutes for negative logbook catch
reports.

*Estimated Total Annual Burden
Hours:* 29,461.

*Estimated Total Annual Cost to
Public:* \$0 (no capital or recordkeeping/
reporting expenditures required).

IV. Request for Comments

Comments are invited on: (a) Whether
the proposed collection of information
is necessary for the proper performance
of the functions of the agency, including
whether the information shall have
practical utility; (b) the accuracy of the
agency's estimate of the burden
(including hours and cost) of the
proposed collection of information; (c)
ways to enhance the quality, utility, and
clarity of the information to be

collected; and (d) ways to minimize the
burden of the collection of information
on respondents, including through the
use of automated collection techniques
or other forms of information
technology.

Comments submitted in response to
this notice will be summarized and/or
included in the request for OMB
approval of this information collection;
they also will become a matter of public
record.

Dated: February 20, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief
Information Officer.

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BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Fishery Capacity Reduction Program Buyback Requests

AGENCY: National Oceanic and
Atmospheric Administration (NOAA),
Commerce.

ACTION: Notice.

SUMMARY: The Department of
Commerce, as part of its continuing
effort to reduce paperwork and
respondent burden, invites the general
public and other Federal agencies to
take this opportunity to comment on
proposed and/or continuing information
collections, as required by the
Paperwork Reduction Act of 1995.

DATES: Written comments must be
submitted on or before April 25, 2008.

ADDRESSES: Direct all written comments
to Diana Hynek, Departmental
Paperwork Clearance Officer,
Department of Commerce, Room 6625,
14th and Constitution Avenue, NW.,
Washington, DC 20230 (or via the
Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT:
Requests for additional information or
copies of the information collection
instrument and instructions should be
directed to Leo Erwin, (301) 713-2390,
or via the Internet at
Leo.Erwin@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA has established a program to
reduce excess fishing capacity by paying
fishermen to (1) surrender their fishing
permits or (2) both surrender their
permits and either scrap their vessels or
restrict vessel titles to prevent fishing.