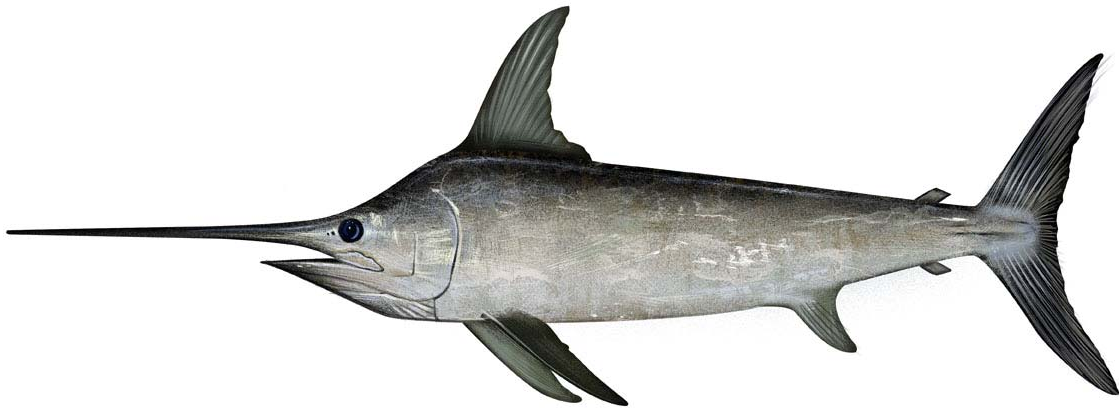


*Draft Environmental Assessment,
Regulatory Impact Review,
and
Initial Regulatory Flexibility Analysis*

for a Proposed Rule to

**Implement the 2012 Atlantic Swordfish
Quotas and Other Measures**



**United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Sustainable Fisheries
Highly Migratory Species Management Division
March 2012**

ABSTRACT

- Proposed Action:** Establish the 2012 quota specifications and modify the minimum size requirements for the Atlantic swordfish fishery.
- Type of statement:** Draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA)
- Lead Agency:** National Marine Fisheries Service (NMFS): Office of Sustainable Fisheries
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- Abstract:** In October 2006, NMFS finalized the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and issued implementing regulations for Atlantic swordfish to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This proposed action is necessary to implement a recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) pursuant to the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives under the Magnuson-Stevens Act. This action would implement the baseline quotas for Atlantic swordfish, and implement the underharvest carryover provisions and international quota transfer requirements of ICCAT Recommendation 11-02 for North Atlantic swordfish. This action would also implement the new minimum size measurement for Atlantic swordfish per ICCAT Recommendation 11-02. These measures would be consistent with the 2006 Consolidated HMS FMP.

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1.0 PURPOSE AND NEED FOR ACTION

1.1 MANAGEMENT HISTORY

The Atlantic swordfish fishery is managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The International Commission for the Conservation of Atlantic Tunas (ICCAT) is responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and adjacent seas. ICCAT currently includes 48 contracting parties, including the United States, and its stated objective is to “cooperate in maintaining the populations of these fishes at levels which will permit the maximum sustainable catch for food and other purposes.” ICCAT recommendations are binding on Contracting Parties unless they object per the treaty. ICCAT resolutions are non-binding and express the will of the Commission. All ICCAT recommendations and resolutions are available on the ICCAT website at <http://www.iccat.int/en/>. Recommendations adopted by ICCAT are promulgated as regulations in the United States as necessary and appropriate under ATCA, which was signed in 1975 (16 U.S.C. 971).

In 1999, NMFS revised the 1993 Atlantic shark fishery management plan (FMP) and included swordfish and tunas in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks (1999 FMP) (NMFS 1999). The 1999 FMP was amended in 2003, and in 2006, NMFS consolidated the Atlantic Tunas, Swordfish, and Shark FMP and its amendments and the Atlantic Billfish FMP and its amendments in the 2006 Consolidated Atlantic HMS FMP (NMFS 2006). The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635. The 2006 Consolidated HMS FMP combined all HMS management into one FMP, changed certain management measures for various HMS, adjusted the regulatory framework measures, and continued the process for updating HMS Essential Fish Habitat (EFH). In 2007, NMFS published a final rule (October 5, 2007; 72 FR 56929) that implemented ICCAT Recommendation 06-02 which established the current U.S. North Atlantic swordfish baseline quota of 2,937.6 metric tons (mt) dressed weight (dw) (3,907 mt whole weight (ww)) and the South Atlantic swordfish baseline quota of 75.2 mt dw (100 mt ww), among other swordfish management measures.

In 2006, ICCAT Recommendation 06-02 established a western North Atlantic swordfish total allowable catch (TAC) of 10,526 mt dw (14,000 mt ww) through 2008. Of this TAC, the United States baseline quota was 2,937.6 mt dw (3,907.3 mt ww) per year. ICCAT recommendation 08-02 extended recommendation 06-02 through 2009 and maintained the U.S. previous years’ quota allocation of 2,937.6 mt dw. ICCAT recommendation 09-02 reduced the western North Atlantic TAC to 10,300.8 mt dw (13,700 mt ww) through 2010. Of the 10,300.8 mt dw TAC, the United States continued to be allocated 2,937.6 mt dw (3,907.3 mt ww). At the 2010 ICCAT meeting, recommendation 10-02 was adopted for North Atlantic swordfish for one year. Recommendation 10-02 included a total TAC of 13,700 mt ww, maintained the previous years’ U.S. quota allocation of 2,937.6 mt dw, and maintained an 18.8 mt dw annual transfer to Canada. ICCAT recommendation 10-02 also limited the amount of North Atlantic swordfish underharvest that can be carried forward by all Contracting Parties, non-Contracting Cooperating Parties, Entities and Fishing Entities (CPCs) to 50 percent of the baseline quota allocation. In November 2011, ICCAT issued a new North Atlantic swordfish recommendation as outlined below in Section 1.2.

Minimum Size Background

In 1990, ICCAT adopted Recommendation 90-02 based on scientific advice from the SCRS which required member nations to set a swordfish minimum of size of 25 kilograms (55 pounds) live weight, or in the alternative, 125 cm (49 inches) lower jaw fork length (LJFL) and allowed a 15 percent tolerance for undersized fish by number. In 1991 via emergency rule and later final rule, the United States established a minimum size of 31 inches (78.7 cm) carcass length or 42 pounds (18.6 kg) dw with a 15 percent allowance for undersized swordfish based on the number of swordfish landed per trip. See 56 FR 26935 (June 12, 1991); 56 FR 65007 (December 13, 1991). In 1995, ICCAT passed Recommendation 95-10 which provided an alternative minimum size of 119 cm (47 inches) LJFL, or in the alternative, 15 kilograms (33 pounds) with no tolerance for undersized fish and appropriate record keeping of discards. Each member nation was given the flexibility to choose which of the measures best served the operational needs of their fishery. The United States chose to use the second alternative and revised the minimum size regulations. 61 FR 27304 (May 31, 1996). However, instead of using the 47 inch LJFL measurement, the United States converted this measurement to a cleithrum to caudal keel (CK) measurement, as a reflection of the typical landing condition of commercial swordfish. This rule did not establish a LJFL minimum size but instead established only a CK minimum size due to the dominant landing condition in the commercial fishery: dressed with the head, viscera and fins removed. The CK minimum size was set at 29 inches which, based upon available observer and landings data, ensured near 100 percent compliance with the ICCAT 47 inch LJFL minimum size. However, due to morphological differences among individual swordfish, legal swordfish measuring 47 inches LJFL had varying CK lengths. The 29 inch CK minimum size ensured that all legally-retained swordfish met the ICCAT LJFL minimum size, but precluded the retention of some swordfish that met the LJFL minimum size but not the 29 inch CK minimum size (i.e., some 47 inch LJFL fish have a CK measurement < 29 inches).

In 2001 (66 FR 52801; August 15, 2001), a 47 inch LJFL minimum size was added as an alternative due to the resurgence of the recreational swordfish fishery. Although this LJFL measurement could be used in both the commercial and recreational swordfish fisheries, the impetus behind implementation of this measurement was the typical landing condition of recreationally-caught swordfish which was usually maintained with both the head and tail attached. Beginning with the implementation of this rule, NMFS allowed three minimum sizes to be applied in the domestic swordfish fisheries: 47 inches LJFL; 29 inches CK; and 33 pounds. However, fishermen were only required to comply with one of the three minimum sizes. The LJFL and weight minimum sizes were the product of an internationally-negotiated ICCAT Recommendation. The CK minimum size was a U.S.-developed standard for domestic use.

Post-2001, NMFS received information that the swordfish minimum sizes created two compliance and enforcement difficulties. First, the use of three minimum sizes (weight, LJFL, and CK) complicated minimum size enforcement because all three measurements had to be taken to prove that a fish was undersized. This can require heavy time investments, particularly in cases with thousands of pounds of swordfish. Second, neither enforcement agents nor fishermen could definitively determine the accurate weight and subsequent legality of fish while at sea on a moving or pitching vessel and determining the weight was often delayed until the fish was brought to shore, presenting both compliance and enforcement problems. To address these enforcement and

compliance complexities, NMFS simplified the swordfish minimum size requirements in 2009 after consultation with enforcement, industry, and recreational fishery representatives. NMFS published a final rule (December 16, 2009; 74 FR 66585) that removed the 33 pound weight requirement in the domestic fishery (although it remains in place for imported swordfish), and implemented minimum length measurements based on landing condition: the LJFL measurement is used if the head is naturally attached; and the CK measurement is used if the head has been removed or if the carcass has been damaged by shark bites.

1.2 NEED FOR ACTION AND OBJECTIVES

NMFS is analyzing alternatives regarding implementation of the ICCAT recommended North Atlantic swordfish quota and minimum size requirements in order to ensure consistency with the objectives of the 2006 Consolidated HMS FMP and its implementing regulations, applicable law, and ICCAT Recommendation 11-02 and other applicable recommendations. South Atlantic swordfish quotas were established in ICCAT Recommendation 09-03 and the impacts were analyzed in the EA associated with the implementing rule. 75 FR 57407. Therefore, this EA does not consider impacts associated with the South Atlantic swordfish quota, although the annual specifications portion of the associated rule does implement an adjusted quota per ICCAT Recommendation 09-03. For a discussion on the impacts resulting from Recommendation 09-03, please see 75 FR 57407 (September 21, 2010). In this action, NMFS is also analyzing the impact of scientific research and exempted fishing permits (EFP) on Atlantic swordfish and considering counting fishery-independent research landings against the reserve category (Section 4.9)

2011 North Atlantic Swordfish ICCAT Recommendation

In November 2011, ICCAT adopted Recommendation 11-02 for North Atlantic swordfish. This recommendation maintains the U.S. baseline quota of 2,937.6 mt dw (3,907 mt ww) for 2012 and 2013. Previous North Atlantic swordfish recommendations included a quota transfer of 25 mt ww from the United States to Canada; however, Recommendation 11-02 eliminates this quota transfer and includes a transfer of 112.8 mt dw (150 mt ww) from the United States to Morocco to support joint scientific research and Morocco's efforts to eliminate the use of driftnets. Recommendation 11-02 includes a provision for the submission of annual swordfish management plans and a change to the underharvest carry over amount from 50 percent of the baseline quota to 25 percent of the baseline quota. This recommendation also includes an option for countries to use a cleithrum to caudal keel (CK) minimum size measurement of 63 centimeters (cm). One objective of this action is to ensure compliance with the 2012 North Atlantic swordfish quotas and other management measures in Recommendation 11-02 consistent with ATCA, the 2006 Consolidated HMS FMP, the requirements of the MSA, and other applicable laws.

Minimum Size Requirements

As described in Section 1.1 above, the current U.S. North Atlantic swordfish minimum size requirements include a 47 inch LJFL and a 29 inch CK measurement. The U.S. commercial swordfish fleet often catch swordfish that meet the current 47 inch LJFL measurement, but not the 29 inch CK measurement, thus meaning that the fishermen cannot fully dress the swordfish while at sea

because the head needs to remain naturally attached in order to meet the LJFL minimum size. Since the removal of the 33 pound minimum weight requirement in the 2009 final rule (December 16, 2009; 74 FR 66585), NMFS has received multiple requests from commercial fishery participants asking NMFS to reconsider the 33 pound minimum weight to allow them to dress at sea those swordfish that meet the 47 inch LJFL, but not the 29 inch CK minimum size. Re-implementation of the weight option could allow fishermen to dress and retain swordfish that meet the LJFL but not the CK minimum size. ICCAT Recommendation 11-02 includes an alternative minimum size measurement for dressed swordfish of 25 inches CK, which is equivalent to the current 47 inch LJFL. In addition, commercial fishery participants have also requested that NMFS allow the removal of the swordfish bill from those swordfish that meet the 47 inch LJFL minimum size in order to make storage of these swordfish easier while continuing to allow an accurate LJFL measurement to be taken. Given the range of minimum size issues in the Atlantic swordfish fishery, another objective of this action is to ensure compliance with the new minimum size requirement in ICCAT Recommendation 11-02, and address the requests from fishery participants while preserving the ability to obtain the required minimum size measurements and facilitate enforcement of those requirements.

The management measures considered for this proposed rule affecting the Atlantic swordfish fishery are taken under the dual authority of ATCA and the Magnuson-Stevens Act. In addition to the Magnuson-Stevens Act, any management measures must also be consistent with other applicable laws including, but not limited to, the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Coastal Zone Management Act (CZMA). This document is prepared, in part, to comply with NMFS' responsibilities under NEPA, as implemented by the regulations published by the Council on Environmental Quality, 50 C.F.R. Parts 1501-1508 (CEQ Regs), and NOAA Administrative Order 216-6 (NAO 216-6).

2.0

SUMMARY OF THE ALTERNATIVES

This section provides a summary of the alternatives considered in this rulemaking to meet the obligations of NEPA, the Magnuson-Stevens Act, and ATCA. The primary goal of this action is to implement ICCAT North Atlantic swordfish Recommendation 11-02. NMFS promulgates regulations as may be necessary and appropriate to implement binding recommendations of ICCAT. NMFS considered other quota measures in addition to the alternatives below, however, because those measures do not meet the obligations or mandates under ATCA, these measures were not analyzed.

Alternative 1: No Action. Do not implement the 2011 ICCAT North Atlantic swordfish Recommendation 11-02 or any other new management measures

Under this alternative, NMFS would not implement any of the measures contained in the 2011 ICCAT North Atlantic swordfish Recommendation 11-02, including the underharvest carryover limit, international quota transfer, or CK minimum size measurement, nor would NMFS implement any other management measures to facilitate the sustainable harvest of swordfish in U.S. waters.

Alternative 2: *Implement the 2011 ICCAT North Atlantic swordfish Recommendation 11-02, which includes an annual quota transfer of 112.8 mt dw from the United States to Morocco and an annual underharvest carryover limit of 25 percent of the base quota (annual carryover limit of 734.4 mt dw); maintain status quo for North Atlantic quotas – Preferred Alternative*

Under Alternative 2, NMFS would implement both of the quota-related measures in the 2011 ICCAT North Atlantic swordfish Recommendation 11-02. The first measure requires an annual quota transfer of 112.8 mt dw from the United States to Morocco to support joint scientific research and Morocco's efforts to eliminate the use of driftnets. The second measure reduces the amount of underharvest the United States can carryover to the subsequent fishing year from 50 to 25 percent of the base quota. Currently, the United States can carryover underharvests of up to 50 percent of the annual base quota (1,468.8 mt dw); however, ICCAT Recommendation 11-02 limits this carryover limit to 25 percent of the base quota (734.4 mt dw). As in the past, this carryover would be added to the base quota and allocated to the Directed Category. In addition to these two changes, NMFS would maintain the annual baseline quota of 2,937.6 mt dw across quota categories, maintain the 300 mt dw quota for the incidental category quota, and reduce the reserve category quota to 50 mt dw. Previously, NMFS would remove the ICCAT-recommended transfers from the reserve category quota. Under this alternative, NMFS would remove the ICCAT-recommended transfers directly off the annual baseline quota and use the reserve category quota to adjust for inseason adjustments, over- and underharvests, and scientific research, consistent with management objectives.

Alternative 3: *Implement the alternative swordfish CK minimum size measurement of 25 inches per the 2011 ICCAT North Atlantic swordfish Recommendation 11-02 – Preferred Alternative*

In addition to the quota measures, ICCAT Recommendation 11-02 also contains an alternative swordfish minimum size measurement. This minimum size is 25 inches CK and is equivalent to the existing ICCAT LJFL measurement of 47 inches. Under Alternative 4, NMFS would implement the 25 inch CK minimum size, replacing the existing 29 inch CK minimum size in the regulations. For more information on the existing 29 inch CK minimum size, please see Section 0 above.

Alternative 4: Use the CK measurement as the sole minimum size and discontinue the use of the LJFL minimum length standard in U.S. domestic fisheries

Under Alternative 4, NMFS would remove the LJFL minimum size, leaving the CK measurement as the sole minimum size in Atlantic swordfish domestic fisheries. Currently, the two minimum length standards are employed separately, depending on the condition of the carcass. If the head is naturally attached, the LJFL minimum size is the sole criterion for determining whether a swordfish meets the minimum size. If the head has been removed, the CK minimum size is the sole criterion. Under Alternative 5, the CK minimum size would be used regardless of carcass condition, consistent with the new ICCAT alternative 25 inch CK minimum size. The 25 inch CK minimum size in ICCAT Recommendation 11-02 is an equivalent measurement to the existing 47 inch LJFL minimum size. Although morphological differences between individual fish can result in a few outlying fish that meet the LJFL minimum size but not the CK, the vast majority of fish that meet one likely meet the other. For this reason, employing two minimum sizes could be redundant in many cases. However, NMFS invites public comment on whether this alternative should be preferred. Note that if adopted, this alternative would preclude the need for Alternative 5.

Alternative 5: *Allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw– Preferred Alternative*

Due to morphological differences between individual swordfish, fishermen occasionally retain swordfish that meet the 47 inch LJFL minimum size but not the current 29 inch CK minimum size. In these cases, the fishermen must leave the head of the swordfish naturally attached in order to maintain the carcass in a form that can be measured using the LJFL standard. Under Alternative 5, the regulations would explicitly allow fishermen to remove the bill of the swordfish and still consider the head naturally attached, provided the bill is removed forward of the anterior tip of the lower jaw (Figure 1).

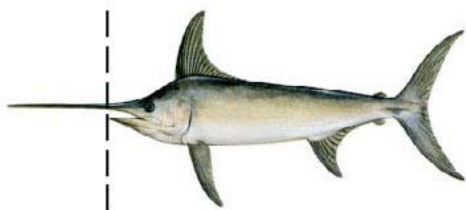


Figure 1 Diagram of bill removal location for Alternative 6

Alternative 6: Reintroduce the 33 pound minimum weight standard

As described in Section 0, NMFS removed the minimum weight standard in 2009 due to the difficulty of at-sea enforcement and compliance. Under Alternative 7, NMFS would re-implement the minimum weight standard of 33 pounds, as allowed under ICCAT North Atlantic swordfish recommendations, including the most recent, Recommendation 11-02. The two minimum length standards would continue to be used depending on the landing condition of the carcass (i.e., LJFL measurement for carcasses with the head and tail naturally attached, CK measurement for carcasses with the head and/or tail removed or that has been damaged by shark bites) and the 33 pound minimum weight could be employed in either case. NMFS invites public comment on whether this alternative should be preferred.

This section includes a brief summary of the status of the stocks, fishery participants and gear types, and affected area including habitat and protected species. For a complete description of the biology and status of HMS and the Atlantic pelagic longline (PLL) and recreational fisheries, including operations, catches, and discards, please see the HMS Stock Assessment and Fishery Evaluation (SAFE) Reports (NMFS 2011) and the 2006 Consolidated HMS FMP (NMFS 2006). The action area is the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

Atlantic swordfish (*Xiphias gladius*) is managed in the U.S. Atlantic Ocean, Gulf of Mexico, and Caribbean Sea under the authority of the Magnuson-Stevens Act and ATCA, which authorizes the Secretary of Commerce to promulgate regulations as may be necessary and appropriate to implement recommendations of the ICCAT. The U.S. swordfish fishery is quota-managed, and operated under a limited access program established in 1999. The majority of swordfish landed in Atlantic HMS fisheries are by directed swordfish permit holders using PLL and handgear (rod and reel, handline, harpoon, and buoy gear). Pelagic longlining accounts for the majority of U.S. swordfish landings; however, there is increasing effort in the commercial handgear and recreational fisheries. Driftnets were allocated two percent of the U.S. North Atlantic directed fishery quota in the past; however, this gear was prohibited by NMFS in 1999. Currently, directed swordfish permit holders and swordfish handgear permit holders are not subject to trip limits. Incidental swordfish permits allow fishermen to land up to 30 swordfish while engaged in other fishing activities. The HMS Angling permit allows fishermen to land up to 1 swordfish per person up to a maximum of 4 swordfish per vessel per trip. The HMS Charter/Headboat permit allows for different retention limits depending on whether the vessel is operating as a charter or headboat. Charter vessels are allowed to retain 1 swordfish per paying passenger up to a maximum of 6 swordfish per vessel per trip. Headboat vessels are allowed to retain up to 1 swordfish per paying passenger up to a maximum of 15 swordfish per vessel per trip. In 2011, the United States implemented the Incidental HMS Squid Trawl permit which allows *Illex* squid trawl vessels to retain up to 15 swordfish per trip. Trawl gear is otherwise not authorized for HMS. There are also minimum size requirements on all Atlantic swordfish landed by HMS commercial and recreational fisheries. For cases where the head remains naturally attached to the swordfish (whole), a LJFL measurement of 47 inches is the sole method for determining if a retained swordfish meets the minimum size requirement. For cases where the head has been removed from the fish (dressed), a CK measurement of 29 inches is the sole method for determining if a retained swordfish meets the minimum size requirement. This measurement also applies to swordfish carcasses damaged by shark bites.

Swordfish vessel permit holders may only sell to permitted swordfish dealers. Atlantic swordfish dealers must obtain an Atlantic swordfish dealer permit to receive, purchase, trade for, or barter for Atlantic swordfish from a vessel. Dealers importing and/or exporting swordfish must obtain an International Trade Permit.

3.0 DESCRIPTION OF THE AFFECTED ENVIRONMENT

3.1 STATUS OF THE STOCKS

Stock assessments for Atlantic swordfish are conducted by ICCAT's Standing Committee on Research and Statistics (SCRS).

North Atlantic swordfish are fully rebuilt and overfishing is not occurring. The latest SCRS stock assessment (2009) indicates that the North Atlantic swordfish stock is at or above B_{MSY} . The estimated relative biomass trend shows a consistent increase since 2000. The relative trend in fishing mortality shows that the level of fishing peaked in 1995, followed by a decrease until 2002, followed by small increase in the 2003-2005 period and a downward trend since then. Fishing mortality has been below F_{MSY} since 2005. The results suggest that there is greater than 50 percent probability that the stock is at or above B_{MSY} , and thus ICCAT's stock rebuilding objective has been achieved. It is important to note that catches since 2003 have been below the TAC thereby greatly increasing the chances for a quick recovery. Overall, the stock was estimated to be somewhat less productive than the previous assessment, with the intrinsic rate of increase, r , estimated at 0.44 compared to 0.49 in 2006. The next stock assessment for North Atlantic Swordfish is scheduled for 2013.

South Atlantic Swordfish

South Atlantic swordfish are not overfished and overfishing is not occurring. However, until sufficiently more research has been conducted to reduce the high uncertainty in stock status evaluations for the southern Atlantic swordfish stock, the ICCAT Standing Committee on Research and Statistics (SCRS) emphasizes that annual catch should not exceed the provisionally estimated MSY. Considering the unquantified uncertainties and the conflicting indications for the stock, the ICCAT SCRS recommends a more precautionary management approach, to limit catches to the recent average level (~15,000 mt ww) which are expected to maintain the catch rates at about their current level.

3.2 FISHERY PARTICIPANTS, GEAR TYPES, AND AFFECTED AREA

Atlantic HMS fishery participants that fish for swordfish commercially or recreationally with fishing gear that is authorized to retain swordfish (e.g., PLL and handgear) are the affected fishery participants of this rulemaking. The majority of swordfish landed in Atlantic HMS fisheries are by directed swordfish permit holders using PLL and handgear (rod and reel, handline, harpoon, and buoy gear). In the United States, six categories of swordfish permits are currently issued: Directed Swordfish, Incidental Swordfish, Swordfish Handgear, HMS Angling, HMS Charter/Headboat (CHB), and the Incidental HMS Squid Trawl Permit. The HMS Angling permit is required to fish for HMS recreationally and the sale of fish is prohibited under this permit. The HMS CHB permit is required for for-hire vessels that target HMS. Swordfish may be sold with an HMS CHB permit. The Directed Swordfish permit is valid only if the vessel owner also holds both an Atlantic Tunas Longline and an Atlantic shark limited access permit. Directed swordfish permit holders and swordfish handgear permit holders are not subject to trip limits. Incidental swordfish permits allow fishermen to land up to 30 swordfish while engaged in other fishing activities, but these fishermen must also have valid Atlantic Tunas Longline and Atlantic Shark permits. The Incidental HMS Squid Trawl permit allows *Illex* squid trawl vessels to retain up to 15 swordfish per trip. Regulations currently allow vessels to be permitted in only one category per year and allow for only one permit category change to occur during the permit renewal period.

As of October 2011, there were 27,655 vessel permits issued in the swordfish fisheries, including: 23,138 HMS Angling permits; 4,194 HMS CHB permits; 178 Directed Swordfish permits;

67 Incidental Swordfish permits; and 78 Swordfish Handgear permits (NMFS, 2011). In 2011, there were a total of 724 HMS dealer permits issued in the United States. Of those permits, 191 were swordfish dealer permits (NMFS 2011).

Pelagic longlining accounts for the majority of U.S. swordfish landings; however, there is increasing effort in the commercial handgear and recreational fisheries. In 2010, U.S. swordfish catches and landings were approximately 2,137.93 mt dw. Of these reported catches and landings, 1,898.50 mt dw were reported as captured with PLL gear (NMFS, 2011a). Approximately 234.4 mt dw of swordfish were reported as harvested with handline, rod and reel, harpoon, and trawl gears. See Table 3.1 for distribution of swordfish landings from 2006 – 2010 by gear type.

Table 1. Catches and Landings of Swordfish Reported from 2006-2010 in metric tons (mt) dressed weight (dw) by gear type and year (NMFS 2011a).

Gear	2006	2007	2008	2009	2010	TOTAL
Longline**	1,474.29	1,860.15	1,769.62	2,023.38	1,898.50	9,025.94
Handline	24.51	94.29	63.46	93.91	167.82	443.99
Rod and Reel*	39.62	51.28	56.92	23.76	50.00	221.58
Trawl	2.63	4.89	5.71	17.82	15.86	46.92
Harpoon	0.23	0.00	0.00	0.04	0.45	0.71
Unclassified	0.15	0.15	0.15	0.00	1.58	2.03
Unclassified discards	5.86	8.65	6.54	5.04	3.72	29.81
TOTAL	1,547.29	2,019.40	1,902.41	2,163.95	2,137.93	9,770.98

* Rod and reel catches and landings represent estimates of landings and dead discards when available based on statistical surveys of the U.S. recreational harvesting sector.

** Includes *landings* and *estimated discards* from scientific observer and logbook sampling programs

3.3 HABITAT

The Magnuson-Stevens Act requires NMFS to identify and describe essential fish habitat (EFH) for each life stage of managed species (16 U.S.C. § 1855((b)(1), as implemented by 50 C.F.R. § 800.815), and to evaluate the potential adverse effects of fishing activities on EFH, including the cumulative effects of multiple fisheries activities (50 C.F.R § 800.815(a) (2)). Habitats that satisfy the criteria in the Magnuson-Stevens Act have been identified and described as EFH in the 1999 FMP and in Amendment 1 to the 1999 FMP (NMFS, 2003).

In 2009, NMFS completed the five year review and update of EFH for Atlantic HMS with the

publication of Amendment 1 to the Consolidated HMS FMP (June 12, 2009, 74 FR 28018) (NMFS, 2009). As a result of the 2009 Amendment 1 to the Consolidated HMS FMP, EFH was updated for all federally-managed Atlantic HMS. This amendment updated and revised EFH boundaries for HMS, designated a new habitat area of particular concern (HAPC) for bluefin tuna in the Gulf of Mexico, and analyzed fishing and non-fishing impacts on EFH. As described in Amendment 1 to the Consolidated HMS FMP, there is no evidence that physical effects caused by any authorized HMS gears (*i.e.*, PLL and handgear) are adversely affecting EFH for targeted or non-targeted species, to the extent that physical effects can be identified on the habitat or the fisheries. As such, the actions analyzed in this EA are not expected to increase gear impacts on any EFH beyond those impacts that have already been analyzed in Amendment 1 to the 2006 Consolidated HMS FMP.

3.4 PROTECTED SPECIES UNDER THE ENDANGERED SPECIES ACT (ESA) AND MARINE MAMMAL PROTECTION ACT (MMPA)

The ESA is the primary Federal legislation governing interactions between fisheries and species whose continued existence is threatened or endangered. Through a consultative process, the ESA allows Federal agencies to evaluate proposed agency actions in light of the impacts they could have on ESA-listed species. In the case of marine fisheries, the NMFS Office of Sustainable Fisheries consults with the Office of Protected Resources to determine what impacts major fishery management actions will have on endangered populations of marine species and what actions can be taken to reduce or eliminate negative impacts. Under the consultative process, NMFS issues a Biological Opinion (BiOp) which outlines expected impacts of the proposed action and specifies terms and conditions which must be met to mitigate impacts on ESA-listed species. The primary gear types considered in this rulemaking are recreational handgear, commercial handgear, and PLL gear. Handgear is covered under the 2001 BiOp for HMS fisheries and is not likely to jeopardize the continued existence of endangered or threatened species, including seas turtles. A 2004 BiOp determined that the continued operation of the PLL fishery is not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but is likely to jeopardize the continued existence of leatherback sea turtles. According to an August 9, 2007 memorandum regarding re-initiation of the Endangered Species Act Section 7 consultation process for the U.S. Atlantic pelagic longline fishery, NMFS determined that the basis and assumptions of the 2004 BiOp remain valid, and that the expected effects on the species, the Terms and Conditions, and the Incidental Take Statement (ITS), are still appropriate and do not need to be revised.

The MMPA is one of the principal Federal statutes that guide marine mammal species protection and conservation policy. Under MMPA requirements, NMFS produces an annual List of Fisheries that classifies domestic commercial fisheries, by gear type, relative to their rates of incidental mortality or serious injury of marine mammals. The List of Fisheries includes three classifications:

- Category I fisheries are those with frequent serious injury or mortality to marine mammals (*e.g.*, PLL);

- Category II fisheries are those with occasional serious injury or mortality (e.g., shark gillnet); and
- Category III fisheries are those with remote likelihood of serious injury or mortality to marine mammals (e.g., rod and reel, purse seine, harpoon).

Fishermen participating in Category I or II fisheries are required to be registered under the MMPA and, if selected, to accommodate an observer aboard their vessels. Vessel owners or operators, or fishermen, in Category I, II, or III fisheries must report all incidental mortalities and injuries of marine mammals during the course of commercial fishing operations to NMFS. There are currently no regulations requiring recreational fishermen to report takes, nor are they authorized to have incidental takes (i.e., they are illegal). NMFS does require reporting and authorizes takes by charter/headboat fishermen (considered “commercial” by the MMPA), and, no takes have been reported to NMFS to date.

The handgear (hook-and-line and harpoon) fishery is currently listed as a Category III fishery under the MMPA (November 29, 2011; 76 FR 73912). Strict control and operations of these fishing gears means these gear types are not likely to result in mortality or serious injury of marine mammals or sea turtles. The PLL fishery is listed as a Category I fishery. NMFS formed the Pelagic Longline Take Reduction Team (TRT) to reduce bycatch of long finned and short finned pilot whales and Risso’s dolphins in the Atlantic pelagic longline fishery to a level approaching a zero mortality and serious injury rate within 5 years of implementation of the plan. On May 19, 2009 (74 FR 23349), NMFS implemented a consensus Take Reduction Plan (TRP) in a final rule that limits the length of mainline for PLL in the mid-Atlantic area, established the Cape Hatteras Special Research Area, required a placard showing how to release whales be posted in the wheelhouse and working deck of the vessel, and required owners and operators be certified in ways to reduce mortality of marine mammals.

Please refer to Sections 3.8 and 3.9.9 of the 2006 Consolidated HMS FMP for additional information on potential interactions of Atlantic HMS fisheries with protected species and marine mammals. Sections 3.9.9.1 and 3.9.9.2 specify the 22 cetacean species of concern that occur off the Atlantic and Gulf coasts, including six endangered whale species.

4.0 ENVIRONMENTAL CONSEQUENCES OF ANALYZED ALTERNATIVES

The following sub-sections consider and describe probable and potential impacts of each of the considered alternatives. The alternatives that are preferred by NMFS at this time are identified and justification for this preference is explained.

As described in Section 2.0, the following alternatives consider the North Atlantic swordfish quota and swordfish minimum size options. At this time, NMFS prefers Alternatives 2, 4, and 6.

Alternative 1: No Action. Do not implement the 2011 ICCAT North Atlantic

swordfish Recommendation 11-02 or any other new management measures

- Alternative 2:** *Implement the 2011 ICCAT North Atlantic swordfish Recommendation 11-02, which includes an annual quota transfer of 112.8 mt dw from the U.S. to Morocco and an annual underharvest carryover limit of 25 percent of the base quota (annual carryover limit of 734.4 mt dw); maintain status quo for North Atlantic quotas – Preferred Alternative*
- Alternative 3:** *Implement the alternative swordfish CK minimum size measurement of 25 inches per the 2011 ICCAT North Atlantic swordfish Recommendation 11-02 – Preferred Alternative*
- Alternative 4:** Use the CK measurement as the sole minimum size and discontinue the use of the LJFL minimum length standard in U.S. domestic fisheries
- Alternative 5:** *Allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw– Preferred Alternative*
- Alternative 6:** Reintroduce the 33 pound minimum weight standard

4.1 ECOLOGICAL IMPACTS

Under Alternative 1, NMFS would not implement any of the measures contained in the 2011 ICCAT North Atlantic swordfish Recommendation 11-02, including the quota allocation, underharvest carryover limit, international quota transfer, or CK minimum size measurement. Alternative 1 would likely have direct neutral ecological impacts in the short-term. The U.S. quota specified in ICCAT Recommendation 11-02 is unchanged from previous years; therefore, the base quota would not be affected. The only effect of non-action would be that the transferred quota would not be deducted from the U.S. adjusted quota. Since the United States has not harvested the entire allocated swordfish quota and is unlikely to do so in the short-term, deducting the transferred quota from the domestic adjusted quota is unlikely to result in changes in effort or landings. Similarly, if NMFS does not reduce the annual carryover limit from 50 percent to 25 percent, the higher annual adjusted quota is unlikely to be utilized and is unlikely to result in changes in effort or landings in the short-term. In the long-term, due to a variety of swordfish revitalization efforts within and outside of the Agency, NMFS expects that U.S. fishermen could achieve near 100 percent quota utilization. If NMFS does not take action to reduce the adjusted quota and the United States obtains the higher annual adjusted quota in the future, the North Atlantic swordfish stock could experience higher levels of fishing mortality resulting in long-term direct minor adverse ecological impacts. No additional impacts would be expected if NMFS does not implement the alternative minimum CK size of 25 inches since the measurement is equivalent to the existing minimum sizes. Alternative 1 could result in swordfish mortality higher than ICCAT-negotiated levels and because the United States has an obligation to implement ICCAT recommendations under ATCA, NMFS does not prefer this

alternative at this time.

Alternative 2 would implement the ICCAT Recommendation 11-02 provisions pertaining to quota allocation, the underharvest carryover limit, and quota transfer to Morocco. Alternative 2 would likely have direct neutral ecological impacts in the short-term. As noted in the ecological impact discussion for Alternative 1, the United States is unlikely to achieve 100 percent quota utilization in the short-term. Consequently, minor changes to the adjusted quota through international quota transfers or through reduced underharvest carryover limits are unlikely to impact swordfish catch rates or mortality levels. In the long-term, however, Alternative 2 could have direct minor beneficial ecological impacts as the U.S. swordfish fishery nears 100 percent quota utilization. At that time, an adjusted quota that reflects the annual international quota transfer to Morocco and the lower underharvest carryover limit would ensure that the U.S. domestic fishery harvest levels are consistent with international recommendations and the latest stock assessment and would result in lower levels of fishing mortality than under Alternative 1. NMFS prefers Alternative 2 at this time because it fulfills the United States' obligation to implement ICCAT recommendations and because the measure will limit North Atlantic swordfish mortality to an ICCAT-adopted level.

Indirect ecological impacts resulting from Alternatives 1 and 2 are likely neutral in the short and long-term. Changes to international quota transfers and underharvest carryover limits are unlikely to affect essential fish habitat, bycatch, or predator/prey dynamics.

Under Alternative 3, NMFS would implement the swordfish minimum size portion of the 2011 ICCAT swordfish Recommendation 11-02 which allows a 25 inch CK measurement. Figure 2 demonstrates the current LJFL and CK minimum sizes and the minimum size proposed in Alternative 3, in the context of a larger representative sample of swordfish catch collected from Pelagic Observer Program (POP) data. The vertical line represents the minimum LJFL measurement determined by the ICCAT SCRS to be appropriate for the sustainable harvest of Atlantic swordfish. The two horizontal lines represent the current (29 inches) (upper, solid line) and the proposed (25 inches) (lower, dashed line) CK minimum sizes. The data points in the lower left quadrant formed by the solid lines represent swordfish that currently cannot be retained since the fish do not meet either of the CK minimum sizes. The data points in the upper left quadrant formed by the solid lines represent swordfish that can currently be retained with the head removed, but not naturally attached, since the fish meets the CK minimum size but not the LJFL minimum size. The data points in the upper right quadrant formed by the solid lines represent swordfish that can currently be retained under either the current LJFL or CK minimum sizes. The data points in the lower right quadrant formed by the solid lines represent swordfish that currently can only be retained with the head naturally attached, since the fish meets the minimum LJFL but not the minimum CK size. These data points in the lower right quadrant represent the legal swordfish that fishermen are not currently able to dress because they do not meet the current CK minimum size.

The dashed line represents the CK minimum size of 25 inches proposed in Alternative 3 and demonstrates the impact on compliance and enforcement of these swordfish. Alternative 3 would likely result in direct neutral short and long-term ecological impacts. The 25 inch CK minimum size is equivalent to the existing 47 inch LJFL minimum size measurement. Therefore, the 25 inch CK measurement could result in a larger number of retained swordfish, however, the increase in retained

fish would come almost exclusively from legal fish that were previously discarded. All retained fish would continue to be above the minimum size recommended by the ICCAT SCRS and so no ecological impacts are expected. The alternative CK minimum size would simplify and facilitate compliance and enforcement of the minimum size requirements. Simplifying enforcement and compliance could lead to an increase in the number of fish retained, but NMFS expects that this increase would be modest and well within the ICCAT SCRS minimum size requirements. As demonstrated in Figure 2, the proposed 25 inch CK minimum length could provide a length measurement equivalent to a greater number of fish that meet the 47 inch LJFL minimum size, which could better address the operational needs of the U.S. swordfish fleet while not having negative ecological impacts to the swordfish stocks. For this reason, and because it fulfills the United States' obligation to implement ICCAT recommendations under ATCA, NMFS prefers this alternative.

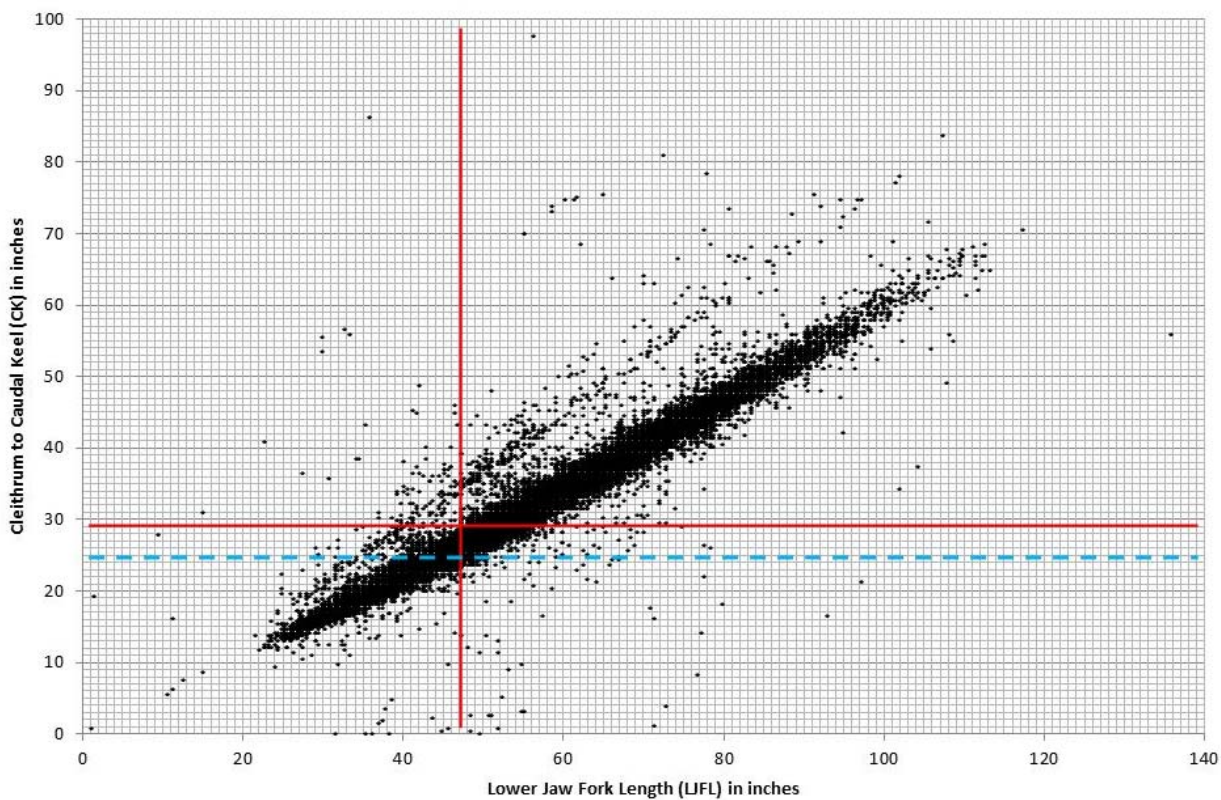


Figure 2. LJFL measurement versus CK measurements for individual swordfish. Vertical line represents current LJFL minimum size, solid horizontal line represents current CK minimum size, and dashed horizontal line represents proposed minimum CK length in Alternative 4; Source: Pelagic Observer Program Data, 1992-2009.

Under Alternative 4, NMFS would use the CK measurement as the sole minimum size and discontinue the use of the LJFL minimum size in U.S. domestic fisheries. NMFS does not expect that the removal of the LJFL measurement would have any direct ecological impacts in the short or long-term. The 25 inch CK minimum size is equivalent to the current 47 inch LJFL minimum size for the majority of swordfish. Since these two minimum sizes are equivalent, the removal of the

LJFL minimum size is unlikely to greatly increase swordfish retention levels. Removal of the LJFL minimum size could simplify compliance and enforcement, reduce confusion, and slightly increase retained catch numbers, but these numbers are unlikely to affect the stock and all legally retained swordfish would continue to fall well within the ICCAT SCRS minimum size requirements. Figure 2 provides a graphical comparison of the existing LJFL and CK minimum sizes and the proposed CK minimum size in the context of a larger representative sample of catch collected from POP data. This figure demonstrates that the proposed 25 inch CK minimum size could, in the absence of the LJFL minimum size, continue to adequately protect undersized swordfish while minimizing changes to the number of swordfish that can be legally retained. However, removing one of the minimum size measurements could reduce flexibility for fishermen in how they choose to measure and land swordfish; therefore NMFS does not prefer this alternative at this time.

Under Alternative 5 NMFS would allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw. Adoption of Alternative 5 would likely result in direct neutral short and long-term ecological impacts. Keeping the bill of a swordfish attached to the carcass is unnecessary when performing minimum size measurements. Both the LJFL and CK minimum size measurements use two end points posterior to the bill, therefore, removing the bill would not have any impact on determining compliance with minimum size measurements (Figure 1). Alternative 5 would not provide any additional impacts to the swordfish stock from increased catch or effort or result in the harvest of undersized individuals. NMFS prefers this alternative because it provides increased flexibility for fisherman, increases safety, and allows for more efficient packing while not impacting the ability to determine if the fish meets the LJFL minimum size.

Under Alternative 6, NMFS would reintroduce the 33 pound minimum weight requirement. Figure 3 demonstrates how dressed weight and CK measurements compare in swordfish observed by the POP. The area in the box in the lower left hand corner is shown in greater detail in Figure 4. Swordfish weights were reported as dressed weight for retained fish or estimated whole weight for released fish. All data points represent swordfish that were observed before the minimum weight requirement was removed in 2009. Therefore, the figure presents an accurate comparison of dressed weight to CK length, particularly in the detailed area presented in Figure 4. The data points in the upper left hand quadrant in Figure 4 formed by the two solid lines represent swordfish that did not meet the CK minimum size, but met the 33 pound minimum weight. Retention of these swordfish became prohibited after the 2009 rule that removed the minimum weight requirement. The vertical dashed line indicates the proposed minimum CK size of 25 inches. Similar to the above impact analyses, Alternative 6 is unlikely to have any short and long-term direct ecological impacts since the ICCAT-authorized 33 pound minimum weight requirement is equivalent to the dressed weight of a swordfish measuring 47 inch LJFL. Reintroducing the 33 pound minimum weight could provide some operational benefits to fishery participants, but it is unlikely to provide any additional impacts to the swordfish stock from increased catch or effort or result in the harvest of undersized individuals. Figure 4 demonstrates that the 25 inch CK minimum size proposed in the preferred Alternative 4 could provide a length measurement equivalent to a greater number of fish that meet the 33 pound minimum weight and could allow for the retention of the majority of fish that weigh more than 33 pounds weight but do not meet the current CK minimum size of 29 inches. Only those fish represented by the data points above the horizontal line and to the right of the dashed line would be

precluded from retention in the absence of the 33 pound minimum weight. While the ecological impact is expected to be neutral, due to the enforcement and compliance difficulties described in Chapter 1, NMFS does not prefer this alternative to reintroduce a minimum weight requirement at this time. Should those enforcement and compliance difficulties be resolved in the future, NMFS may reconsider reintroduction of a minimum weight requirement.

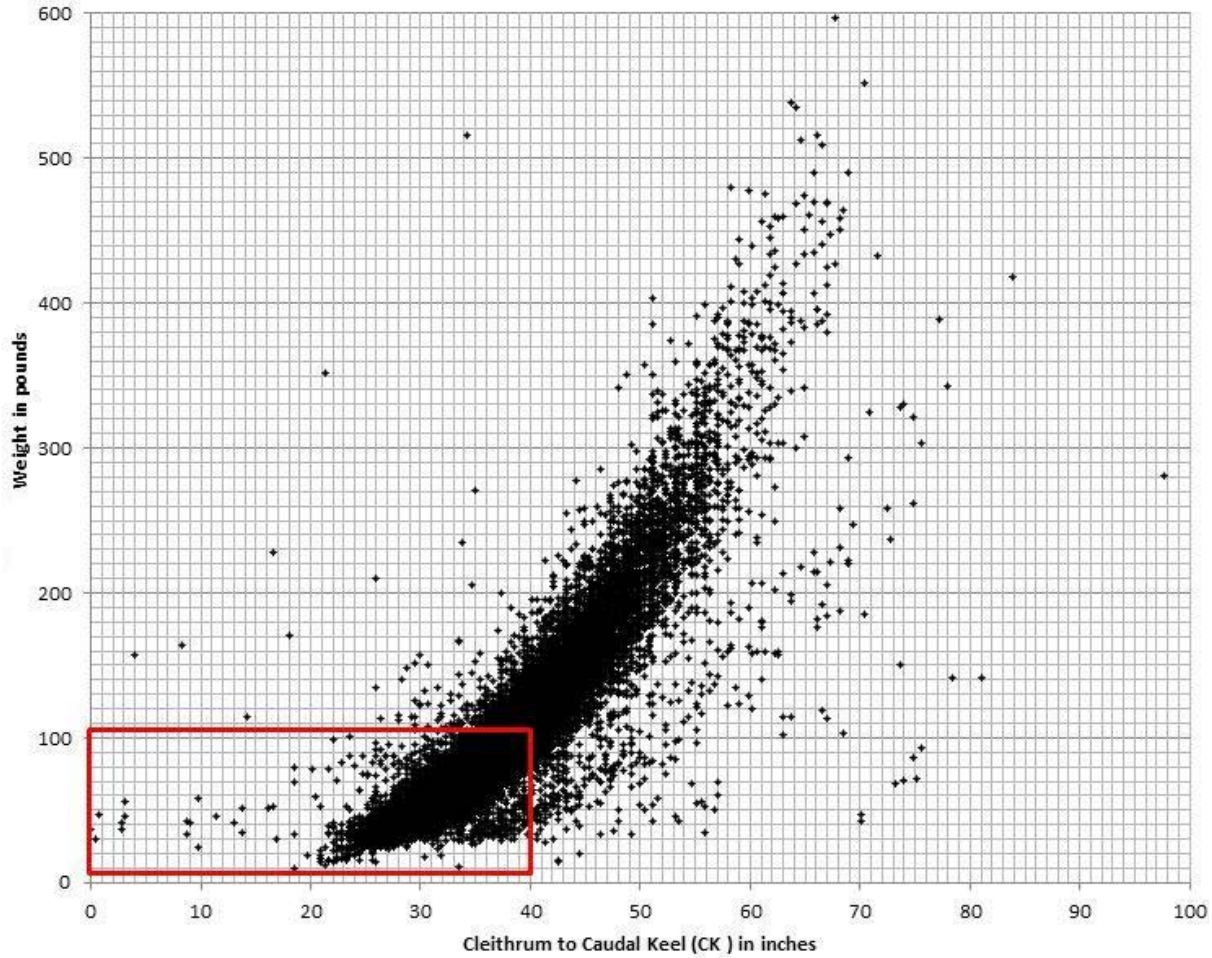


Figure 3. CK measurement versus weight for individual swordfish. Box in lower left hand corner is the area shown in Figure 5 which provides greater detail of the swordfish impacted by this rulemaking; Source: Pelagic Observer Program Data, 1992-2009.

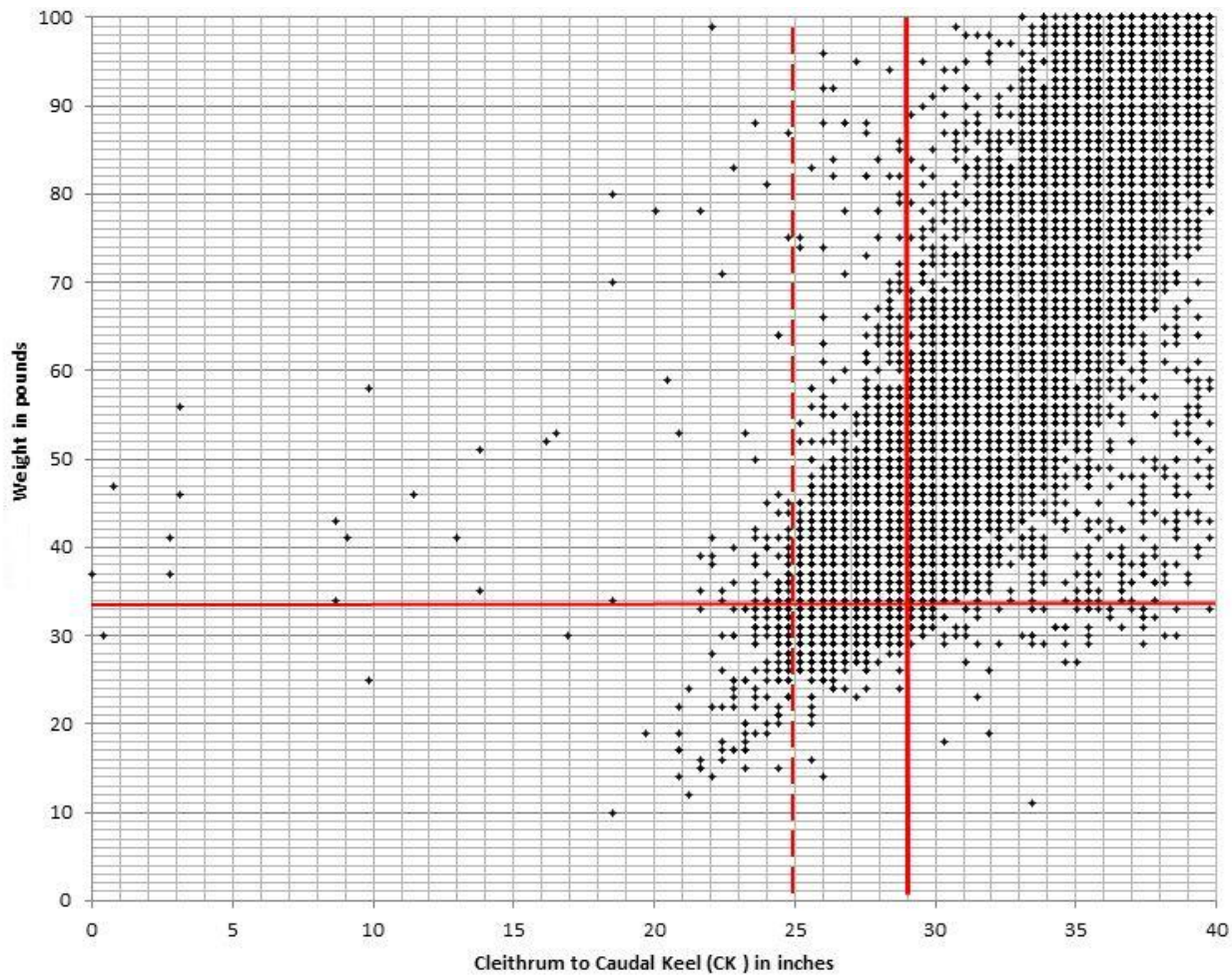


Figure 4. Detailed area highlighted in Figure 3 of CK measurement versus weight for individual swordfish. Horizontal line represents the 33 pound minimum weight standard, the solid vertical line on the right represents the current minimum CK length of 29 inches, and the dashed vertical line on the left represents the proposed minimum CK length of 25 inches; Source: Pelagic Observer Program Data, 1992-2009.

Short and long-term indirect ecological impacts would likely be neutral for Alternatives 3 through 6. Indirect impacts to EFH, bycatch, and other ecosystem components are expected to be neutral because none of these alternatives would change fishing effort. Similarly, impacts to protected resources are expected to be neutral because no changes to fishing effort are anticipated from Alternative 3 through 6.

4.2 SOCIAL AND ECONOMIC IMPACTS

Under Alternative 1, NMFS would not implement any of the measures contained in the 2011 ICCAT North Atlantic swordfish Recommendation 11-02, including the quota allocation, underharvest carryover limit, international quota transfer, or CK minimum size measurement. Alternative 1 would likely have net direct minor adverse socioeconomic impacts in the short-term. No impacts would be expected if NMFS does not implement the quota portion of ICCAT

Recommendation 11-02, however, direct minor adverse socioeconomic short-term impacts could result if NMFS does not implement the alternative CK minimum size. The U.S. quota specified in ICCAT Recommendation 11-02 is unchanged from previous years; therefore, the base quota would not be affected. The only effect of non-action would be that the transferred quota would not be deducted from the U.S. base quota. Since the United States has not harvested the entire allocated swordfish quota and is unlikely to do so in the short-term, deducting the transferred quota from the domestic base quota is unlikely to result in changes to annual revenue or revenue to individual vessels. Similarly, if NMFS does not reduce the annual carryover limit from 50 percent to 25 percent, the higher annual adjusted quota is unlikely to be utilized and is unlikely to result in changes in landings or revenue. However, if NMFS does not implement the alternative CK minimum size, there could be direct minor adverse socioeconomic short-term impacts. The 25 inch CK minimum size is equivalent to the existing 47 inch LJFL minimum size. Currently, fishermen do not have a minimum size measurement that allows for the retention of dressed swordfish that measure at or slightly above 47 inches LJFL. If a fisherman catches a swordfish that meets the 47 inch LJFL minimum size but not the current 29 inch CK minimum size, the fisherman must either land the fish with the head naturally attached or discard the fish. Due to storage capacity limitations and uncertainty in minimum size regulations, fishermen sometimes choose to discard fish that legally meet the 47 inch LJFL measurement but do not meet the 29 inch CK minimum size. Similarly, dealers sometimes will not accept fish that meet the 47 inch LJFL measurement but not the 29 inch CK minimum size. These fish are landed with the head naturally attached, but once removed, some dealers have expressed concern that a minimum size violation could occur in the absence of proof that the fish was landed with the head and met the 47 inch LJFL measurement. For these reasons, if NMFS does not implement the alternative CK minimum size, fishermen would continue to discard and not land some fish that meet the LJFL minimum size but not the current CK minimum size, resulting in direct short-term minor adverse socioeconomic impacts.

In the long-term, Alternative 1 could have net direct minor beneficial socioeconomic impacts. Due to a variety of swordfish revitalization efforts within and outside of the Agency, NMFS expects that U.S. fishermen could achieve near 100 percent quota utilization. If NMFS does not take action to reduce the base quota due to the annual quota transfer to Morocco nor reduce the adjusted quota by limiting underharvest carryover, the domestic fishery could land more swordfish resulting in higher annual revenues. The United States is allocated 2,937.6 mt dw of North Atlantic swordfish. If 112.8 mt dw of quota is not transferred to Morocco and if up to 50 percent of the base quota can be carried over, the total U.S. adjusted quota could reach 4406.4 mt dw (9,714,349 lb dw). Assuming an average ex-vessel price of \$4.31 per pound (NMFS 2011) and 100 percent quota utilization, the total possible annual gross revenues across the domestic fishery would be estimated to be \$41,868,844 under Alternative 1. As in the short-term, fishermen might still discard fish that meet the LJFL minimum size but not the current minimum size, precluding ex-vessel revenue from these landings, however, the larger quota would likely offset this impact. Because the United States has an obligation to implement ICCAT recommendations under ATCA, NMFS does not prefer this alternative at this time.

Alternative 2 would implement the ICCAT Recommendation 11-02 provisions pertaining to quota allocation, the underharvest carryover limit, and the quota transfer to Morocco. Alternative 2 would likely have direct neutral socioeconomic impacts in the short-term. As noted in the ecological

impact discussion for Alternative 1, the United States is unlikely to achieve 100 percent quota utilization in the short-term. Consequently, minor changes to the base quota through international quota transfers or to the adjusted quota through reduced underharvest carryover limits are unlikely to impact swordfish fishing effort levels or annual revenues. In the long-term, however, Alternative 2 could have direct minor adverse socioeconomic impacts assuming the U.S. swordfish fishery nears 100 percent quota utilization. At that time, an adjusted quota that reflects the annual international quota transfer to Morocco and the lower underharvest carryover limit could lead to a lower available quota relative to the current adjusted quota. This lower level of adjusted quota would result in a decrease in the total possible fishery-wide annual revenue. If NMFS deducts the 112.8 mt dw quota transfer from the U.S. base quota of 2,937.6 mt dw and limits underharvest carryover to 25 percent, the total U.S. adjusted quota could reach 3,559.2 mt dw (7,846,612 lbs dw). Assuming an average ex-vessel price of \$4.31 per pound (NMFS 2011) and 100 percent quota utilization, total possible gross revenues across the domestic fishery would be estimated to be \$33,818,898 under Alternative 2. Therefore, Alternative 2 could result in annual gross revenues that are \$8,049,946 less (\$41,868,844 - \$33,818,898) than the possible annual gross revenues under Alternative 1. However, the United States is required to implement these measures through regulations as necessary and appropriated to comply with ICCAT Recommendation 11-02 under ATCA. Therefore, NMFS prefers this alternative at this time.

Indirect socioeconomic impacts resulting from Alternatives 1 and 2 are likely neutral in the short and long-term. Changes to international quota transfers and underharvest carryover limits are unlikely to affect dealers, bait and tackle suppliers, and other supporting businesses since they do not solely rely on the swordfish fishery.

Under Alternative 3, NMFS would implement the swordfish minimum size portion of the 2011 ICCAT swordfish Recommendation 11-02 which allows a 25 inch CK measurement. This alternative would likely have direct moderate beneficial socioeconomic impacts in both the short- and long-term. The 25 inch CK minimum size is equivalent to the existing 47 inch LJFL minimum size. Currently, fishermen do not have a minimum size measurement that allows for the retention of dressed swordfish that measure at or slightly above 47 inches LJFL. If a fisherman catches a swordfish that meets the 47 inch LJFL minimum size but not the current 29 inch CK minimum size, the fisherman must either land the fish with the head naturally attached or discard the fish. Due to storage capacity limitations and uncertainty in minimum size regulations, fishermen sometimes choose to discard fish that legally meet the 47 LJFL measurement but do not meet the 29 inch CK minimum size. Similarly, dealers sometimes will not accept fish that meet the 47 inch LJFL measurement but not the 29 inch CK minimum size. Even when these swordfish are landed with the head naturally attached, some dealers have expressed concern that, once the head is removed, the fish could be in violation of minimum size requirements. For these reasons, implementing the ICCAT alternative minimum CK size of 25 inches could lead to increased retention of previously discarded legal fish that measure at or slightly above 47 inches LJFL, since this CK minimum size is equivalent to a greater number of 47 inch LJFL fish (Figure 2). Fish in this size range are the most frequently encountered fish (Figure 5 and Figure 6; note that the figures provide lengths in centimeters), therefore, increased landings of fish in this size range are not trivial. The increase in retained catch could lead to increased annual revenues for both fishermen and dealers, resulting in direct moderate beneficial socioeconomic impacts in both the short and long-term. Because this alternative provides

these benefits to fishermen but does not lead to increased mortality of undersized swordfish, NMFS prefers this alternative at this time.

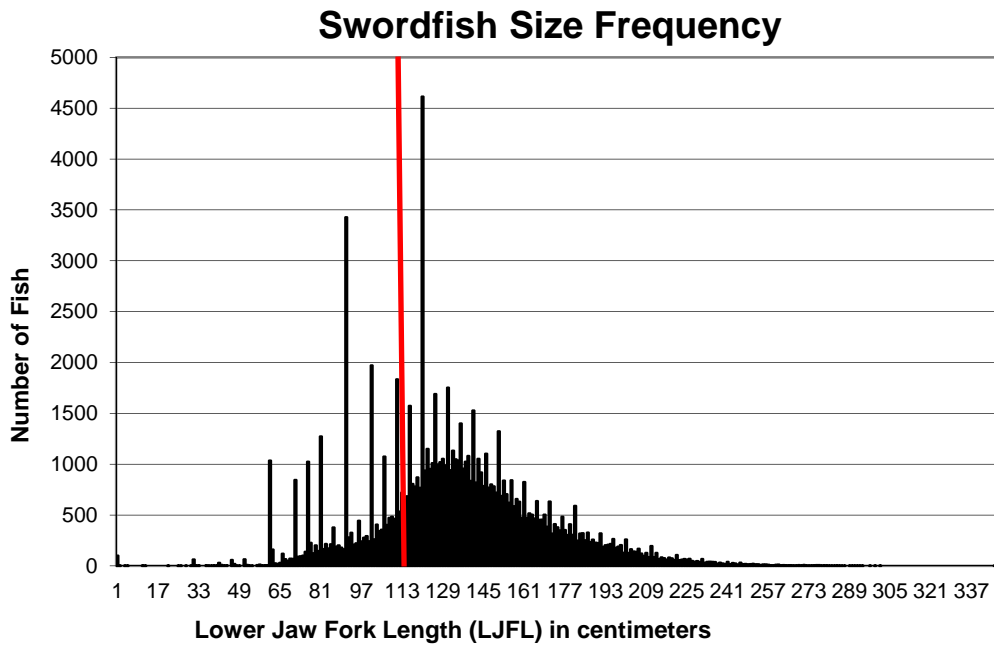


Figure 5. Frequency of observed swordfish LJFL measurements (cm). Vertical line represents minimum LJFL size of 47" (119 cm); Source: Pelagic Observer Program data, 1992-2009

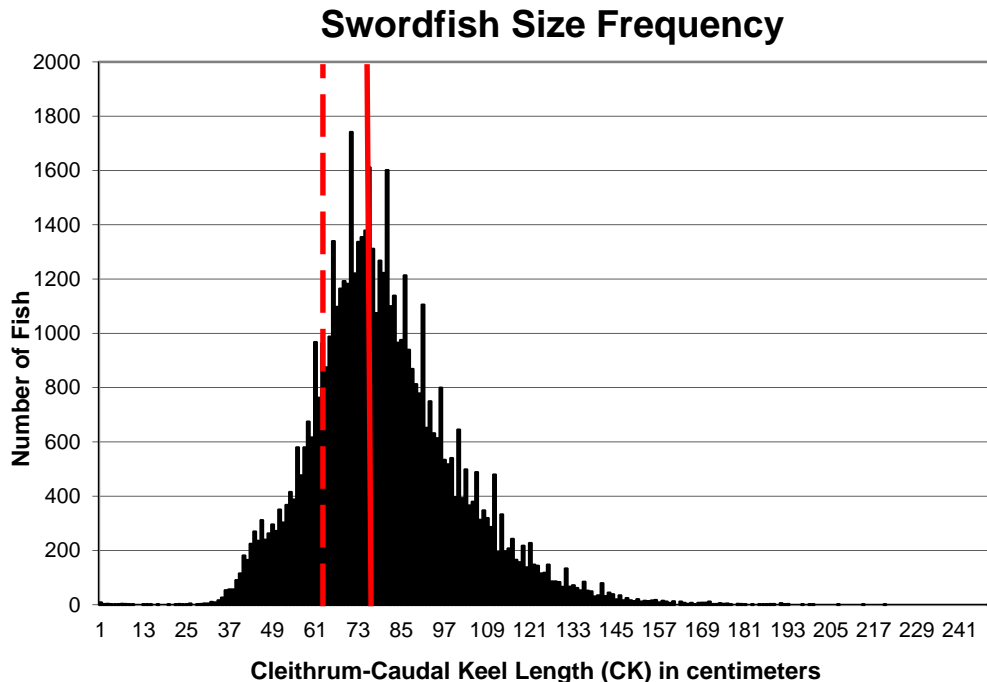


Figure 6. Frequency of observed swordfish CK measurements (cm). Vertical line represents current minimum CK length of 29” (74 cm) and dashed vertical line represents proposed minimum CK length of 25” (63 cm); Source: Pelagic Observer Program data, 1992-2009

Under Alternative 4, NMFS would use the CK measurement as the sole minimum size and discontinue the use of the LJFL minimum size in U.S. domestic fisheries. This alternative would be unlikely to have any direct socioeconomic impacts in the short or long-term, provided that the new ICCAT alternative CK minimum size of 25 inches is implemented under Alternative 4. The current LJFL minimum size of 47 inches and the proposed CK minimum size of 25 inches equate to the same size fish in the majority of instances. Therefore, the LJFL minimum size could be redundant with the CK minimum size. Removal of the LJFL minimum size and use of only the CK measurement could simplify enforcement and compliance with minimum size requirements. Additionally, since the two minimum sizes refer to the same size fish, removal of the LJFL minimum size is unlikely to result in increased landings. However, removing one of the minimum size measurements could reduce flexibility for fishermen in how they choose to measure and land swordfish; therefore NMFS does not prefer this alternative at this time.

Under Alternative 5, NMFS would allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw. Adoption of Alternative 6 would likely result in short and long-term direct minor beneficial socioeconomic impacts. Swordfish are currently measured using either the lower jaw and fork of the tail (in the case of LJFL) or the cleithrum and caudal keel (in the case of CK) as endpoints. Neither of these measurement methods require the bill of the swordfish to be attached, therefore, the bill is unnecessary in determining if a swordfish is of legal size. The bill of a swordfish can complicate fishing operations by presenting safety concerns and imposing storage capacity costs. If NMFS

allows fishermen to continue to employ the LJFL measurement in the absence of the bill, commercial vessels could more efficiently pack the swordfish catch, leaving more room for additional product. This additional product could increase revenues for both fishermen and dealers, therefore NMFS prefers Alternative 5 at this time.

Under Alternative 6, NMFS would reintroduce the 33 pound minimum weight standard. This alternative would be unlikely to have any net direct socioeconomic impacts in the short or long-term, provided that the new ICCAT alternative CK minimum size of 25 inches is implemented under Alternative 3. As discussed in Section 0, NMFS employed the 33 pound minimum weight, in combination with two minimum lengths, until 2009. At that time, NMFS removed the 33 pound minimum weight and specified landing condition-specific minimum sizes. The impetus for this change was twofold. First, the use of three minimum sizes (weight, LJFL, and CK) complicated minimum size enforcement because all three measurements had to be taken to prove that a fish was undersized. This can require heavy time investments, particularly in cases with thousands of pounds of swordfish. Second, neither enforcement agents nor fishermen could definitively determine the accurate weight and subsequent legality of fish while at sea, presenting both compliance and enforcement problems. To address these enforcement and compliance complexities, NMFS simplified the swordfish minimum size requirements by removing the 33 pound minimum weight and specified landing condition-specific minimum lengths. Reintroducing the minimum dressed weight could provide some benefits and some disadvantages. The 33 pound minimum weight and the proposed 25 inch CK minimum size equate to the same size fish in the majority of instances (Figure 4). The primary benefit is that fishermen might be able to retain more swordfish because some fish meet the minimum weight but not the minimum length. Reintroducing the minimum weight could provide the opportunity to retain these fish, as demonstrated in Figure 4. Disadvantages include those discussed above, including enforcement and compliance difficulties. Since it is difficult to obtain a definitive weight at sea, fishermen are unlikely to be able to determine the legality of swordfish weighing near 33 pounds. This presents uncertainties and compliance difficulties. The possible benefits and possible disadvantages, when taken together, result in neutral socioeconomic impacts. Additionally, since the 33 pound minimum weight and the proposed 25 inch CK minimum size equate to the same size fish in the majority of instances (Figure 4), reintroducing the minimum weight standard could be unnecessary. Since Alternative 6 poses enforcement and compliance concerns, and because the socioeconomic impacts may be neutral compared to the beneficial socioeconomic impacts under Alternatives 3 and 5, NMFS does not prefer this alternative at this time. However, should the enforcement and compliance issues be resolved in the future, NMFS may reconsider reintroduction of the 33 pound minimum weight standard.

Short and long-term indirect socioeconomic impacts would likely be neutral for Alternatives 3 through 6. Indirect socioeconomic impacts include those experienced by supporting businesses such as fish processors, bait and tackle suppliers, and vessel maintenance companies. Although fishermen and dealers will experience some impacts, these impacts are unlikely to carry over into the supporting businesses.

4.3 IMPACTS ON ESSENTIAL FISH HABITAT

The Magnuson-Stevens Act established a program to promote the protection of EFH in the review of projects conducted by federal agencies, or under federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After the Secretary has identified EFH, federal agencies are obligated to consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH. In the Consolidated HMS FMP, NMFS concluded that there is no evidence that physical effects caused by fishing for HMS are adversely affecting EFH to the extent that detrimental effects can be identified on the habitat of fisheries. As this action would not alter fishing gears or practices, it is anticipated that this action would not have any adverse impacts to EFH, and the conclusion for the Consolidated HMS FMP is still applicable, so further consultation is not necessary.

4.4 IMPACTS ON PROTECTED RESOURCES

Direct impacts to protected resources resulting from Alternatives 1 and 2 are likely neutral in the short term. Because none of these three alternatives are likely to impact effort in the short-term, impacts to protected resources are likely neutral. In the long-term, Alternative 1 could allow more effort in the fishery due to a higher adjusted quota, therefore, long-term direct minor adverse impacts to protected resources would be possible. In the long-term, Alternative 2 would likely have neutral direct impacts on protected resources since effort and landings would be capped at a level lower than that under Alternative 1. All indirect impacts to protected resources under any of the alternatives are likely neutral since none would impact protected resource habitat or prey species.

Direct and indirect impacts to protected resources resulting from Alternatives 3 through 6 are likely neutral in both the short- and long-term. Addressing minimum size requirements is unlikely to impact fishing effort, levels, or patterns, therefore, it would be unlikely that any of these alternatives would have impacts on protected resources.

4.5 ENVIRONMENTAL JUSTICE CONCERNS

Executive Order (E.O.) 12898 requires that Federal agencies address environmental justice in the decision-making process. In particular, the environmental effects of Federal actions should not have a disproportionate effect on minority and low-income communities. The proposed action would not have any effects on human health nor is it expected to have any disproportionate social or economic effects on minority and low-income communities. Implementing the North Atlantic swordfish quotas would likely have neutral socioeconomic impacts in the short-term because the baseline quota would be the same as in previous years and the United States is unlikely to achieve 100 percent quota utilization in the short-term. However, because this proposed action would reduce the adjusted quota, there could be minor adverse socioeconomic impacts in the long-term if the U.S. swordfish fishery comes close to fully utilizing the adjusted swordfish quota. This lower adjusted quota could result in a decrease in the total fishery-wide revenue. However, implementing the 25 inch CK measurement per ICCAT Recommendation 11-02 would have moderate beneficial socioeconomic impacts because it could better address the operational needs of the U.S. fleet and

could allow commercial fishery participants the ability to retain and dress a larger number of swordfish resulting in increased revenues for fishermen and dealers.

4.6 COASTAL ZONE MANAGEMENT ACT (CZMA) CONCERNS

NMFS has determined that these proposed regulations are consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have approved coastal zone management programs. Letters will be sent to those states requesting their concurrence.

4.7 CUMULATIVE IMPACTS

Cumulative impacts are the impacts on the environment that result from the incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR § 1508.7). A cumulative impact includes the total effect on a natural resource, ecosystem, or human community due to past, present, and reasonably foreseeable future activities or actions of federal, non-federal, public, and private entities. Cumulative impacts may also include the effects of natural processes and events, depending on the specific resource in question. Cumulative impacts include the total of all impacts to a particular resource that have occurred, are occurring, and would likely occur as a result of any action or influence, including the direct and reasonably foreseeable indirect impacts of a federal activity. The goal of this section is to describe the cumulative ecological, economic and social impacts of past, present and reasonably foreseeable future actions with regard to the management measures presented in this document.

Prior to 2006, NMFS implemented a number of measures primarily to reduce bycatch mortality in the PLL fishery. These included the August 2000 bycatch and time/area closure rule (August 1, 2000; 65 FR 47214) and the July 2004 rule implementing Biological Opinion measures (i.e., circle hooks, release gears, etc.) required to fulfill NMFS' Section 7 ESA obligations (July 6, 2004; 69 FR 40734). The cumulative impacts of these measures on the PLL fishery has contributed to the unintended effect of the United States not harvesting its full ICCAT-recommended domestic swordfish quota since 2000, despite the improved stock status of the species

Since 2007, with the recovery of the North Atlantic swordfish stock, the Agency has been actively working to revitalize the U.S. swordfish fishery by providing opportunities for additional swordfish fishing when possible, especially with gears that are low in bycatch and bycatch mortality, while balancing the impacts on other species caught on the same gear that are still overfished or experiencing overfishing. NMFS believes that the proposed action, in combination with Agency's effort to revitalize the fishery, will have positive cumulative impacts on the North Atlantic swordfish stock. Preferred Alternative 2 would implement a reduction in the underharvest carryover limit to 25 percent of the base quota and a quota transfer of 112.8 mt dw to Morocco. The underharvest carryover limit would keep total Atlantic-wide swordfish mortality within the ICCAT SCRS swordfish rebuilding plan and the quota transfer to Morocco would provide quota to support joint scientific research and Morocco's efforts to eliminate the use of driftnets.

Preferred Alternatives 3 and 5 would allow the use of the 25 inch CK minimum size for dressed swordfish and the use of the 47 inch LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw, respectively. NMFS believes that the preferred alternatives would have positive impacts on the Atlantic swordfish fishery but there would be no incremental change in cumulative impacts. Both preferred alternatives in conjunction with the Agency’s efforts to revitalize the fishery would simplify and facilitate compliance and enforcement of the minimum size requirements and increase the efficiency of the fishery. Simplifying enforcement and compliance as well as the efficiency of the fishery could lead to an increase in the number of fish retained and annual revenue in the future. Additionally, both these measures could better address the operational needs of the U.S. swordfish fleet while not having negative ecological impacts (e.g., increase effort or landings) to the Atlantic swordfish stocks.

4.8 COMPARISON OF ALTERNATIVES

The environmental, socioeconomic and impacts to protected resources for the different alternatives and their sub-alternatives compared in Table 2.

Table 2. Comparison of alternatives considered

Alternative	Quality	Timeframe	Ecological	Protected Resources	Socioeconomic
Alternative 1: No Action. Do not implement the 2011 ICCAT North Atlantic swordfish Recommendation 11-02 or any other new management measures	Direct	Short-term	○	○	⊖ ₋
		Long-term	⊖ ₋	⊖ ₋	⊖ ₊
	Indirect	Short-term	○	○	○
		Long-term	○	○	○
	Cumulative	Short-term	○	○	○
		Long-term	○	○	○
<i>Alternative 2: Implement the 2011 ICCAT North Atlantic swordfish Recommendation 11-02, which includes an annual quota transfer of 112.8 mt dw from the U.S. to Morocco and an annual underharvest carryover limit of 25 percent of the base quota (annual carryover limit of 734.4 mt dw); maintain status quo for North Atlantic quotas – Preferred Alternative</i>	Direct	Short-term	○	○	○
		Long-term	⊖ ₊	○	⊖ ₋
	Indirect	Short-term	○	○	○
		Long-term	○	○	○
	Cumulative	Short-term	○	○	○
		Long-term	○	○	○

<i>Alternative 3: Implement the alternative swordfish CK minimum size measurement of 25 inches per the 2011 ICCAT North Atlantic swordfish Recommendation 11-02 – Preferred Alternative</i>	Direct	Short-term	0	0	0 ₊
		Long-term	0	0	0 ₊
	Indirect	Short-term	0	0	0
		Long-term	0	0	0
	Cumulative	Short-term	0	0	0
		Long-term	0	0	0
Alternative 4: Use the CK measurement as the sole minimum size and discontinue the use of the LJFL minimum length standard in U.S. domestic fisheries	Direct	Short-term	0	0	0
		Long-term	0	0	0
	Indirect	Short-term	0	0	0
		Long-term	0	0	0
	Cumulative	Short-term	0	0	0
		Long-term	0	0	0
<i>Alternative 5: Allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw– Preferred Alternative</i>	Direct	Short-term	0	0	0 ₊
		Long-term	0	0	0 ₊
	Indirect	Short-term	0	0	0
		Long-term	0	0	0
	Cumulative	Short-term	0	0	0
		Long-term	0	0	0
Alternative 6: Reintroduce the 33 pound minimum weight standard.	Direct	Short-term	0	0	0
		Long-term	0	0	0
	Indirect	Short-term	0	0	0
		Long-term	0	0	0
		Long-term	0	0	0

	Cumulative	Short-term	O	O	O
		Long-term	O	O	O

Symbol Key:

- O Neutral Impacts
- O₋ Minor Adverse Impacts
- O₊ Minor Beneficial Impacts
- O₋ Moderate Adverse Impacts
- O₊ Moderate Beneficial Impacts

4.9 SWORDFISH RESERVE CATEGORY QUOTA AND SWORDFISH COLLECTION VIA AUTHORIZED FISHING ACTIVITIES

In 1999, NMFS established a reserve quota category for U.S. North Atlantic swordfish, and 301 mt dw of North Atlantic swordfish was allocated to the reserve. The establishment of the reserve category was designed to allow the North Atlantic rebuilding program, established in 1999, to remain on track. Quota in the reserve category may be used for inseason adjustments to other fishing categories, to compensate for projected or actual overharvest in any category, for fishery independent research, or for other purposes consistent with management objectives. In 2007, NMFS transferred 15 percent (440.6 mt dw) of the 2007 baseline U.S. North Atlantic swordfish allocation to the reserve category (October 5, 2007, 72 FR 56929). Since 2007, a number of transfers have been made out of the reserve, including 18.8 mt dw of North Atlantic swordfish to Canada annually since 2003 (November 23, 2004; 69 FR 68090) and 161.7 mt dw to Japan in 2002 (March 24, 2003; 68 FR 14167). In this action and per the 2011 ICCAT recommendation, NMFS would eliminate the 18.8 mt dw annual transfer to Canada out of the reserve quota.

NMFS issues Exempted Fishing Permits (EFPs) and Scientific Research Permits (SRPs) for research activities involving the collection of biological samples and data from swordfish. EFPs and SRPs are issued under the authority of the Magnuson-Stevens Act and ATCA. These EFPs and SRPs authorize collections of swordfish, as well as other HMS, from federal waters in the Atlantic Ocean and Gulf of Mexico for the purposes of scientific data collection. Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic HMS. EFPs are issued to individuals for the purpose of conducting research or other fishing activities using private (non-research) vessels, whereas an SRP would be issued to Agency, state, and academic scientists who are using NOAA or bona fide research vessels as their platforms.

Sampling may require collecting undersize fish, sampling fish in excess of retention/bag limits, the use of unauthorized gears, the collection of fish without the necessary commercial or recreational permits (as research vessels are not required to obtain such permits), and/or the deployment of archival tags. Issuance of EFPs and SRPs may be necessary if the fisheries for swordfish are closed for extended periods during which collection of live animals and/or biological

samples would otherwise be prohibited. Researchers issued an EFP or SRP are required to submit interim reports regarding collections within five days of the completion of a fishing trip and an annual report within 30 days of the expiration of a permit.

NMFS regularly issues EFPs and SRPs to scientists for a wide range of research involving tagging and biological sampling of swordfish. For instance, much research has involved the deployment of archival and pop-up satellite archival tags (PSATs) on swordfish to determine swordfish stock structure. Other tagging studies have investigated migration routes, residency, spawning areas, mixing, and stock structure of swordfish. Biological sampling was conducted to determine reproduction status, feeding habits, and nutritional condition of fish. Additionally swordfish sampling was conducted to study the impact of gear modification on target catch rates and bycatch.

NMFS issued a total of 24 and 28 EFPs, SRPs, and Display Permits in 2009 and 2010 for the collection of HMS, respectively. Although NMFS authorized collection of 312 swordfish, only one was taken in 2009. In 2010, NMFS authorized 1085 swordfish, of which only 181 were taken. These do not include permits that were issued for research related to the Deepwater Horizon/BP oil spill in the Gulf of Mexico. An additional seven permits and/or amendments to permits already issued under the exempted fishing program were issued for research related to the oil spill in the Gulf of Mexico in 2010. Although the total number of authorized swordfish have not been taken in the past couple of years, the potential exists for research to takes to reach this number. Therefore, the reserve category needs to include enough quota to cover all authorized swordfish. Using the 2009 average weight of non-Gulf of Mexico swordfish of 90 lbs dw (U.S. Domestic Longline Database, SEFSC), multiplied by the number of swordfish authorized in 2010 (1085 swordfish), NMFS expects a maximum total of 44.3 mt dw of swordfish to be taken for fishery-independent research under the EFP program.

Currently, mortality associated with an EFP, SRP, Display, or LOA (except for larvae) is counted against the appropriate quota. As most fish are taken in conjunction with commercial fishing, mortality is usually counted against the commercial quotas. However, NMFS still needs to account for mortalities that come from research activities that are not in conjunction with commercial fishing activities. As noted above, the reserve category was specifically set up to account for inseason adjustments and authorized research activities. In this action, NMFS proposes to allocate 50 mt dw of adjusted quota to the reserve category quota and then use the reserve category quota to account for mortality associated with these types of permits. As noted in the previous paragraph, NMFS expects a maximum of 44.3 mt dw of swordfish to be taken under the EFP program, so allocating 50 mt dw to the reserve category should provide enough quota. The impacts to the human environment associated with any of the swordfish quota categories have been previously analyzed in the 2006 Consolidated HMS FMP, and specific quota allocations based on ICCAT recommendations have been analyzed in subsequent NEPA analyses. Mortality associated with these types of permits is usually a small percentage of the total amount authorized for research activities, as evidenced by the small number of swordfish takes reported versus authorized for 2011. Mortality associated with these types of permits would not exceed the reserve category quota. Therefore, the impacts to the human environment associated with swordfish mortality authorized under these permits would be consistent with the analyses conducted under the 2006 Consolidated HMS FMP and implementing regulations and no further analysis is needed here.

5.0 MITIGATION AND UNAVOIDABLE ADVERSE IMPACTS

5.1 MITIGATING MEASURES

Under the preferred alternative for quotas, NMFS would implement the 2011 ICCAT recommendation for the 2012 fishing year in accordance with domestic legislation and the Consolidated HMS FMP and implementing regulations. The ICCAT-recommended TAC for North Atlantic swordfish is intended to have long-term positive ecological benefits and will maintain the stock biomass at maximum sustainable yield. The U.S. domestic swordfish management program includes numerous management measures to implement ICCAT quota and management recommendations, consistent with the 2006 Consolidated HMS FMP. NMFS uses a variety of controls such as swordfish quotas, seasons, retention limits, size limits, and time/area closures to provide reasonable swordfish fishing and harvest opportunities over a wide geographic range within available quotas, while minimizing negative ecological impacts.

Using its in-season management authority, NMFS would be able to monitor and make adjustments to the commercial fishery close to “real time.” Since NMFS will continue to monitor the commercial fishery, any unpredicted increase in effort and landings of swordfish, should they occur, could be addressed within a fishing season. NMFS also may adjust recreational effort controls based on the best information available, but landings data are not available with the timing and frequency of commercial data.

Under the preferred minimum size limit alternatives, NMFS would implement the 25 inch CK measurement per ICCAT Recommendation 11-02, which could better address the operational needs of the U.S. fleet by allowing commercial fishery participants the ability to retain and dress a larger number of swordfish that meet the 47 inch LJFL measurement but not the current 29 inch CK measurement. However, the 25 inch CK measurement is not expected to jeopardize the sustainability of the North Atlantic swordfish because it is not expected that this lower CK measurement will substantially increase the number of swordfish retained and is equivalent to current 47 inch LJFL. Thus, NMFS has not identified mitigating measures for these issues.

5.2 UNAVOIDABLE ADVERSE IMPACTS

Although the preferred quota alternative would result in a slight decrease in the adjusted quota due to the reduced underharvest carryover limit and quota transfer to Morocco, it is consistent with ICCAT Recommendation 11-02, the Consolidated HMS FMP, ATCA, and the Magnuson-Stevens Act. NMFS does not expect a change in current fishing patterns or an increase in fishing effort as compared to pre-2011 levels. The proposed action to adjust quotas and minimum size requirements would not alter current impacts on threatened or endangered species which have been previously analyzed in the 2001 and 2004 Biological Opinions. The action would not significantly modify fishing behavior or gear type, nor would it expand fishing effort because the current baseline quota remains unchanged and the U.S. swordfish fleet has not fully utilized the baseline quota. Thus, the actions analyzed in this EA/RIR/IRFA would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates.

5.3 IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES

No irreversible or irretrievable commitments of resources are expected from this proposed rule.

6.0 ECONOMIC EVALUATION

Note that all dollars are reported in nominal dollars, consistent with methods used in the 2006 Consolidated HMS FMP.

6.1 NUMBER OF VESSELS AND PERMIT HOLDERS

This section further describes the number of vessel and dealer permit holders that may be affected by this proposed rulemaking as of October 2011. Table 3 lists the number of swordfish permit holders and is used to estimate the universe of commercial vessels (i.e., directed, incidental and handgear swordfish permits holders) that would be impacted. These permits have been limited access since 1999. The number of HMS Angling, Charter/Headboat, and Swordfish Dealer permits are also provided, however, these permits are not limited access. The HMS Angling and Charter/Headboat permits are not species-specific; thus, permit holders may fish for swordfish but may also fish for tunas, billfish, or sharks. All permit holders are considered small entities for purposes of Executive Order 12866.

Table 3. Number of Directed Swordfish, Incidental Swordfish, Swordfish Handgear, Charter/Headboat, HMS Angling, and Swordfish Dealer Permits, 2005-2011.

Type of Permit	2005	2006	2007	2008	2009	2010	2011
Directed Swordfish	190	191	180	181	187	177	178
Incidental Swordfish	91	86	79	76	72	72	67
Swordfish Handgear	92	88	82	81	81	75	78
Charter/Headboat	3,963	4,173	3,899	4,297	4,150	4,174	4,194
HMS Angling	24,127	25,238	24,220	26,933	25,506	24,479	23,138
Swordfish Dealer	294	285	269	171	177	181	191
Total	28,757	30,061	28,729	31,739	30,173	29,158	27,846

6.2 GROSS REVENUES OF COMMERCIAL FISHERMEN

NMFS calculated annual gross revenues by combining current federal permit holders with their reported landings from the U.S. National Report (NMFS 2011a) averaged from 2006 to 2010. These landings were multiplied by ex-vessel prices for swordfish obtained from dealer reporting to determine annual gross revenues.

Of all Atlantic HMS, swordfish bring in the second highest total gross revenue according to the 2011 SAFE Report, and made up only 34.8 percent of total HMS fishery revenue over the time series ([total swordfish revenue (\$64,648,513 / Total HMS revenue (185,956,331)] * 100 = 34.8 percent).

Table 4 provides data on the prices swordfish fishermen received at the dock. The average values from HMS dealer reports were used to construct the table.

Table 4. Estimates of the Total Ex-vessel Annual Revenues of Atlantic HMS Commercial Swordfish Fisheries. Source: NMFS 2011.

Species		2006	2007	2008	2009	2010
Swordfish	Ex-vessel \$/lb dw	\$3.54	\$4.02	\$3.63	\$3.45	\$4.41
	Weight lb dw	3,002,597	3,643,926	3,414,513	3,762,280	3,173,739
	Fishery Revenue	\$10,629,193	\$14,648,583	\$12,394,682	\$12,979,866	\$13,996,189

Note: Average ex-vessel prices may have some weighting errors

6.3 OPERATING COSTS OF COMMERCIAL FISHERMEN

NMFS has collected operating cost information from commercial permit holders via logbook reporting. Each year, 20 percent of active Atlantic HMS commercial permit holders are selected to report economic information along with their Atlantic HMS logbook or Coastal Fisheries logbook submissions. In addition, NMFS also receives voluntary submissions of the trip expense and payment section of the logbook form from non-selected vessels.

The primary expenses associated with operating an Atlantic HMS permitted commercial vessel include labor, fuel, bait, ice, groceries, other gear, and light sticks on swordfish trips. Unit costs are collected on some of the primary variable inputs associated with trips. The unit costs for fuel, bait, and light sticks are reported in Table 5. Fuel costs increased approximately 89 percent from 2005 to 2008 while the cost per pound for bait has remained fairly constant. This spike in fuel costs ended in 2009 when fuel costs decreased by 45 percent in one year. The unit cost per light sticks used in the PLL fishery has actually declined from 2005 to 2009.

Table 5. Median Unit Costs for Fuel, Bait, and Light Sticks 2006- 2009. Source: Atlantic HMS logbooks.

Input Unit Costs	2005	2006	2007	2008	2009
Fuel	\$1.90	\$2.20	\$2.29	\$3.59	\$1.98
Bait	\$0.85	\$0.85	\$0.85	\$0.85	\$0.85
Light Sticks*	\$0.50	\$0.50	\$0.40	\$0.37	\$0.37

*Cost per light stick.

Table 6 provides the median total cost per trip for the major variable inputs associated with Atlantic HMS trips. Fuel costs are one of the largest variable expenses and the total costs of fuel decreased substantially per trip in 2009 in line with the decline in the unit cost of fuel.

Table 6. Median Input Costs for HMS Trips 2006 - 2009. Source: Atlantic HMS logbooks.

Input Costs	2005	2006	2007	2008	2009
Fuel	\$2,341	\$1,728	\$2,144	\$3,031	\$2,303
Bait	\$920	\$750	\$858	\$1,080	\$1,320
Light Sticks	\$500	\$500	\$520	\$444	\$446
Ice Costs	\$480	\$400	\$540	\$520	\$600
Grocery Expenses	\$610	\$470	\$600	\$600	\$800
Other Trip Costs	\$1,250	\$920	\$1,236	\$1,293	\$1,500

Labor costs are also an important component of operating costs for HMS commercial vessels. Table 7 lists the amount of crew on a typical trip. The median number of crew members has been consistently three from 2005 to 2009. Most crew and captains are paid based on a lay system.

According to Atlantic HMS logbook reports, owners are typically paid 50 percent of revenues. Captains receive a 20 percent share and crew in 2009 received 22.5 percent on average. These shares are typically paid out after costs are netted from gross revenues. Median total shared costs per trip have ranged from \$4,500 to \$5,000 from 2005 to 2009.

Table 7. Median Labor Inputs and Costs for HMS Trips 2006 - 2009. Source: Atlantic HMS logbooks.

Labor	2005	2006	2007	2008	2009
Number of Crew	3	3	3	3	3
Owner Share	50%	50%	50%	50%	50%
Captain Share	20%	20%	20%	20%	20%
Crew Share	11%	12%	15%	15%	22.5%
Total Shared Costs	\$4,550	\$4,500	\$4,500	\$5,000	\$4,689

In 2009, median reported total trip sales were \$9,731. In 2008, median reported total trip sales were \$10,970. In 2007, the median reported total trip sales were \$12,064. After adjusting for operating costs, median net earnings per trip in 2008 was \$3,214. Median net earnings per trip increased to \$4,340 in 2009.

It should be noted that operating costs for the Atlantic HMS commercial fleet vary considerably from vessel to vessel. The factors that impact operating costs include unit input costs, vessel size, target species, and geographic location among other things.

6.4 ANGLING AND CHARTER/HEADBOAT REVENUES

A complete description of these fisheries is provided in the 2006 Consolidated HMS FMP and the 2011 SAFE Report and is not repeated here. In 2004, NMFS collected market information regarding advertised charterboat rates. The analysis of this data focused on observations of advertised rates on the internet for full day charters. Full day charters vary from 6 to 14 hours long with a typical trip being 10 hours. Most vessels can accommodate six passengers, but this also varies from two to 12 passengers. The average price for a full day boat charter was \$1,053 in 2004. Sutton *et al.*, (1999) surveyed charterboats throughout Alabama, Mississippi, Louisiana, and Texas in 1998 and found the average charterboat base fee to be \$762 for a full day trip. Holland *et al.* (1999) conducted a similar study on charterboats in Florida, Georgia, South Carolina, and North Carolina and found the average fee for full day trips to be \$554, \$562, \$661, and \$701, respectively. Comparing these two studies conducted in the late 1990s to the average advertised daily HMS charterboat rate in 2004, it is apparent that there were significant increases in charterboat rates.

6.5 EXPECTED ECONOMIC IMPACTS OF THE ALTERNATIVES

ALTERNATIVE 1: NO ACTION. DO NOT IMPLEMENT THE 2011 ICCAT NORTH ATLANTIC SWORDFISH RECOMMENDATION 11-02 OR ANY OTHER NEW MANAGEMENT MEASURES

Under Alternative 1, NMFS would not implement any of the measures contained in the 2011 ICCAT North Atlantic swordfish Recommendation 11-02, including the quota allocation, underharvest carryover limit, international quota transfer, or CK minimum size measurement. Alternative 1 would likely have net direct minor adverse socioeconomic impacts in the short-term. No impacts would be expected if NMFS does not implement the quota portion of ICCAT Recommendation 11-02, however, direct minor adverse socioeconomic short-term impacts could result if NMFS does not implement the alternative CK minimum size. The U.S. quota specified in ICCAT Recommendation 11-02 is unchanged from previous years; therefore, the base quota would not be affected. The only effect of non-action would be that the transferred quota would not be deducted from the U.S. base quota. Since the United States has not harvested the entire allocated swordfish quota and is unlikely to do so in the short-term, deducting the transferred quota from the domestic base quota is unlikely to result in changes to annual revenue or revenue to individual vessels. Similarly, if NMFS does not reduce the annual carryover limit from 50 percent to 25 percent, the higher annual adjusted quota is unlikely to be utilized and is unlikely to result in changes in landings or revenue. However, if NMFS does not implement the alternative CK minimum size, there could be direct minor adverse socioeconomic short-term impacts. The 25 inch CK minimum size is equivalent to the existing 47 inch LJFL minimum size. Currently, fishermen do not have a minimum size measurement that allows for the retention of dressed swordfish that measure at or slightly above 47 inches LJFL. If a fisherman catches a swordfish that meets the 47 inch LJFL minimum size but not the current 29 inch CK minimum size, the fisherman must either land the fish with the head naturally attached or discard the fish. Due to storage capacity limitations and uncertainty in minimum size regulations, fishermen sometimes choose to discard fish that legally meet the 47 LJFL measurement but do not meet the 29 inch CK minimum size. Similarly, dealers sometimes will not accept fish that meet the 47 inch LJFL measurement but not the 29 inch CK minimum size. These fish are landed with the head naturally attached, but once removed, some dealers have expressed concern that a minimum size violation could occur in the absence of proof that the fish was landed with the head and met the 47 inch LJFL measurement. For these reasons, if NMFS does not implement the alternative CK minimum size, fishermen would continue to discard and not land some fish that meet the LJFL minimum size but not the current CK minimum size, resulting in direct short-term minor adverse socioeconomic impacts.

In the long-term, Alternative 1 could have net direct minor beneficial socioeconomic impacts. Due to a variety of swordfish revitalization efforts within and outside of the Agency, NMFS expects that U.S. fishermen could achieve near 100 percent quota utilization. If NMFS does not take action to reduce the base quota due to the annual quota transfer to Morocco nor reduce the adjusted quota by limiting underharvest carryover, the domestic fishery could land more swordfish resulting in higher annual revenues. The United States is allocated 2,937.6 mt dw of North Atlantic swordfish. If 112.8 mt dw of quota is not transferred to Morocco and if up to 50 percent of the base quota can be carried over, the total U.S. adjusted quota could reach 4406.4 mt dw (9,714,349 lb dw). Assuming an average ex-vessel price of \$4.31 per pound (NMFS 2011) and 100 percent quota utilization, the total possible annual gross revenues across the domestic fishery would be estimated to be \$41,868,844 under Alternative 1. As in the short-term, fishermen might still discard fish that meet the LJFL

minimum size but not the current minimum size, precluding ex-vessel revenue from these landings, however, the larger quota would likely offset this impact. Because the United States has an obligation to implement ICCAT recommendations under ATCA, NMFS does not prefer this alternative at this time.

Indirect socioeconomic impacts resulting from Alternative 1 are likely neutral in the short and long-term. Changes to international quota transfers and underharvest carryover limits are unlikely to affect dealers, bait and tackle suppliers, and other supporting businesses since they do not solely rely on the swordfish fishery

ALTERNATIVE 2: IMPLEMENT THE 2011 ICCAT NORTH ATLANTIC SWORDFISH RECOMMENDATION 11-02, WHICH INCLUDES AN ANNUAL QUOTA TRANSFER OF 112.8 MT DW FROM THE U.S. TO MOROCCO AND AN ANNUAL UNDERHARVEST CARRYOVER LIMIT OF 25 PERCENT OF THE BASE QUOTA (ANNUAL CARRYOVER LIMIT OF 734.4 MT DW); MAINTAIN STATUS QUO FOR NORTH ATLANTIC QUOTAS – PREFERRED ALTERNATIVE

Alternative 2 would implement the ICCAT Recommendation 11-02 provisions pertaining to quota allocation, the underharvest carryover limit, and the quota transfer to Morocco. Alternative 2 would likely have direct neutral socioeconomic impacts in the short-term. As noted in the ecological impact discussion for Alternative 1, the United States is unlikely to achieve 100 percent quota utilization in the short-term. Consequently, minor changes to the base quota through international quota transfers or to the adjusted quota through reduced underharvest carryover limits are unlikely to impact swordfish fishing effort levels or annual revenues. In the long-term, however, Alternative 2 could have direct minor adverse socioeconomic impacts assuming the U.S. swordfish fishery nears 100 percent quota utilization. At that time, an adjusted quota that reflects the annual international quota transfer to Morocco and the lower underharvest carryover limit could lead to a lower available quota relative to the current adjusted quota. This lower level of adjusted quota would result in a decrease in the total possible fishery-wide annual revenue. If NMFS deducts the 112.8 mt dw quota transfer from the U.S. base quota of 2,937.6 mt dw and limits underharvest carryover to 25 percent, the total U.S. adjusted quota could reach 3,559.2 mt dw (7,846,612 lbs dw). Assuming an average ex-vessel price of \$4.31 per pound (NMFS 2011) and 100 percent quota utilization, total possible gross revenues across the domestic fishery would be estimated to be \$33,818,898 under Alternative 2. Therefore, Alternative 2 could result in annual gross revenues that are \$8,049,946 less (\$41,868,844 - \$33,818,898) than the possible annual gross revenues under Alternative 1. However, the United States is required to implement these measures through regulations as necessary and appropriated to comply with ICCAT Recommendation 11-02 under ATCA. Therefore, NMFS prefers this alternative at this time.

Indirect socioeconomic impacts resulting from Alternative 2 are likely neutral in the short and long-term. Changes to international quota transfers and underharvest carryover limits are unlikely to affect dealers, bait and tackle suppliers, and other supporting businesses since they do not solely rely on the swordfish fishery

ALTERNATIVE 3: IMPLEMENT THE ALTERNATIVE SWORDFISH CK MINIMUM SIZE MEASUREMENT OF 25 INCHES PER THE 2011 ICCAT NORTH ATLANTIC SWORDFISH RECOMMENDATION 11-02 – PREFERRED ALTERNATIVE

Under Alternative 3, NMFS would implement the swordfish minimum size portion of the 2011 ICCAT swordfish Recommendation 11-02 which allows a 25 inch CK measurement. This alternative would likely have direct moderate beneficial socioeconomic impacts in both the short- and long-term. The 25 inch CK minimum size is equivalent to the existing 47 inch LJFL minimum size. Currently, fishermen do not have a minimum size measurement that allows for the retention of dressed swordfish that measure at or slightly above 47 inches LJFL. If a fisherman catches a swordfish that meets the 47 inch LJFL minimum size but not the current 29 inch CK minimum size, the fisherman must either land the fish with the head naturally attached or discard the fish. Due to storage capacity limitations and uncertainty in minimum size regulations, fishermen sometimes choose to discard fish that legally meet the 47 LJFL measurement but do not meet the 29 inch CK minimum size. Similarly, dealers sometimes will not accept fish that meet the 47 inch LJFL measurement but not the 29 inch CK minimum size. Even when these swordfish are landed with the head naturally attached, some dealers have expressed concern that, once the head is removed, the fish could be in violation of minimum size requirements. For these reasons, implementing the ICCAT alternative minimum CK size of 25 inches could lead to increased retention of previously discarded legal fish that measure at or slightly above 47 inches LJFL, since this CK minimum size is equivalent to a greater number of 47 inch LJFL fish (Figure 2). Fish in this size range are the most frequently encountered fish (Figure 5 and Figure 6; note that the figures provide lengths in centimeters), therefore, increased landings of fish in this size range are not trivial. The increase in retained catch could lead to increased annual revenues for both fishermen and dealers, resulting in direct moderate beneficial socioeconomic impacts in both the short and long-term. Because this alternative provides these benefits to fishermen but does not lead to increased mortality of undersized swordfish, NMFS prefers this alternative at this time.

Short and long-term indirect socioeconomic impacts would likely be neutral for Alternative 3. Indirect socioeconomic impact include those experienced by supporting businesses such as fish processors, bait and tackle suppliers, and vessel maintenance companies. Although fishermen and dealers will experience some impacts, these impacts are unlikely to carry over into the supporting businesses.

ALTERNATIVE 4: USE THE CK MEASUREMENT AS THE SOLE MINIMUM SIZE AND DISCONTINUE THE USE OF THE LJFL MINIMUM LENGTH STANDARD IN U.S. DOMESTIC FISHERIES

Under Alternative 4, NMFS would use the CK measurement as the sole minimum size and discontinue the use of the LJFL minimum size in U.S. domestic fisheries. This alternative would be unlikely to have any direct socioeconomic impacts in the short or long-term, provided that the new ICCAT alternative CK minimum size of 25 inches is implemented under Alternative 4. The current LJFL minimum size of 47 inches and the proposed CK minimum size of 25 inches equate to the same size fish in the majority of instances. Therefore, the LJFL minimum size could be redundant with the CK minimum size. Removal of the LJFL minimum size and use of only the CK measurement could simplify enforcement and compliance with minimum size requirements. Additionally, since the two

minimum sizes refer to the same size fish, removal of the LJFL minimum size is unlikely to result in increased landings. However, removing one of the minimum size measurements could reduce flexibility for fishermen in how they choose to measure and land swordfish; therefore NMFS does not prefer this alternative at this time.

Short and long-term indirect socioeconomic impacts would likely be neutral for Alternative 4. Indirect socioeconomic impact include those experienced by supporting businesses such as fish processors, bait and tackle suppliers, and vessel maintenance companies. Although fishermen and dealers will experience some impacts, these impacts are unlikely to carry over into the supporting businesses.

ALTERNATIVE 5: ALLOW THE LJFL MINIMUM SIZE TO BE APPLIED TO SWORDFISH WITHOUT A BILL, PROVIDED THE BILL HAS BEEN REMOVED FORWARD OF THE ANTERIOR TIP OF THE LOWER JAW— PREFERRED ALTERNATIVE

Under Alternative 5, NMFS would allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw. Adoption of Alternative 6 would likely result short and long-term direct minor beneficial socioeconomic impacts. Swordfish are currently measured using either the lower jaw and fork of the tail (in the case of LJFL) or the cleithrum and caudal keel (in the case of CK) as endpoints. Neither of these measurement methods require the bill of the swordfish to be attached, therefore, the bill is unnecessary in determining if a swordfish is of legal size. The bill of a swordfish can complicate fishing operations by presenting safety concerns and imposing storage capacity costs. If NMFS allows fishermen to continue to employ the LJFL measurement in the absence of the bill, commercial vessels could more efficiently pack the swordfish catch, leaving more room for additional product. This additional product could increase revenues for both fishermen and dealers, therefore NMFS prefers Alternative 5 at this time.

Short and long-term indirect socioeconomic impacts would likely be neutral for Alternative 5. Indirect socioeconomic impact include those experienced by supporting businesses such as fish processors, bait and tackle suppliers, and vessel maintenance companies. Although fishermen and dealers will experience some impacts, these impacts are unlikely to carry over into the supporting businesses.

ALTERNATIVE 6: REINTRODUCE THE 33 POUND MINIMUM WEIGHT STANDARD.

Under Alternative 6, NMFS would reintroduce the 33 pound minimum weight standard. This alternative would be unlikely to have any net direct socioeconomic impacts in the short or long-term, provided that the new ICCAT alternative CK minimum size of 25 inches is implemented under Alternative 3. As discussed in Section 0, NMFS employed the 33 pound minimum weight, in combination with two minimum lengths, until 2009. At that time, NMFS removed the 33 pound minimum weight and specified landing condition-specific minimum sizes. The impetus for this change was twofold. First, the use of three minimum sizes (weight, LJFL, and CK) complicated minimum size enforcement because all three measurements had to be taken to prove that a fish was undersized. This can require heavy time investments, particularly in cases with thousands of pounds

of swordfish. Second, neither enforcement agents nor fishermen could definitively determine the accurate weight and subsequent legality of fish while at sea, presenting both compliance and enforcement problems. To address these enforcement and compliance complexities, NMFS simplified the swordfish minimum size requirements by removing the 33 pound minimum weight and specified landing condition-specific minimum lengths. Reintroducing the minimum dressed weight could provide some benefits and some disadvantages. The 33 pound minimum weight and the proposed 25 inch CK minimum size equate to the same size fish in the majority of instances (Figure 4). The primary benefit is that fishermen might be able to retain more swordfish because some fish meet the minimum weight but not the minimum length. Reintroducing the minimum weight could provide the opportunity to retain these fish, as demonstrated in Figure 4. Disadvantages include those discussed above, including enforcement and compliance difficulties. Since it is difficult to obtain a definitive weight at sea, fishermen are unlikely to be able to determine the legality of swordfish weighing near 33 pounds. This presents uncertainties and compliance difficulties. The possible benefits and possible disadvantages, when taken together, result in neutral socioeconomic impacts. Additionally, since the 33 pound minimum weight and the proposed 25 inch CK minimum size equate to the same size fish in the majority of instances (Figure 4), reintroducing the minimum weight standard could be unnecessary. Since Alternative 6 poses enforcement and compliance concerns, and because the socioeconomic impacts may be neutral compared to the beneficial socioeconomic impacts under Alternatives 3 and 5, NMFS does not prefer this alternative at this time. However, should the enforcement and compliance issues be resolved in the future, NMFS may reconsider reintroduction of the 33 pound minimum weight standard.

Short and long-term indirect socioeconomic impacts would likely be neutral for Alternative 6. Indirect socioeconomic impact include those experienced by supporting businesses such as fish processors, bait and tackle suppliers, and vessel maintenance companies. Although fishermen and dealers will experience some impacts, these impacts are unlikely to carry over into the supporting businesses.

7.0 REGULATORY IMPACT REVIEW

This section assesses the economic impacts of the alternatives presented in this document. The RIR is conducted to comply with E.O. 12866 and provides analyses of the economic benefits and costs of each alternative to the nation and the fishery as a whole. Certain elements required in an RIR are also required as part of an EA. Thus, this section should be considered only part of the RIR, the rest of the RIR can be found throughout this document.

7.1 DESCRIPTION OF THE MANAGEMENT OBJECTIVES

Please see Chapter 1 for a description of the objectives of this rulemaking.

7.2 DESCRIPTION OF THE FISHERY

Please see Chapter 3 for a description of fishery and environment that could be affected by this rulemaking.

7.3 STATEMENT OF THE PROBLEM

Please see Chapter 1 for a description of the problem and need for this rulemaking.

7.4 DESCRIPTION OF EACH ALTERNATIVE

Please see Chapter 2 for a summary of each alternative and Chapter 4 for a complete description of each alternative and its expected ecological, social, and economic impacts. Table 8 shows the net economic benefits and costs of each of the alternatives analyzed in this Draft EA.

Table 8. Net Economic Benefits and Costs of Alternatives.

Alternatives	Net Economic Benefits	Net Economic Costs
Alternative 1: No Action. Do not implement the 2011 ICCAT North Atlantic swordfish Recommendation 11-02 or any other new management measures	Could allow for a higher adjusted quota since the underharvest carryover limit would not be reduced and the quota transfer to Morocco would not be deducted, leading to higher possible revenues. Because fishermen have not landed the entire quota in recent years, no directed net economic benefits are expected.	No direct economic impacts, but this alternative would not fulfill the United States' obligation to implement ICCAT recommendations and could impact the United States' position at ICCAT.
<i>Alternative 2: Implement the 2011 ICCAT North Atlantic swordfish Recommendation 11-02, which includes an annual quota transfer of 112.8 mt dw from the U.S. to Morocco and an annual underharvest carryover limit of 25 percent of the base quota (annual carryover limit of 734.4 mt dw); maintain status quo for North Atlantic quotas – Preferred Alternative</i>	In the short-term, no economic benefits since the domestic fishery has not caught the entire North Atlantic quota in a number of years.	In the long-term, would limit adjusted quotas due to the underharvest carryover limit reduction and the quota transfer to Morocco deduction. The lower quota would reduce possible fishery-wide revenue. In the short-term, no economic costs since the domestic fishery has not caught the entire North Atlantic quota in almost a decade.

<i>Alternative 3: Implement the alternative swordfish CK minimum size measurement of 25 inches per the 2011 ICCAT North Atlantic swordfish Recommendation 11-02 – Preferred Alternative</i>	Reduced CK minimum size could result in an increase in the number of fish that can be retained with the head removed, increasing fishing and storage efficiency.	No economic costs associated with a reduction in the CK minimum size.
Alternative 4: Use the CK measurement as the sole minimum size and discontinue the use of the LJFL minimum length standard in U.S. domestic fisheries	Could simplify compliance which would reduce uncertainty and allow for more efficient fishing.	Could preclude the retention of the small number of swordfish that measure at least 47 inches LJFL but not 25 inches CK.
<i>Alternative 5: Allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw– Preferred Alternative</i>	Commercial fishermen do not typically wish to retain the bill of swordfish. Allowing the LJFL minimum size be applied to swordfish without a bill would free more storage room for marketable swordfish product.	No economic cost associated with this alternative.
Alternative 6: Reintroduce the 33 pound minimum weight standard.	Could allow fishermen to retain the small number of swordfish that meet the 33 pound minimum live weight, but not the LJFL or CK minimum sizes.	Would introduce enforcement and compliance concerns and uncertainty in determining whether a swordfish meets minimum size requirements. Difficult for fishermen to accurately assess the live weight of a swordfish while at sea, possibly reducing efficiency.

7.5 ECONOMIC ANALYSIS OF EXPECTED EFFECTS OF EACH ALTERNATIVE RELATIVE TO THE BASELINE

NMFS does not foresee that the national net benefits and costs would change significantly in the short- or long-term as a result of implementation of the preferred alternatives relative to the baseline (Alternative 1). Alternative 2, which would implement an annual quota transfer of 112.8 mt dw from the U.S. to Morocco and an annual underharvest carryover limit of 25 percent of the base quota, would not have any short-term economic impacts. The United States has not fully used the quota in over a decade therefore, minor changes to the total adjusted quota available for U.S. harvest is unlikely to have any impact. In the long-term, as the United States uses more of the quota, total fishery-wide revenues could be impacted due to the lower adjusted quota under Alternative 2. If NMFS deducts the 112.8 mt dw quota transfer from the U.S. base quota of 2,937.6 mt dw and limits underharvest carryover to 25 percent, the total U.S. adjusted quota could reach 3,559.2 mt dw (7,846,612 lbs dw). Assuming an average ex-vessel price of \$4.31 per pound (NMFS 2011) and 100 percent quota utilization, total possible gross revenues across the domestic fishery would be estimated to be \$33,818,898 under Alternative 2. Therefore, Alternative 2 could result in annual gross revenues that are \$8,049,946 less (\$41,868,844 - \$33,818,898) than the possible annual gross revenues under Alternative 1. However, the transfer to Morocco and the reduction in the underharvest carryover

limit are binding measures and the United States is required under ATCA to implement these measures in order to be in compliance with ICCAT Recommendation 11-02.

Alternative 3 would implement the swordfish minimum size portion of the 2011 ICCAT swordfish Recommendation 11-02 which allows a 25 inch CK measurement. If this alternative is implemented, NMFS expects some benefits to fishermen and dealers in both the short and long-term. The lower CK minimum size will allow more fish to be retained with the head removed, increasing fishing and storage efficiency. Since the 25 inch CK minimum size equates to a 47 inch LJFL, this alternative would not allow for increased retention of undersized swordfish. The benefits from this alternative are minor and not significant in nature.

Alternative 5 would allow the LJFL minimum size to be applied to swordfish without a bill. The bill is not necessary to obtain a LJFL measurement, presents a safety concern, and takes up storage room that could be used for marketable swordfish product. Allowing fishermen to remove the bill but still apply the LJFL minimum size will increase safety and allow for an increase in the storage efficiency, without undermining minimum size enforcement. The benefits from this alternative are minor and not significant in nature.

7.6 CONCLUSION

Under E.O. 12866, a regulation is a "significant regulatory action" if it is likely to: 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 obligation 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 the Executive Order. The proposed action described in this draft EA/RIR/IRFA does not meet the above criteria, for example, the economic impacts as reflected in this proposed rule are under the \$100 million threshold. This action raises no novel or legal policy issues as it implements ICCAT recommendations according to international and domestic law and policy, and is not expected to result in any inconsistency with other agency actions. Therefore, under E.O. 12866, the proposed action described in this document has been determined to be not significant for the purposes of E.O. 12866. A summary of the expected net economic benefits and costs of each alternative can be found in Table 8.

8.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

8.1 DESCRIPTION OF THE REASONS WHY ACTION IS BEING CONSIDERED

The action is being considered in order to adjust the 2012 annual North and South Atlantic swordfish quotas and implement the management measures contained in ICCAT Recommendation 11-02, consistent with the Magnuson-Stevens Act and ATCA.

8.2 STATEMENT OF THE OBJECTIVES OF, AND LEGAL BASIS FOR, THE PROPOSED RULE

Under ATCA, the United States shall promulgate regulations as may be necessary and appropriate to implement binding recommendations of ICCAT. An objective of this action is to adjust the 2012 Atlantic swordfish quotas and implement the management measures contained in ICCAT Recommendation 11-02 including underharvest carryover provisions, international quota transfer requirements, and a new minimum size measurement for Atlantic swordfish, consistent with ATCA, the 2006 Consolidated HMS FMP and other applicable laws.

8.3 DESCRIPTION AND ESTIMATE OF THE NUMBER OF SMALL ENTITIES TO WHICH THE PROPOSED RULE WILL APPLY

This proposed action would apply to all participants in the Atlantic HMS commercial and recreational fisheries that retain Atlantic swordfish. NMFS considers all these participants to be small entities. As of October 2011, 245 vessels held a directed or incidental commercial swordfish permit and are reasonably expected to use PLL gear although they could also use handgear. Also, as of October 2011, 78 vessels held a commercial handgear permit, 23,138 held an Atlantic HMS Angling permit, and 4,194 vessels held an Atlantic HMS Charter/Headboat permit.

8.4 DESCRIPTION OF THE PROJECTED REPORTING, RECORD-KEEPING, AND OTHER COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING AN ESTIMATE OF THE CLASSES OF SMALL ENTITIES WHICH WILL BE SUBJECT TO THE REQUIREMENTS OF THE REPORT OR RECORD

The proposed action does not contain any new collection of information, reporting, or record keeping requirements. NMFS is proposing to change the current Atlantic swordfish minimum size from 29 inches CK to 25 inches CK. Additionally, NMFS is proposing to allow the use of the LJFL minimum size even when the swordfish bill is removed. The expected benefits of these actions are discussed in Section **Error! Reference source not found.**

8.5 IDENTIFICATION OF ALL RELEVANT FEDERAL RULES WHICH MAY DUPLICATE, OVERLAP, OR CONFLICT WITH THE PROPOSED RULE

This proposed rule must be consistent with a number of international agreements and domestic laws. These include, but are not limited to, the Magnuson-Stevens Act, the ATCA, Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. Additionally, NMFS strives to ensure consistency among the regulations with Fishery Management Councils and other relevant

agencies. NMFS does not believe that the proposed alternatives would conflict with any relevant regulations, Federal or otherwise. Once the proposed rule is finalized and made effective, fishermen participating in the affected fisheries must comply with the final rule.

8.6 DESCRIPTION OF ANY SIGNIFICANT ALTERNATIVES TO THE PROPOSED RULE THAT ACCOMPLISH THE STATED OBJECTIVES OF APPLICABLE STATUTES AND THAT MINIMIZE ANY SIGNIFICANT ECONOMIC IMPACT OF THE PROPOSED RULE ON SMALL ENTITIES

One of the requirements of a IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Chapters 4 and 6 of this document. Additionally, the Regulatory Flexibility Act (5 U.S.C. § 603 (c) (1)-(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and,
4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with Magnuson-Stevens Act and ATCA, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act and ATCA. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this proposed rulemaking that fall under the second category above and provides rationale for identifying the preferred alternative to achieve the desired objective.

NMFS has prepared this IRFA to analyze the impacts on small entities of the alternatives for implementing ICCAT Recommendation 11-02 for all domestic fishing categories that Atlantic swordfish. The IRFA assesses the impacts of the various alternatives on the vessels that participate in the Atlantic HMS commercial and recreational fisheries that retain Atlantic swordfish, all of which are considered small entities. Six alternatives were considered and analyzed and include (1) No Action; (2) Implement the 2011 ICCAT North Atlantic swordfish Recommendation 11-02, which includes an annual quota transfer of 112.8 mt dw from the United States to Morocco and an annual underharvest carryover limit of 25 percent of the base quota (annual carryover limit of 734.4 mt dw); maintain status quo for North Atlantic quotas – Preferred Alternative; (3) Implement the alternative swordfish CK minimum size measurement of 25 inches per the 2011 ICCAT North Atlantic

swordfish Recommendation 11-02 – Preferred Alternative; (4) Use the CK measurement as the sole minimum size and discontinue the use of the LJFL minimum length standard in U.S. domestic fisheries; (5) Allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw– Preferred Alternative; and (6) Reintroduce the 33 pound minimum weight standard .

Economic Impacts

Under Alternative 1, NMFS would not implement any of the measures contained in the 2011 ICCAT North Atlantic swordfish Recommendation 11-02, including the quota allocation, underharvest carryover limit, international quota transfer, or CK minimum size measurement. Alternative 1 would likely have net direct minor adverse socioeconomic impacts in the short-term. No impacts would be expected if NMFS does not implement the quota portion of ICCAT Recommendation 11-02, however, direct minor adverse socioeconomic short-term impacts could result if NMFS does not implement the alternative CK minimum size. The U.S. quota specified in ICCAT Recommendation 11-02 is unchanged from previous years; therefore, the base quota would not be affected. The only effect of non-action would be that the transferred quota would not be deducted from the U.S. base quota. Since the United States has not harvested the entire allocated swordfish quota and is unlikely to do so in the short-term, deducting the transferred quota from the domestic base quota is unlikely to result in changes to annual revenue or revenue to individual vessels. Similarly, if NMFS does not reduce the annual carryover limit from 50 percent to 25 percent, the higher annual adjusted quota is unlikely to be utilized and is unlikely to result in changes in landings or revenue to individual vessels. However, if NMFS does not implement the alternative CK minimum size, there could be direct minor adverse socioeconomic short-term impacts. The 25 inch CK minimum size is equivalent to the existing 47 inch LJFL minimum size. Currently, fishermen do not have a minimum size measurement that allows for the retention of dressed swordfish that measure at or slightly above 47 inches LJFL. If a fisherman catches a swordfish that meets the 47 inch LJFL minimum size but not the current 29 inch CK minimum size, the fisherman must either land the fish with the head naturally attached or discard the fish. Due to storage capacity limitations and uncertainty in minimum size regulations, fishermen sometimes choose to discard fish that legally meet the 47 LJFL measurement but do not meet the 29 inch CK minimum size. Similarly, dealers sometimes will not accept fish that meet the 47 inch LJFL measurement but not the 29 inch CK minimum size. These fish are landed with the head naturally attached, but once removed, some dealers have expressed concern that a minimum size violation could occur in the absence of proof that the fish was landed with the head and met the 47 inch LJFL measurement. For these reasons, if NMFS does not implement the alternative CK minimum size, fishermen would continue to discard and not land some fish that meet the LJFL minimum size but not the current CK minimum size, resulting in direct short-term minor adverse socioeconomic impacts. Quantifying the economic impact to individual vessels is difficult without estimates on the number of legal fish that are discarded, however, fish in this size range are often encountered by pelagic longline, handgear, and incidental (including squid trawl) swordfish permit holders. These permit holders would likely experience minor adverse economic impacts if the CK minimum size was not changed to 25 inches.

In the long-term, Alternative 1 could have net direct minor beneficial socioeconomic impacts. Due to a variety of swordfish revitalization efforts within and outside of the Agency, NMFS expects

that U.S. fishermen could achieve near 100 percent quota utilization. If NMFS does not take action to reduce the base quota due to the annual quota transfer to Morocco nor reduce the adjusted quota by limiting underharvest carryover, the domestic fishery could land more swordfish resulting in higher annual revenues. The United States is allocated 2,937.6 mt dw of North Atlantic swordfish. If 112.8 mt dw of quota is not transferred to Morocco and if up to 50 percent of the base quota can be carried over, the total U.S. adjusted quota could reach 4406.4 mt dw (9,714,349 lb dw). Assuming an average ex-vessel price of \$4.31 per pound (NMFS 2011) and 100 percent quota utilization, the total possible annual gross revenues across the domestic fishery would be estimated to be \$41,868,844 under Alternative 1. In 2011, there were 178 directed swordfish permit holders, 67 incidental swordfish permit holders, and 78 swordfish handgear permit holders (NMFS 2011). The Incidental HMS Squid Trawl Permit, which allows for limited retention of swordfish caught in the *Illex* squid trawl fishery, became effective toward the end of 2011, therefore, NMFS does not yet have a reliable estimate on the number of vessels that have or will avail themselves of this permit. Due to quota tracking complexities, NMFS does not have a proportional breakdown of the total landings by permit type, however, the average annual ex-vessel revenue across all swordfish permit types is \$129,625 per vessel (\$41,868,844 / (178 directed swordfish permit holders, 67 incidental swordfish permit holders, and 78 swordfish handgear permit holders)). Since retention limits are higher for directed permit holders than incidental permit holders, actual per vessel revenue would likely be higher for directed permit holders and lower for incidental permit holders. Handgear permit holders do not have a retention limit, however, the gear used by these permit holders is less efficient, therefore, actual per vessel revenue is somewhere in between directed and incidental permit holders. As in the short-term, fishermen might still discard fish that meet the LJFL minimum size but not the current minimum size, precluding ex-vessel revenue from these landings, however, the larger quota would likely offset this impact. Because the United States has an obligation to implement ICCAT recommendations under ATCA, NMFS does not prefer this alternative at this time.

Alternative 2 would implement the ICCAT Recommendation 11-02 provisions pertaining to quota allocation, the underharvest carryover limit, and the quota transfer to Morocco. Alternative 2 would likely have direct neutral socioeconomic impacts in the short-term. As noted in the ecological impact discussion for Alternative 1, the United States is unlikely to achieve 100 percent quota utilization in the short-term. Consequently, minor changes to the base quota through international quota transfers or to the adjusted quota through reduced underharvest carryover limits are unlikely to impact swordfish fishing effort levels or annual revenues. In the long-term, however, Alternative 2 could have direct minor adverse socioeconomic impacts as the U.S. swordfish fishery nears 100 percent quota utilization. At that time, an adjusted quota that reflects the annual international quota transfer to Morocco and the lower underharvest carryover limit could lead to a lower available quota than the level possible under Alternative 1. This lower level of adjusted quota would result in a decrease in the total possible fishery-wide annual revenue. If NMFS deducts the 112.8 mt dw quota transfer from the U.S. base quota of 2,937.6 mt dw and limits underharvest carryover to 25 percent, the total U.S. adjusted quota could reach 3,559.2 mt dw (7,846,612 lbs dw). Assuming an average ex-vessel price of \$4.31 per pound (NMFS 2011) and 100 percent quota utilization, total possible gross revenues across the domestic fishery would be estimated to be \$33,818,898 under Alternative 2. Therefore, Alternative 2 could result in annual gross revenues that are \$8,049,946 less (\$41,868,844 - \$33,818,898) than the possible annual gross revenues under Alternative 1. This potential decrease in average annual ex-vessel revenue across all swordfish permit types is \$24,922 per vessel (\$8,049,946

(178 directed swordfish permit holders, 67 incidental swordfish permit holders, and 78 swordfish handgear permit holders)). Since retention limits are higher for directed permit holders than incidental permit holders, actual per vessel revenue loss would likely be higher for directed permit holders and lower for incidental permit holders. Handgear permit holders do not have a retention limit, however, the gear used by these permit holders is less efficient, therefore, actual per vessel revenue loss is somewhere in between directed and incidental permit holders. The United States, however, is required to implement these measures in order to be in compliance with ICCAT recommendation 11-02 under ATCA, therefore, NMFS prefers this alternative at this time.

Under Alternative 3, NMFS would implement the swordfish minimum size portion of the 2011 ICCAT swordfish Recommendation 11-02 which allows a 25 inch CK measurement. This alternative would likely have direct moderate beneficial socioeconomic impacts in both the short- and long-term. The 25 inch CK minimum size is equivalent to the existing 47 inch LJFL minimum size. Currently, fishermen do not have a minimum size measurement that allows for the retention of dressed swordfish that measure at or slightly above 47 inches LJFL. If a fisherman catches a swordfish that meets the 47 inch LJFL minimum size but not the current 29 inch CK minimum size, the fisherman must either land the fish with the head naturally attached or discard the fish. Due to storage capacity limitations and uncertainty in minimum size regulations, fishermen sometimes choose to discard fish that legally meet the 47 inch LJFL measurement but do not meet the 29 inch CK minimum size. Similarly, dealers sometimes will not accept fish that meet the 47 inch LJFL measurement but not the 29 inch CK minimum size. These fish are landed with the head naturally attached, but once removed, some dealers have expressed concern that a minimum size violation could occur in the absence of proof that the fish was landed with the head and met the 47 inch LJFL measurement. For these reasons, implementing the ICCAT alternative minimum CK size of 25 inches could lead to increased retention of previously discarded legal fish that measure at or slightly above 47 inches LJFL, since this CK minimum size is equivalent to a greater number of 47 inch LJFL fish (Figure 2). Fish in this size range are the most frequently encountered fish (Figure 5 and Figure 6; note that the figures provide lengths in centimeters), therefore, increased landings of fish in this size range are not trivial. The increase in retained catch could lead to increased annual revenues for both fishermen and dealers, resulting in direct moderate beneficial socioeconomic impacts in both the short and long-term. Quantifying the economic impact to individual vessels is difficult without estimates on the number of legal fish that are discarded, however, fish in this size range are often encountered by pelagic longline, handgear, and incidental (including squid trawl) swordfish permit holders. These permit holders would likely experience minor beneficial economic impacts if the CK minimum size is changed to 25 inches. Because this alternative provides these benefits to fishermen but does not lead to increased mortality of undersized swordfish, NMFS prefers this alternative at this time.

Under Alternative 4, NMFS would use the CK measurement as the sole minimum size and discontinue the use of the LJFL minimum size in U.S. domestic fisheries. This alternative would be unlikely to have any direct socioeconomic impacts in the short or long-term, provided that the new ICCAT alternative CK minimum size of 25 inches is implemented under Alternative 4. The current LJFL minimum size of 47 inches and the proposed CK minimum size of 25 inches equate to the same size fish in the majority of instances. Therefore, the LJFL minimum size could be redundant with the CK minimum size. Removal of the LJFL minimum size and use of only the CK measurement could

simplify enforcement and compliance with minimum size requirements. Additionally, since the two minimum sizes refer to the same size fish, removal of the LJFL minimum size is unlikely to result in increased landings for individual vessels. However, removing one of the minimum size measurements could reduce flexibility for fishermen in how they choose to measure and land swordfish; therefore NMFS does not prefer this alternative at this time.

Under Alternative 5, NMFS would allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw. Adoption of Alternative 6 would likely result short and long-term direct minor beneficial socioeconomic impacts. Swordfish are currently measured using either the lower jaw and fork of the tail (in the case of LJFL) or the cleithrum and caudal keel (in the case of CK) as endpoints. Neither of these measurement methods require the bill of the swordfish to be attached, therefore, the bill is unnecessary in determining if a swordfish is of legal size. The bill of a swordfish can complicate fishing operations by presenting safety concerns and imposing storage capacity costs. If NMFS allows fishermen to continue to employ the LJFL measurement in the absence of the bill, commercial vessels could more efficiently pack the swordfish catch, leaving more room for additional product. This additional product could increase revenues for both fishermen and dealers, although quantifying the economic benefits on a per-vessel basis is not possible. NMFS prefers Alternative 6 at this time.

Under Alternative 6, NMFS would reintroduce the 33 pound minimum weight standard. This alternative would be unlikely to have any net direct socioeconomic impacts in the short or long-term, provided that the new ICCAT alternative CK minimum size of 25 inches is implemented under Alternative 4. As discussed in Section 0, NMFS employed the 33 pound minimum weight, in combination with two minimum lengths, until 2009. At that time, NMFS removed the 33 pound minimum weight and specified landing condition-specific minimum sizes. The impetus for this change was twofold. First, the use of three minimum sizes (weight, LJFL, and CK) complicated minimum size enforcement because all three measurements had to be taken to prove that a fish was undersized. This can require heavy time investments, particularly in cases with thousands of pounds of swordfish. Second, neither enforcement agents nor fishermen could definitively determine the accurate weight and subsequent legality of fish while at sea, presenting both compliance and enforcement problems. To address these enforcement and compliance complexities, NMFS simplified the swordfish minimum size requirements by removing the 33 pound minimum weight and specified landing condition-specific minimum lengths. Reintroducing the minimum dressed weight could provide some benefits and some disadvantages. The 33 pound minimum weight and the proposed 25 inch CK minimum size equate to the same size fish in the majority of instances (Figure 4). The primary benefit is that fishermen might be able to retain more swordfish because some fish meet the minimum weight but not the minimum length. Reintroducing the minimum weight could provide the opportunity to retain these fish, as demonstrated in Figure 4. Disadvantages include those discussed above, including the enforcement and compliance difficulties. Since a definitive weight cannot be taken at sea, fishermen are unlikely to be able to determine the legality of swordfish weighing near 33 pounds. This presents uncertainties and compliance difficulties. The possible benefits and possible disadvantages, when taken together, result in neutral socioeconomic impacts across the fishery and to individual vessels. Additionally, since the 33 pound minimum weight and the proposed 25 inch CK minimum size equate to the same size fish in the majority of instances (Figure 4), reintroducing the minimum weight standard could be unnecessary. Since Alternative 7

poses enforcement and compliance concerns, and because the socioeconomic impacts may be neutral compared to the beneficial socioeconomic impacts under Alternatives 4 and 6, NMFS does not prefer this alternative at this time. However, should the enforcement and compliance issues be resolved in the future, NMFS may reconsider reintroduction of the 33 pound minimum weight standard.

9.0 COMMUNITY PROFILES

Section 102(2)(a) of the National Environmental Policy Act (NEPA) requires Federal agencies to consider the interactions of natural and human environments by using “a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences . . . in planning and decision-making.” Federal agencies should address the aesthetic, historic, cultural, economic, social, or health effects which may be direct, indirect, or cumulative. The Magnuson-Stevens Act also requires, among other matters, consideration of social impacts. Consideration of the social impacts associated with fishery management measures is a growing concern as fisheries experience variable participation and/or declines in stocks.

Profiles for HMS fishing communities were included in Chapter 9 of the 2006 Consolidated HMS FMP and updated in Chapter 6 of the 2010 SAFE Report. These HMS communities are analyzed for social impacts in this action due to the importance of the pelagic longline fishery: Gloucester and New Bedford, MA; Barnegat Light and Brielle/Point Pleasant, NJ; Hatteras and Wanchese, NC; and Venice and Dulac, LA.

The impacts of the proposed action will be neutral in all of these communities. The action to implement the management measures in 2011 ICCAT Recommendation 11-02 is unlikely to result in a significant decrease effort and revenue. Since the United States has not harvested the entire allocated swordfish quota and is unlikely to do so in the short-term, the lower adjusted quota that would result from this action is not expected to decrease commercial and recreational fishing opportunities.

10.0 OTHER CONSIDERATIONS

10.1 MAGNUSON-STEVENSON ACT AND ATLANTIC TUNAS CONVENTION ACT

NMFS has determined that this proposed action is consistent with the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment. Section 971d(c)(1)(C) of ATCA provides that regulations promulgated under the Act, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson-Stevens Act.

The analyses in this document are consistent with the Magnuson-Stevens Act National Standards (NS) (see 50 C.F.R. Part 600, Subpart D for National Standard Guidelines). The proposed rule is consistent with NS 1 in that, according to the latest stock assessment, it would prevent overfishing of Atlantic swordfish. Because the proposed action is based on the 2011 North Atlantic swordfish ICCAT recommendation which stems from the 2009 ICCAT SCRS swordfish stock assessment, and the data used for the analysis in this document consists of fishery logbook and observer data from 2006 through 2010, it is based on the best scientific information available (NS 2), including self-reported, observer, and stock assessment data, which provide for the management of the affected species throughout its range (NS 3).

This proposed action does not discriminate against fishermen in any state (NS 4) and increases resource efficiency without having economic allocation as its sole purpose (NS 5). With regard to NS 6, the proposed action takes into account any variations that may occur in the fishery and the fishery resources. Additionally, NMFS considered the costs and benefits of these management measures economically and socially under National Standards 7 and 8 in Sections 4, 5, 6, 7, and 8 of this document. The proposed action ensures that bycatch is accounted for in the Atlantic swordfish fisheries, accounting for dead discards and incidentally caught swordfish taken in the pelagic longline fishery within available quotas (NS9). Finally, the proposed action would allow fishermen to remove the bill of a swordfish when fishing, which may increase safety at sea, instead of requiring fishermen to fish in an unsafe manner (NS10).

10.2 PAPERWORK REDUCTION ACT

The proposed quota specifications and effort controls contain no new collection-of-information requirements subject to the Paperwork Reduction Act.

10.3 E. O. 13132

This action does not contain regulatory provisions with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132.

11.0 LIST OF PREPARERS AND PERSONS/AGENCIES CONSULTED

This EA/RIR/IRFA was prepared by LeAnn Hogan, Delisse Ortiz, Steve Durkee, Karyl Brewster-Geisz, and Margo Schulze-Haugen from the HMS Management Division, Office of Sustainable Fisheries. Please contact the HMS Management Division for a complete copy of current regulations for the Atlantic HMS commercial and recreational fisheries.

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Discussions relevant to the formulation of the preferred alternatives/proposed action and the analyses for this draft EA/RIR/IRFA involved input from several NMFS components and constituent groups, including: NMFS Southeast Fisheries Science Center, NMFS Office for Law Enforcement, NMFS Office of Science and Technology, and the members of the HMS AP (which includes representatives from the commercial and recreational fishing industries, environmental and academic organizations, state representatives, and fishery management councils). NMFS also considered the numerous comments received at AP meetings from individual fishermen and interested parties regarding these issues.

12.0 REFERENCES

- NMFS. 1999. Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. Highly Migratory Species Management Division, Silver Spring, MD.
- NMFS. 2004. Final Supplemental Environmental Impact Statement for a Final Rule to Implement Management Measures to Reduce Bycatch and Bycatch Mortality of Atlantic Sea Turtles in the Atlantic Pelagic Longline Fishery. NOAA, NMFS, Highly Migratory Species Management Division.
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- NMFS. 2011. Stock Assessment and Fishery Evaluation Report for Atlantic Highly Migratory Species. Atlantic Highly Migratory Species Management Division, 1315 East West Highway, Silver Spring, MD 20910.
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FINDING OF NO SIGNIFICANT IMPACT

Draft Finding of No Significant Impact for implementation of the 2011 ICCAT Recommendation for North Atlantic Swordfish

National Marine Fisheries Service

The Highly Migratory Species (HMS) Management Division of the Office of Sustainable Fisheries submits the attached Environmental Assessment (EA) for the Atlantic HMS fisheries for Secretarial review under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This EA considers the impacts of implementing the management measures in North Atlantic swordfish ICCAT Recommendation 11-02 and was developed as an integrated document that includes a Regulatory Impact Review and Initial Regulatory Flexibility Analysis. The National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant in making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ’s context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?

The proposed action is not expected to jeopardize the sustainability of North Atlantic swordfish. In this action, NMFS preferred Alternative 2 to implement ICCAT Recommendation 11-02, which, among other things, maintains the current baseline quota that was established in the 2007 swordfish specifications final rule (October 5, 2007; 72 FR 56929). The ICCAT recommendation also includes a transfer of 112.8 mt dw from the United States to Morocco to support joint scientific research and Morocco’s efforts to eliminate the use of driftnets by implementing gear that reduces bycatch. In addition, Recommendation 11-02 includes a change to the underharvest carry over amount from 50 percent of the baseline quota to 25 percent of the baseline quota. The change in the underharvest carry over limit is not expected to jeopardize the sustainability of North Atlantic swordfish because less underharvested quota will be carried over, resulting in lower adjusted quotas.

The proposed action also considers changes to the swordfish minimum size requirements at 50 CFR 635.20 consistent with the ICCAT Recommendation 11-02. Before Recommendation 11-02, the ICCAT minimum size measurements included a weight measurement of 33 pounds live weight and a lower jaw fork length (LJFL) measurement of 125 cm, with a 15 percent tolerance for small fish or a 119 cm LJFL measurement with no tolerance. NMFS has implemented the 119 cm (47 inch) LJFL measurement as well as a U.S.-developed cleithrum to caudal keel (CK) measurement of 29 inches for domestic use. However, some commercially caught swordfish meet the current 47 inch LJFL measurement, but not the 29 inch CK measurement, precluding the ability to fully retain and dress the swordfish while at sea. ICCAT Recommendation 11-02 includes an alternative minimum size measurement of 63 cm or 25 inches CK which is equivalent to 47 inches LJFL. Therefore, the CK measurement of 25 inches included in Recommendation 11-02 could allow U.S. commercial fishery participants the ability to retain and dress a larger number of swordfish that previously met the 47

inch LJFL measurement but, not the 29 inch CK measurement. Thus, NMFS has selected alternative 3 as a preferred alternative. NMFS has also selected preferred alternative 5 which would allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw. The 25 inch CK measurement and the removal of the swordfish bill are not expected to jeopardize the sustainability of the North Atlantic swordfish because it is not expected that this lower CK measurement will substantially increase fishing effort or the number of swordfish retained and is equivalent to the current 47 inch LJFL minimum size. This proposed action is necessary to implement the North Atlantic swordfish ICCAT recommendation pursuant to ATCA. In compliance with ATCA, NMFS implements ICCAT recommendations through regulations as may be necessary and appropriate.

2) Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?

No. The action is not expected to jeopardize the sustainability of any non-target finfish species or bycatch because it is not expected to result in changes to fishing effort or practices compared to 2011 levels, as the current baseline quotas for North Atlantic swordfish would be maintained in this proposed action. The primary fishing gears used to target swordfish (i.e., handgear and pelagic longline) allow for the release of non-target species to a great degree. Primary non-target fish species caught by vessels targeting swordfish include tunas, sharks, and other large pelagic species. NMFS has already implemented rebuilding plans, as appropriate, and fishing controls for the primary non-target species. In addition, commercial fishery participants are required to attend safe handling and release workshops for non-target and protected species.

Handgear fisheries actions, covered under the June 2001 Biological Opinion (BiOp) for HMS fisheries, were determined not likely to jeopardize the continued existence of endangered or threatened species, including sea turtles. A June 2004 BiOp determined that the continued operation of the pelagic longline fishery is not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley seas turtles, but is likely to jeopardize the continued existence of leatherback sea turtles. NMFS has implemented the Reasonable and Prudent Alternatives required under the 2004 BiOp. The analyses in the 2001 and 2004 BiOps were relevant for the 2006 Consolidated HMS FMP, which serves as the baseline FEIS for annual swordfish specifications. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard. NMFS is implementing the other RPMs in compliance with the 2004 BiOp. On August 9, 2007, the NMFS Southeast Regional Director determined that, following a review of sea turtle take during the 3-year Incidental Take Statement period, the 2004 BiOp remains valid and does not need to be amended. On May 19, 2009 (74 FR 23349), NMFS implemented a consensus Pelagic Longline Take Reduction Plan in a final rule that limits the length of mainline for PLL in the mid-Atlantic area, established the Cape Hatteras Special Research Area, required a placard showing how to release whales be posted in the wheelhouse and working deck of the vessel, and required owners and operators be certified in ways to reduce mortality of marine mammals.

3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-Stevens Act and identified in FMPs?

This action is not expected to change PLL or recreational fishing patterns or have impacts on EFH, or to allow substantial damage to ocean and coastal habitats and/or EFH. The primary fishing gears used to harvest swordfish (handgear and PLL) are pelagic in nature and have little impact on bottom substrate. Further, the effects of this action would not apply to any sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural or historical resources.

4) Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?

The action is not expected to have substantial adverse impacts on public health and safety. Fishing activity or behavior would not change as a result of the adjustment of the swordfish quotas or changes to the minimum size measurements. Although fishing can be a dangerous profession, NMFS encourages fishermen to be responsible in safety matters while at sea. Nothing in this action would increase the risks already inherent in the fishing profession.

5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under Section 7 of the ESA. A BiOp issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. This BiOp also concluded that the continued operation of the handgear fishery may adversely affect, but are not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. NMFS has implemented the reasonable and prudent alternatives (RPAs) required by this BiOp.

Subsequently, based on the management measures in several proposed rules, a new BiOp on the Atlantic pelagic longline fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified RPAs necessary to avoid jeopardizing leatherbacks, and listed the reasonable and prudent measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard. NMFS is implementing the other RPMs in compliance with the 2004 BiOp. NMFS will undertake additional rulemaking and non-regulatory actions, as required, to implement any management measures that are required under the 2004 BiOp.

Goals of the 2006 Consolidated HMS FMP include implementing rebuilding plans, minimizing bycatch and bycatch mortality for overfished stocks, and managing healthy stocks for optimum yield. Bycatch reduction measures are in place under the HMS Bycatch Reduction Implementation Plan (discussed in Section 3.8 of the Consolidated HMS FMP), and this action would not change any of the bycatch measures in place under the Consolidated HMS FMP, or the

effectiveness of those measures. Section 3.4 of this document and Chapter 7 of the 2011 SAFE Report list the 22 marine mammal species that are or could be of concern with respect to potential interactions with HMS fisheries. Those sections discuss interactions and the Endangered Species Act, including six endangered whale species. A summary of marine mammal interactions in the pelagic longline fishery from 1992 through 2005 is provided in Section 3.4.1.2 of the 2006 Consolidated HMS FMP and is updated for 2002 through 2010 in the 2011 SAFE Report. In addition, through a final rule that published on May 19, 2009 (74 FR 23349) and became effective on June 18, 2009, NMFS established additional management measures to reduce serious injury and mortality of long-finned and short-finned pilot whales, and Risso's dolphins in the U.S. East Coast Atlantic pelagic longline fishery. These measures include a requirement to post a marine mammal handling placard, restrict pelagic longline mainline length to 20 nautical miles in the Mid-Atlantic Bight area, and develop observer and research participation requirements to operate in the Cape Hatteras Special Research Area.

Consistent with the 2011 ICCAT Recommendation 11-02 for North Atlantic swordfish, the preferred alternatives would adjust the 2012 North Atlantic swordfish quota, reduce the underharvest carry over limit, transfer 112.8 mt dw of the U.S. North Atlantic swordfish quota to Morocco, and implement a new minimum size measurement. The measures in this proposed action are not expected to alter current fishing practices or increase fishing effort, and, therefore, are not expected to have adverse impacts on protected species, or have any further impacts on endangered species, marine mammals, or critical habitat beyond those considered in the 2001 and 2004 BiOps. Thus, the proposed action in this Draft EA/RIR/IRFA would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates, and no further consultation is necessary.

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

The action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area, because the action is not expected to change fishing practices, and/or interactions with non-target and endangered or threatened species. The action would not affect unique geographic areas. In addition, this action is not expected to introduce or spread non-indigenous species.

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

No. There are no significant social and economic impacts interrelated with natural or physical environmental effects associated with the proposed action.

Implementing the North Atlantic swordfish quota would likely have neutral socioeconomic impacts in the short-term because the baseline quota would be the same as in previous years and the United States is unlikely to achieve 100 percent quota utilization in the short-term. However, because this proposed action would reduce the adjusted quota, there could be minor adverse socioeconomic impacts in the long-term if the U.S. swordfish fishery comes close to fully utilizing the adjusted swordfish quota. This lower adjusted quota could result in a decrease in the total fishery-wide revenue. However, implementing the 25 inch CK measurement per ICCAT Recommendation 11-02

would have moderate beneficial socioeconomic impacts because it could better address the operational needs of the U.S. fleet and could allow commercial fishery participants the ability to retain and dress a larger number of swordfish resulting in increased revenues for fishermen and dealers.

8) Are the effects on the quality of the human environment likely to be highly controversial?

The effects of this action on the human environment are not expected to be highly controversial because current North Atlantic swordfish management measures and controls have been in place for several years and this fishery is a highly regulated fishery. The proposed changes to current swordfish management measures are reasonably minor, and include underharvest carryover limits, international quota transfers, and swordfish minimum sizes and fall within the existing management structure.

9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

No. The action area does not include the unique areas listed. Thus, the proposed action will not result in substantial impacts to the listed areas.

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

No. Effects on the human environment would be similar to those in similar annual actions since 1999, and have been considered in the 2006 Consolidated HMS FMP. This proposed action is necessary to implement the ICCAT recommendation for North Atlantic swordfish pursuant to ATCA. In compliance with the ATCA, NMFS is required to implement domestic regulations consistent with recommendations adopted by ICCAT as may be necessary and appropriate.

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

There are no significant cumulative impacts associated with this action in combination with other past, present or reasonable foreseeable future actions. The proposed rule implements the 2011 ICCAT North Atlantic swordfish recommendation for the 2012 fishing year and maintains the current baseline quota, lowers the underharvest carry over limit, transfer 112.8 mt dw of the U.S. North Atlantic swordfish quota to Morocco, and establishes an alternative minimum size measurement for swordfish that have been dressed. Other recent actions have been consistent with ICCAT recommendations and the 2006 Consolidated HMS FMP. Any future domestic actions taken in regard to the swordfish fishery would remain within the scope of ICCAT recommendations and the 2006 Consolidated HMS FMP. Likewise, all actions in this rule are consistent with those proposed and consulted over in previous Biological Opinions issued under the Endangered Species Act.

12) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

No. The management measures would occur in the inshore and offshore waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea and would not occur in any areas listed or eligible for listing in the National Register of Historic Places. This action would not cause loss or destruction of significant scientific, cultural, or historical resources because there are no significant scientific, cultural, or historic resources within the action area.

13) Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?

As the action does not involve ballast water exchange or movement of vessels between water bodies, it is not expected to result in the introduction or spread of any non-indigenous species.

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

No, the proposed action is not likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. This proposed action is necessary to implement ICCAT recommendations pursuant to ATCA and is consistent with the objectives of the 2006 Consolidated HMS FMP. In compliance with the ATCA, NMFS is required to implement ICCAT recommendations through regulations as may be necessary and appropriate. The HMS regulations at 50 CFR 635 lay out the approach and boundaries for the action. The 2012 adjusted quotas would be in place from the effective date through December 31, 2012. A separate action would be taken to establish the 2013 swordfish quota specifications and would not be dependent upon this proposed action. Thus, the decisions involved are limited and unlikely to involve principles which would affect future actions.

15) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

No. This action would be consistent with the Magnuson-Stevens Act, ATCA and the regulations at 50 CFR 635. NMFS has preliminarily determined that the proposed action would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states on the Atlantic including the Gulf of Mexico and Caribbean that have approved coastal zone management programs. Letters will be sent to the relevant states asking for their concurrence when the proposed rule is filed with the Federal Register. The proposed action would not be expected to violate any Federal, state or local law imposed for the protection of the environment.

16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

The action is not expected to result in cumulative adverse effects that could have a substantial effect on target species or non-target species. The action would implement the 2011 ICCAT North Atlantic swordfish recommendation for the United States and is consistent with the objectives of the 2006 Consolidated HMS FMP as analyzed in the Consolidated HMS FMP FEIS. No increase in fishing effort or change in current fishing practices are expected as the 2011 recommendation maintains the current U.S. baseline quota for North Atlantic swordfish. The ICCAT recommendation

includes a transfer of 112.8 mt dw from the United States to Morocco to support joint scientific research and Morocco's efforts to eliminate the use of driftnets by implementing gear that reduces bycatch. Recommendation 11-02 also includes a change to the underharvest carry over amount from 50 percent of the baseline quota to 25 percent of the baseline quota. The change in the underharvest carry over limit is not expected to jeopardize the sustainability of North Atlantic swordfish because less underharvested quota will be carried over to subsequent fishing years, resulting in lower adjusted quotas. ICCAT Recommendation 11-02 also includes an alternative minimum size measurement of 63 cm or 25 inches CK (current CK measurement is 29 inches), which is equivalent to the current 47 inch LJFL minimum size measurement. Therefore, the CK measurement of 25 inches included in Recommendation 11-02 could better address the operational needs of the U.S. fleet by allowing commercial fishery participants to retain and fully dress swordfish that previously met the 47 inch LJFL measurement but not the 29 inch CK measurement. The 25 inch CK measurement is not expected to result in cumulative adverse effects that could have substantial effect on North Atlantic swordfish because it is not expected that this lower CK measurement will substantially increase the number of swordfish retained. In compliance with ATCA, NMFS is required to implement domestic regulations consistent with recommendations adopted by ICCAT as may be necessary and appropriate.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment prepared for the implementation of the ICCAT Shark Recommendations, it is hereby determined that this action will not significantly impact the quality of the human environment as described above and in the supporting Environmental Assessment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

DRAFT

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Date