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Atlantic Highly Migratory Species; Revisions to Fishing Gear Regulations

A Proposed Rule by the [National Oceanic and Atmospheric Administration](#) on 08/14/2026

 This document has a comment period that ends in 54 days. (10/13/2026)

2 comments received. [View posted comments](#)

PUBLISHED CONTENT - DOCUMENT DETAILS

Agencies: Department of Commerce
National Oceanic and Atmospheric Administration

Agency/Docket Number: Docket No. 260811-0511

CFR: 50 CFR 635

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DOCUMENT HEADINGS

Department of Commerce
National Oceanic and Atmospheric Administration
50 CFR Part 635
[Docket No. 260811-0511]
RIN 0648-BN52

AGENCY:

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

ACTION:

Proposed rule; request for comments.

SUMMARY:

NMFS is proposing regulatory revisions to fishing gear requirements in fisheries targeting Atlantic highly migratory species (HMS) to increase flexibility and remove inefficiencies, thus increasing fishing opportunities and the ability of HMS fisheries to achieve optimum yield. Specifically, NMFS is proposing changes to buoy gear regulations that include modifying gear deployment and retrieval requirements, authorizing this gear under additional permits, and allowing the retention of additional species. NMFS is also proposing changes to speargun fishing gear regulations that include authorizing this gear under additional permits and targeting additional species. Finally, NMFS is proposing overarching changes regarding gear used for the collection of bait in all HMS fisheries.

DATES:

Written comments must be received by October 13, 2026. NMFS will hold two public hearing webinars on August 31, 2026 from 1 to 3 p.m. ET and October 1, 2026 from 1 to 3 p.m. ET. For additional details on the public hearings, see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES:

A plain language summary of this proposed rule is available at

<https://www.regulations.gov/NOAA-NMFS-2024-0050> (<https://www.regulations.gov/NOAA-NMFS-2024-0050>). You may submit comments on this document, identified by NOAA-NMFS-2024-0050, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> (<https://www.regulations.gov>) and type “NOAA-NMFS-2024-0050” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> (<https://www.regulations.gov>) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

NMFS will hold two public hearings via webinar on this proposed rule. For specific location, date and time, see the **SUPPLEMENTARY INFORMATION** section of this document.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted at:

<https://www.reginfo.gov/public/do/PRAMain> (<https://www.reginfo.gov/public/do/PRAMain>).

Find this particular collection information by selecting “Currently under Review—Open for Public Comments” or by using the search function.

Additional information related to this proposed rule, including electronic copies of supporting documents, is available from the HMS Management Division website at

<https://www.fisheries.noaa.gov/action/comments-requested-revisions-fishing-gear-regulations-atlantic-highly-migratory-species>

(<https://www.fisheries.noaa.gov/action/comments-requested-revisions-fishing-gear-regulations-atlantic-highly-migratory-species>) or by contacting Becky Curtis at becky.curtis@noaa.gov (<mailto:becky.curtis@noaa.gov>) or by phone at 301-427-8503.

FOR FURTHER INFORMATION CONTACT:

Becky Curtis, becky.curtis@noaa.gov (<mailto:becky.curtis@noaa.gov>), Guy DuBeck, guy.dubeck@noaa.gov (<mailto:guy.dubeck@noaa.gov>), or Steve Durkee, steve.durkee@noaa.gov (<mailto:steve.durkee@noaa.gov>), at 301-427-8503.

SUPPLEMENTARY INFORMATION:

Federal Atlantic HMS fisheries (sharks, tunas, billfish, and swordfish) are managed under the 2006 Consolidated Atlantic HMS Fishery Management Plan (HMS FMP) and its amendments (71 FR 58058 ([/citation/71-FR-58058](#)), Oct. 2, 2006), pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 (<https://www.govinfo.gov/link/uscode/16/1801>) *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 (<https://www.govinfo.gov/link/uscode/16/971>) *et seq.*). HMS are defined at section 3(21) of the Magnuson-Stevens Act (see 16 U.S.C. 1802(21) (<https://www.govinfo.gov/link/uscode/16/1802>)) and the provisions for their management are at section 304(g)(1) (see 16 U.S.C. 1854(g)(1) (<https://www.govinfo.gov/link/uscode/16/1854>)). ATCA is the implementing statute for binding recommendations of the International Commission for the Conservation of Atlantic Tunas. HMS implementing regulations are at 50 CFR part 635 (<https://www.ecfr.gov/current/title-50/part-635>).

NMFS is proposing several changes to regulations regarding fishing gear requirements in HMS fisheries to increase flexibility and remove inefficiencies in fisheries targeting HMS, thus increasing fishing opportunities and the ability of HMS fisheries to achieve optimum yield. NMFS published a notice of availability of a scoping document on May 3, 2024 (89 FR 36763 ([/citation/89-FR-36763](#))), and accepted public comments through July 31, 2024, including during three virtual scoping meetings. Comments received during the comment period were considered when developing this proposed rule. Specifically, in this rule NMFS is proposing changes to buoy gear regulations that include modifying gear deployment and retrieval requirements, authorizing this gear under additional permits, and allowing the retention of additional species. NMFS is also proposing changes to speargun fishing gear regulations that include authorizing this gear under additional permits and targeting additional species. Finally, NMFS is proposing overarching changes regarding gear used for the collection of bait in all HMS fisheries.

NMFS has prepared a supporting document that includes a draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA). This document presents the alternatives considered for this proposed rule and analyzes their anticipated environmental, social, and economic impacts. A brief summary of background information and the alternatives considered is provided below. Additional information regarding this action and HMS fishery management overall can be found in the draft EA/RIR/IRFA, the HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> (<https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>).

Statutory Authority

The Magnuson-Stevens Act, among other things, requires measures necessary for the conservation and management of the fishery to be consistent with the 10 National Standards set forth in section 301(a) (see 16 U.S.C. 1851(a) (<https://www.govinfo.gov/link/uscode/16/1851>)). While all of the National Standards are relevant, specific to the objectives of this action, National Standard 1 states that conservation and management measures must prevent overfishing while achieving optimum yield from U.S. fisheries on a continuing basis, and National Standard 5 requires that conservation and management measures consider efficiency in the utilization of fishery resources. Additionally, the Magnuson-Stevens Act in section 303(a) requires that FMPs contain management measures which are necessary and appropriate to support, among other things, the long-term health and stability of the fishery, and the assessment and specification of the extent to which U.S. fishing vessels harvest optimum yield (see 16 U.S.C. 1853(a) (<https://www.govinfo.gov/link/uscode/16/1853>)). Furthermore, the Magnuson-Stevens Act allows for the requirement of permits by NMFS; for implementing or modifying restrictions on gear and equipment; and for NMFS to implement management measures to protect non-target species and habitat (see section 303(b)(1), (4), and (12); 16 U.S.C. 1853(b)(1) (<https://www.govinfo.gov/link/uscode/16/1853>), (4), and (12)). The procedures established by the HMS FMP and HMS regulations allow NMFS to modify gear restrictions in HMS fisheries using a framework adjustment (see 50 CFR 635.34(b) ([https://www.ecfr.gov/current/title-50/section-635.34#p-635.34\(b\)](https://www.ecfr.gov/current/title-50/section-635.34#p-635.34(b)))). More generally, section 304(c) and (g) provides for the promulgation of regulations to implement an FMP that is prepared by NMFS, such as the HMS FMP (see 16 U.S.C. 1854(c) (<https://www.govinfo.gov/link/uscode/16/1854>), (g)).

Background

Since the 1999 Federal FMP for Atlantic Tunas, Swordfish, and Sharks, and Amendment 1 to the Atlantic Billfish FMP (64 FR 29090 (/citation/64-FR-29090), May 28, 1999), NMFS has implemented a wide range of management measures specific to fishing gear in order to comply with the Magnuson-Stevens Act and ATCA. These management measures were designed to, among other things, prevent or stop overfishing and to minimize bycatch to the extent practicable. “Bycatch” in fisheries is a term that generally refers to discarded fish or interactions between fishing operations and protected species. Under the Magnuson-Stevens Act, bycatch is specifically defined as fish that are harvested in a fishery but that are not sold or kept for personal use and (□ printed page 52655) includes both economic and regulatory discards (16 U.S.C. 1802(2) (<https://www.govinfo.gov/link/uscode/16/1802>)). Many fishing gear management measures included restrictions on fishing gear to reduce impacts on bycatch species, increase post-release survivability, limit the use of some gears to reduce lost and derelict gear, and meet other objectives. While each of these management measures helped achieve fishery conservation and management goals, over the course of 2 decades, there have been many changes in species distributions, fishing gears, fishing techniques, market conditions, and fishing interests. Thus, NMFS is revisiting and proposing to update gear measures to avoid unanticipated consequences, such as unnecessarily limiting fishing opportunities, which in turn may limit the ability to achieve optimum yield in HMS fisheries. Additionally, the proposed rule may help fishermen to adjust their fishing techniques to account for a changing environment and changing species distributions and/or to modify their gear to be more efficient or less likely to catch non-target species.

NMFS authorized the use of buoy gear in the commercial swordfish handgear fishery in the HMS FMP (71 FR 58058 (/citation/71-FR-58058), October 2, 2006). In that rule, buoy gear was defined as fishing gear consisting of one or more floatation devices supporting a single mainline to which no more than two hooks or gangions are attached. At that time, this made the commercial fishery for swordfish the only one that authorized free-floating handlines. Additionally, this rule prohibited the use of buoy gear by all commercial fishermen, except those with a Swordfish Handgear or Directed limited access permit (LAP), and by all recreational fishermen. The deployment of buoy gear in the Florida Straits, in particular, allowed for fishery participants to take advantage of large concentrations of swordfish close to shore. It also provided an alternative gear option

after the 2001 regulatory prohibition of pelagic longline gear for the commercial swordfish fishery within the East Florida Coast Closed Area (65 FR 47214 (/citation/65-FR-47214), August 1, 2000; 66 FR 8903 (/citation/66-FR-8903), February 5, 2001).

NMFS issued a final rule in 2008 to refine regulatory language under 50 CFR 635.21 (<https://www.ecfr.gov/current/title-50/section-635.21>) (73 FR 38144 (/citation/73-FR-38144), July 3, 2008). This technical change clarified that only vessels that have been issued, or that are required to have been issued, a valid directed or handgear swordfish LAP may utilize or possess buoy gear.

In Amendment 4 to the HMS FMP (77 FR 59842 (/citation/77-FR-59842), October 1, 2012), NMFS created the HMS Commercial Caribbean Small Boat (CCSB) permit. These permit holders are allowed to fish for and sell bigeye, albacore, yellowfin, and skipjack (collectively known as BAYS) tunas, swordfish, and sharks in the U.S. Caribbean only. These permit holders are also authorized to use buoy gear.

Buoy gear is primarily used by vessels fishing using a Swordfish Handgear LAP and may also be used aboard vessels issued a Swordfish Directed LAP (along with an Atlantic Tunas Longline category LAP and a Shark Directed LAP or Shark Incidental LAP). There were approximately 79 Swordfish Handgear permits and 167 Swordfish Directed permits as of December 2024. When used with these permits, buoy gear is authorized for swordfish fishing only. An HMS CCSB permit (valid in the U.S. Caribbean only) also authorizes fishermen in the U.S. Caribbean to fish for and retain swordfish using buoy gear. The HMS CCSB permit also allows permit holders to retain BAYS tunas caught on buoy gear in the U.S. Caribbean.

NMFS authorized speargun fishing gear in the recreational Atlantic tuna fisheries in the HMS FMP. At the time, it was not expected that the addition of speargun fishing gear as an authorized gear for BAYS tunas would disrupt existing rebuilding plans for overfished BAYS tunas, given the small number of expected spearfishermen. Additionally, catch rates were expected to be low for species targeted with speargun fishing gear. Overall, minimal increases in landings were expected, compared with the landings by Angling and Charter/Headboat category participants using other authorized gears.

The HMS FMP also clarified the differences between primary and secondary gears and prohibited the use of secondary gears to capture free-swimming or undersized HMS. For all HMS fisheries, specific gear types and gear configurations (*i.e.*, primary gears) are authorized based on permit type and target species. Primary gears (*e.g.*, longline, gillnet, and handgear) must be used to initially catch HMS. The regulations also allow for secondary gears, which are gears that are used at boat side to aid and assist in subduing, or bringing on board a vessel, any HMS that has first been caught or captured using primary gears. Examples of secondary gears include dart harpoons, gaffs, flying gaffs, and tail ropes. Any other gear type not authorized to initially catch HMS under a specific HMS permit is prohibited and may not be on board the vessel with that permit. However, there are other gears for bait collection that may be commonly carried on board some fishing vessels. These bait collection gears are neither primary nor secondary gear, and, therefore, are prohibited under the current regulations. However, fishing gear that is used for bait collection (such as cast nets and small dipnets) is generally too small and/or too weak to capture or fish for HMS. As a result, NMFS has received many requests to allow the use of those gears to collect bait.

Proposed Measures

NMFS is proposing changes to buoy gear regulations that include modifying gear deployment and retrieval requirements, authorizing this gear under additional permits, and allowing the retention of additional species. NMFS is also proposing changes to speargun fishing gear regulations that include authorizing this gear under additional permits and targeting additional species. Finally, NMFS is proposing overarching changes regarding gear used for the collection of bait in all HMS fisheries. As described below, NMFS considered seven alternatives concerning buoy gear, three alternatives concerning speargun fishing gear, and two alternatives concerning bait collection gear. These alternatives included both no action and the preferred alternatives. The purpose of this action is to provide increased flexibility and remove inefficiencies in fisheries targeting HMS while still achieving fishery conservation and management goals, thus increasing fishing opportunities and the ability of HMS fisheries to achieve optimum yield.

Buoy Gear

NMFS is proposing under preferred Alternative A2 to authorize the use of power assistance for the deployment and retrieval of buoy gear mainline. This could include hydraulic or electric systems, similar to hydraulic power used with bandit rigs, or electric

reels used with rod and reel. Since authorizing the use of buoy gear in 2006, hand deployment and retrieval requirements have been in place. This requirement separated buoy gear from other gear types that can be retrieved by power assistance (*i.e.*, pelagic or bottom longline). Buoy gear is generally used at night when swordfish are near the water's surface, although it is increasingly being used during the day with deeper sets when swordfish are found at deep depths. While possible, it is difficult to fish buoy gear by hand at such depths, and there has been increased interest in the use of power assistance to retrieve buoy gear when targeting swordfish at deeper depths. (□ printed page 52656)

NMFS is proposing under preferred Alternative A4 to authorize the use of buoy gear to target swordfish under the open access Swordfish General Commercial permit. Under this alternative, Swordfish General Commercial permit holders would be limited to possessing on board or deploying up to five buoys. Current buoy gear regulations for other permit holders (*i.e.*, Swordfish Handgear LAP, Swordfish Directed LAP, and HMS CCSB permit holders) allow for 35 buoys. However, limiting the number of buoys per vessel to five under this alternative is an appropriate approach for an open access permit held by a larger number of vessels. Initially limiting to five buoys per vessel would allow for the new gear to be introduced to a new group of commercial fishing vessels and data to be collected before considering authorizing a higher number of buoys per vessel in the future. Limiting the number of buoys to five per vessel would reduce the amount of additional gear in the water and may be especially appropriate given the free-floating nature of individual buoy gears which can be more challenging to keep track of.

NMFS is proposing under preferred Alternative A6 to allow BAYS tunas to be retained with buoy gear by persons who hold the following combinations of commercial limited access swordfish and tuna permits: Swordfish Directed LAP with an Atlantic Tunas Longline category permit or a Swordfish Handgear LAP with an Atlantic Tunas General category permit. Currently, fishing for, retaining, or possessing BAYS tunas with buoy gear is authorized only under an HMS CCSB permit that is valid in the U.S. Caribbean only. NMFS would also maintain the 35-buoy limit for the possession or deployment of buoys by the newly-authorized permit holders consistent with current buoy gear requirements. Vessels holding only tunas permits will remain prohibited from fishing with buoy gear.

NMFS is proposing under preferred Alternative A7 to allow the retention of allowable shark species caught with buoy gear by Shark Directed LAP, Shark Incidental LAP, and Smoothhound Shark permit holders in federal Atlantic and Gulf waters and HMS CCSB

permit holders in the U.S. Caribbean. Retention limits and authorized shark species in existing regulations remain unchanged for these permits. These shark species could be retained if caught with buoy gear and would be accounted for under the appropriate commercial quotas (see 50 CFR 635.27(b)(1) ([\(https://www.ecfr.gov/current/title-50/section-635.27#p-635.27\(b\)\(1\)](https://www.ecfr.gov/current/title-50/section-635.27#p-635.27(b)(1)))), which are being underutilized. NMFS would maintain the 35-buoy limit for the possession or deployment of buoys, consistent with current buoy gear requirements, with one exception. Alternative A4 limits the number of buoys per vessel to five because the Swordfish General Commercial permit is an open access permit with a relatively larger number of permit holders. If Alternative A4 is adopted, permit holders that have both one of the shark permits listed above and a Swordfish General Commercial permit would be limited to 5 buoys; all other permit combinations would be limited to 35 buoys.

Speargun Fishing Gear

NMFS is proposing under preferred Alternative B2 to authorize the use of speargun fishing gear to retain and sell BAYS tunas, consistent with permit retention and size limits, for the following commercial permits: the Atlantic Tunas General category permit, the HMS Charter/Headboat permit (with a commercial endorsement and on non-for-hire trips only), and the HMS CCSB permit (valid in the U.S. Caribbean only). Existing regulations regarding the sale of landed fish are not proposed to be changed under this rule.

Bait Collection Gear

NMFS is proposing under preferred Alternative C2 to modify regulations to allow the possession and use of small nets and other gear commonly used for bait collection (e.g., cast nets and small dipnets) on board HMS fishing vessels, provided the gear is too small and/or too weak to capture HMS. This preferred alternative would not change the bait requirements for specific gears (e.g., use of whole Atlantic mackerel and/or squid bait when using pelagic longline gear in the Northeast Distant gear restricted area; no live bait on board pelagic longline vessels in the Gulf of America; no natural bait with J-hooks by anglers fishing for billfish in a tournament). Rather, this alternative would simply clarify that the use of bait collection gear on board HMS fishing vessels is allowed.

Across HMS regulations, specific gear types and gear configurations are authorized based on permit type and target species. Other gear types that are not explicitly authorized are prohibited and may not be on board the vessel (50 CFR 635.19(a)

([\(https://www.ecfr.gov/current/title-50/section-635.19#p-635.19\(a\)\)](https://www.ecfr.gov/current/title-50/section-635.19#p-635.19(a))), with the exception of secondary gears (e.g., dart harpoons, gaffs, flying gaffs, and tail ropes) that may be used at boat side to aid and assist in subduing, or bringing on board a vessel, HMS that have initially been caught or captured using primary gears. However, there are other gears for bait collection that may be commonly carried on board some fishing vessels but are not explicitly allowed in the HMS regulations and are not considered secondary gears. Fishing gear used for bait collection (such as cast nets and small dipnets) are generally too small and/or too weak to capture or fish for HMS, thus from a practical standpoint would not reasonably be expected to be used to harvest HMS. Therefore, NMFS proposes to revise the regulations to allow for a common practice across many fisheries that would be beneficial for fishermen.

Other Alternatives Analyzed

In addition to the proposed measures described above, NMFS analyzed three no action alternatives (Alternatives A1, B1, and C1) that would maintain the status quo for fishing gear requirements in HMS fisheries. NMFS does not prefer the no action alternatives because they do not meet the objectives of the rulemaking (i.e., increasing flexibility and removing inefficiencies in fisheries targeting HMS, thus increasing fishing opportunities and the ability of HMS fisheries to achieve optimum yield).

The supporting document for this action also describes the impacts of other alternatives. Concerning buoy gear, there are two alternatives (Alternatives A3 and A5) under which NMFS would authorize the use of buoy gear to target swordfish under different permits. Under Alternative A3, NMFS would authorize buoy gear under the Swordfish General Commercial permit and maintain the 35-buoy limit for the maximum number of buoys that may be possessed or deployed, consistent with current buoy gear requirements. Under Alternative A5, NMFS would authorize the use of buoy gear to target swordfish under the Swordfish Incidental LAP in federal waters of the Atlantic Ocean, including the Gulf of America and Caribbean Sea. Consistent with current Swordfish Incidental LAP requirements, the swordfish retention limit for these permit holders would remain at 30 fish per vessel per trip. NMFS would also maintain the 35-buoy limit for the possession or deployment of buoys, consistent with current buoy gear requirements. NMFS is not proposing these alternatives because, while they may meet the objectives of this rule, they may lead to a large increase in buoy gear fishing effort with a resulting increase in gear conflicts, permit devaluation, and lost or derelict fishing gear.

NMFS analyzed one other alternative concerning speargun fishing gear regulations. Alternative B3 would authorize the use of speargun fishing gear to retain Atlantic bluefin tuna (□ printed page 52657) (BFT) under two recreational permits: the HMS Angling permit and HMS Charter/Headboat permit (when fishing recreationally). Any BFT caught under this alternative could not be sold by the permit holder. All other speargun fishing gear regulations would remain the same. NMFS is not proposing this alternative because, while it may meet the objectives of this rule, stakeholders have expressed concerns about having new entrants (*i.e.*, those using speargun fishing gear for the first time) into the bluefin tuna fishery.

Request for Comments

NMFS is requesting comments on this proposed rule, which may be submitted via <https://www.regulations.gov> (<https://www.regulations.gov>) or at the public hearings. NMFS solicits comments on this action by September 14, 2026 (see **DATES** and **ADDRESSES**).

During the comment period, NMFS will hold two via webinar for this proposed action (table 1). Requests for sign language interpretation or other auxiliary aids should be directed to Becky Curtis, becky.curtis@noaa.gov (<mailto:becky.curtis@noaa.gov>), at least 7 days prior to the meeting. In addition, any requests for in-person public hearings during the comment period should be directed to Becky Curtis, becky.curtis@noaa.gov (<mailto:becky.curtis@noaa.gov>) or 301-427-8503.

Table 1—Dates and Times of Upcoming Public Hearing Webinars

Date and time	Webinar information
August 31, 2026 from 1-3 p.m. ET	https://www.fisheries.noaa.gov/action/comments-requested-revisions-fishing-gear-regulations-atlantic-highly-migratory-species (https://www.fisheries.noaa.gov/action/comments-requested-revisions-fishing-gear-regulations-atlantic-highly-migratory-species).
October 1, 2026 from 1-3 p.m. ET	

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The moderator will then explain how the webinar will be conducted and how and when participants can provide comments. The NMFS representative(s) will attempt to structure the webinar so that all attending members of the public will be able to comment if they so choose. Attendees are expected to respect the ground rules, and if they do not, they may not be allowed to speak during the webinar or may be otherwise excluded from participation.

Classification

As described in the introduction, NMFS is issuing this proposed rule pursuant to section 304(g) of the Magnuson-Stevens Act (see 16 U.S.C. 1854(g) (<https://www.govinfo.gov/link/uscode/16/1854>)). The NMFS Assistant Administrator has determined that this proposed rule is consistent with the HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 (</executive-order/12866>).

This proposed rule is not an Executive Order 14192 (</executive-order/14192>) regulatory action because this rule is not significant under Executive Order 12866 (</executive-order/12866>).

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA; see 5 U.S.C. 603 (<https://www.govinfo.gov/link/uscode/5/603>)). The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section of the preamble. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

Section 603(b)(1) of the RFA requires agencies to describe why the proposed action is being considered. Over the years, NMFS has implemented a number of gear-specific management measures to support fishery conservation and management goals. However, HMS fisheries and fishing gear and techniques have evolved over time, and some management measures may need to be updated to better achieve those goals. This action considers updates to those management measures.

Section 603(b)(2) of the RFA requires agencies to state the objective of, and legal basis for the proposed action. The purpose of this proposed rulemaking is to provide increased flexibility and remove inefficiencies in fisheries targeting HMS while still achieving fishery conservation and management goals, thus increasing fishing opportunities and the ability of HMS fisheries to achieve optimum yield.

Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with the SBA Office of Advocacy and an opportunity for public comment (see 13 CFR 121.903(c) ([https://www.ecfr.gov/current/title-13/section-121.903#p-121.903\(c\)](https://www.ecfr.gov/current/title-13/section-121.903#p-121.903(c)))). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register**, which NMFS did on December 29, 2015 (80 FR 81194 (/citation/80-FR-81194)). In that final rule, effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (North American Industry Classification System (NAICS) code 11411) for RFA compliance purposes. NMFS considers all HMS permit holders to be small entities because they had average annual receipts (revenue) of less than \$11 million for commercial fishing. SBA has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210, for-hire), which includes charter/party boat entities. SBA has defined a small charter/party boat entity as one with average annual receipts (revenue) of less than \$14 million.

The proposed rule would apply to the following permits and number of permit holders (as of December 2024): Swordfish Directed (167), Swordfish Handgear (79), and HMS CCSB (120) permits. The proposed rule would also apply to: Shark Directed LAP (204), Shark Incidental LAP (233), Smoothhound Shark (228), Swordfish Incidental LAP (66), Atlantic Tunas Longline LAP (229), Atlantic Tunas General category (2,489), HMS Charter/Headboat (4,247), and Swordfish General Commercial permits (619). This proposed rule would also affect HMS Angling permit holders, but those permit holders are considered individuals and not small entities under RFA. NMFS considers all HMS permit holders, both commercial and for-hire, to be small entities because they have average annual receipts of less than their respective sector's standard of \$11 million and \$14 million, respectively. NMFS has determined that the proposed (□ printed page 52658) rule would not likely affect any small governmental jurisdictions. More information regarding the description of the fisheries affected, and the categories and number of permit holders can be found in the HMS SAFE Report (NMFS 2023).

Section 603(b)(4) of the RFA requires agencies to describe any new reporting, record-keeping and other compliance requirements. This proposed rule would result in reporting, record-keeping, and compliance requirements that require a modified Paperwork Reduction Act (PRA) filing. This rule revises the existing requirements for three collections of information, including OMB Control Number 0648-0373, "Atlantic HMS Vessel and Gear Marking" by expanding the number of permit categories that are authorized to use buoy gear. See the PRA section below for more information.

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant federal rules that duplicate, overlap, or conflict with the proposed action. Participants in these fisheries, including dealers, must comply with a number of international agreements, domestic laws, and other fishery management measures. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act and related regulations. This proposed action has been determined not to duplicate, overlap, or conflict with any federal rules.

Under section 603(c) of the RFA, agencies must describe 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. Specifically, the RFA (5 U.S.C. 603(c)(1)-(4) (<https://www.govinfo.gov/link/uscode/5/603>))

lists four general categories to assist an agency in the development of significant alternatives. These categories 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, or any part thereof, for small entities.

Regarding the first, second, and fourth categories, NMFS cannot establish differing compliance or reporting requirements for small entities or exempt small entities from coverage of the rule or parts of it because all of the businesses impacted by this rule are considered small entities and thus the requirements are already designed for small entities. NMFS 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. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationales for identifying the preferred alternatives to achieve the desired objectives.

The alternatives considered and analyzed are described below. The IRFA assumes that each vessel will have similar catch and gross revenues in order to show the relative impact of the proposed action on vessels.

Under Alternative A1, the No Action alternative, NMFS would maintain the current buoy gear regulations. Since there would be no change to current regulations, fishing practices would not change, and as a result, there would be no change in landings and no associated economic impacts for fishery participants or supporting businesses. Alternative A1 would likely result in neutral economic impacts on small entities participating in HMS fisheries.

Under preferred Alternative A2, NMFS would allow the use of power assistance for releasing and retrieving buoy gear. Authorizing the use of power assistance would be expected to increase fishing efficiency for vessels that opt to use it. This could lead to additional landings and increased sales of valuable fish species. Power assistance would likely be provided by an electric reel at a cost of approximately \$8,000 or a hydraulic rig at a cost of approximately \$2,000. While there is an upfront cost to buy the equipment, the ability to use power assistance, especially for deep-set gear, would likely increase buoy

gear fishing efficiency and make buoy gear fishing operations less difficult and strenuous. Increased fishing efficiency would be achieved through quicker retrieval of gear, allowing for hooked fish to be removed and the gear to be re-deployed more quickly. These changes could increase the amount of time or the number of hooks that are in the water, resulting in increased catch or reduced trip times, if the retention limit or intended catch is reached more quickly. A reduction in trip time could save on fuel and ancillary supply costs and reduce the amount of time spent fishing, allowing for time to dedicate to other endeavors. Alternatively, a reduction in trip time could allow participants to explore other fishing areas, thus increasing opportunities. If this activity is less strenuous, the chance of injuries that can impact the ability to fish and carry out other activities could be reduced, which in turn could allow fishermen to engage in more or longer fishing trips or participate in other activities. Any increase in effort could lead to additional landings and revenue for fishermen. Increases in effort could also lead to increased costs (e.g., fuel, bait), but such decisions would be up to individual fishermen, and NMFS anticipates that these costs would be offset by any additional landings. While revenues may increase, the expected increase in landings is expected to be modest. Therefore, Alternative A2 would be expected to have a minor beneficial impact on small entities participating in HMS fisheries.

Under Alternatives A3 and A4, NMFS would authorize the use of buoy gear to target swordfish under the open access Swordfish General Commercial permit. Under Alternative A3, NMFS would limit the maximum number of buoys that may be possessed or on board to 35, which is the current number allowed for Swordfish Handgear LAP, Swordfish Directed LAP, and HMS CCSB permit holders. Under Alternative A4 (preferred alternative), NMFS would limit the maximum number of buoys that may be possessed or on board vessels with Swordfish General Commercial permit to 5. Both Alternative A3 and A4 would each result in minor beneficial economic impacts to small entities participating in HMS fisheries, as increased landings could lead to reduced trip costs and increased revenue.

Under Alternative A5, NMFS would authorize the use of buoy gear to target swordfish under the Swordfish Incidental LAP. Alternative A5 would result in minor beneficial economic impacts to small entities participating in HMS fisheries because this Alternative could provide for expanded fishing opportunities for these permit holders. However, some of these benefits may be reduced by the cost of purchasing buoy gear.

Under preferred Alternative A6, NMFS would allow BAYS tunas to be retained with buoy gear in all areas except for the Florida Swordfish Management Area by fishermen who hold either an Atlantic Tunas General category permit or an Atlantic Tunas Longline category LAP. Alternative A6 would result in minor beneficial economic impacts to small entities participating in HMS fisheries because this Alternative could provide for expanded fishing opportunities and the potential for increased revenue from (□ printed page 52659) landing and sales of valuable species. However, if these fishermen do not already own buoy gear, some of these benefits may be reduced by the cost of purchasing buoy gear.

Under preferred Alternative A7, NMFS would allow some shark species to be retained with buoy gear under Shark Directed LAPS, Shark Incidental LAPs, Smoothhound Shark, and HMS CCSB permits. Alternative A7 would likely result in minor beneficial economic impacts to small entities participating in HMS fisheries as a result of expanded fishing opportunities and the potential for increased revenue from landing and sales of sharks. However, if these fishermen do not already own buoy gear, some of these benefits may be reduced by the cost of purchasing buoy gear.

Under Alternative B1, the No Action alternative, NMFS would maintain the current regulations for speargun fishing gear use. Alternative B1 would have neutral impacts to small entities participating in HMS fisheries, as there would be no changes to the regulations and fishing practices and costs would not be expected to change.

Under preferred Alternative B2, NMFS would authorize the use of speargun fishing gear to retain BAYS tunas for permit holders who hold an Atlantic Tunas General category permit, an HMS CCSB permit, or an HMS Charter/Headboat permit (with a commercial endorsement and on non-for-hire trips only). Alternative B2 would likely result in neutral to minor beneficial economic impacts to small entities participating in HMS fisheries as a result of increased fishing opportunities.

Under Alternative B3, NMFS would authorize the use of speargun fishing gear to retain Atlantic bluefin tuna recreationally under the HMS Angling permit, HMS Charter/Headboat permit, and HMS CCSB permit (valid in the U.S. Caribbean only). While this alternative primarily would impact individual anglers who are not considered small entities, it would also impact HMS Charter/Headboat permit holders who are small entities. Alternative B3 would likely result in neutral economic impacts. While this alternative would allow for the recreational harvest of Atlantic bluefin tuna with speargun fishing gear, NMFS believes

increases in landings by HMS Charter/Headboat permit would be minimal, as speargun fishing gear is not commonly used and the fish would need to meet minimum recreational size requirements.

Under Alternative C1, the No Action alternative, NMFS would maintain current regulations for primary and secondary gear authorizations. Under current regulations, the possession and use of small nets and other fishing gear commonly used for bait collection (e.g., cast nets and small dipnets) is not allowed on board HMS fishing vessels. Alternative C1 would likely result in continued minor negative economic impacts to small entities participating in HMS fisheries, as a result of inadvertent violations and missed opportunity for targeting bait species.

Under preferred Alternative C2, NMFS would allow the possession and use of small nets and other gear commonly used for bait collection (e.g., cast nets and small dipnets) on board HMS permitted vessels, provided that the gear is too small and/or too weak to capture HMS. Alternative C2 would result in minor beneficial economic impacts to small entities participating in HMS fisheries as a result of increased flexibility for targeting bait species and savings on bait costs.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget under the PRA. This proposed rule would revise and extend the existing requirements for the collection of information 0648-0373, "Atlantic HMS Vessel and Gear Marking," by expanding the number of permit categories that are authorized to use buoy gear. Specifically, the proposed rule would expand the authorization to use buoy gear to vessels possessing an open access Swordfish General Commercial or Atlantic Tunas General category permit, thus necessitating a revision to the gear marking burden estimates covered by this information collection. Buoy gear is primarily used to target swordfish, and NMFS is proposing to allow Swordfish General Commercial permit holders to fish with up to a maximum of five buoys at once. This would necessitate them to mark up to five buoys with their permit and vessel information, increasing the burden estimates under 0648-0373 by 619 respondents (number of Swordfish General Commercial permit holders), 3,095 responses (number of buoys marked), and 774 burden hours (15 minutes per buoy) at a cost of \$46,425 for marine paint and stencils.

The proposed rule would also authorize the use of buoy gear to land BAYS tunas and sharks by several HMS permit categories. However, these species are only caught incidentally with buoy gear, and the permits in question are generally held in combination with other swordfish permits that are already included in this information collection. As such, no further changes in the burden estimates have been incorporated for these proposed changes, as they are not anticipated to result in the marking of additional gear.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at <https://www.reginfo.gov/public/do/PRAMain> (<https://www.reginfo.gov/public/do/PRAMain>).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 635 **(<https://www.ecfr.gov/current/title-50/part-635>)**

- Fisheries
- Fishing
- Fishing vessels
- Foreign relations
- Imports
- Penalties
- Reporting and recordkeeping requirements
- Statistics
- Treaties

Dated: August 11, 2026.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 635 (<https://www.ecfr.gov/current/title-50/part-635>) as follows:

PART 635-ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 (<https://www.govinfo.gov/link/uscode/16/971>) *et seq.*; 16 U.S.C. 1801 (<https://www.govinfo.gov/link/uscode/16/1801>) *et seq.*

2. In § 635.19, revise paragraphs (a), (b)(2)(ii), (iii), and (v), (b)(3), (d)(2) through (4), (e)(3) and (5) to read as follows:

§ 635.19 Authorized Gears.

(a) *General.* No person may fish for, catch, possess, or retain any Atlantic HMS with gears other than the primary gears specifically authorized in this part. Consistent with § 635.21(a), secondary gears may be used at boat side to aid and assist in subduing, or (□ printed page 52660) bringing on board a vessel, Atlantic HMS that have first been caught or captured using primary gears. For purposes of this part, secondary gears include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc. Secondary gears may not be used to capture, or attempt to capture, free-swimming or undersized HMS. This paragraph does not prohibit persons, for the sole purpose of collecting bait, from possessing on board and using fishing gear incapable (e.g., too small and/or too weak) of capturing HMS (e.g., cast nets, dipnets). Except for vessels permitted under § 635.4(o) or as specified in this section, a vessel using or having on board in the Atlantic Ocean any unauthorized gear may not possess an Atlantic HMS on board.

(b) * * *

(2) * * *

(ii) *Charter/Headboat category*. Rod and reel (including downriggers), bandit gear, handline, green-stick, and speargun fishing gear.

(iii) *General category*. Rod and reel (including downriggers), handline, harpoon, bandit gear, green-stick gear, and speargun fishing gear.

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(v) *Longline category*. Longline, buoy gear, and green-stick gear.

(3) *HMS Commercial Caribbean Small Boat Permit*. A person issued an HMS Commercial Caribbean Small Boat permit may use handline, harpoon, rod and reel, bandit gear, green-stick gear, buoy gear, and speargun fishing gear to fish for, retain, or possess BAYS tunas in the U.S. Caribbean, as defined at § 622.2 of this chapter.

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(d) * * *

(2) No person issued a Federal Atlantic commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, buoy gear, longline, or gillnet, except that smoothhound sharks may be retained incidentally while fishing with trawl gear subject to the restrictions specified in § 635.24(a)(7).

(3) No person issued an HMS Commercial Caribbean Small Boat permit may possess a shark taken from the U.S. Caribbean, as defined at § 622.2 of this chapter, by any gear other than with rod and reel, handline, buoy gear, or bandit gear.

(4) Persons on a vessel issued a permit with a shark endorsement under § 635.4 may possess a shark only if the shark was taken by rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit with a commercial sale endorsement (with or without a shark endorsement) and a Federal Atlantic commercial shark permit may possess sharks taken by rod

and reel, handline, bandit gear, buoy gear, longline, or gillnet if the vessel is engaged in a non for-hire fishing trip and the commercial shark fishery is open pursuant to § 635.28(b).

(e) * * *

(3) A person aboard a vessel issued or required to be issued a valid directed handgear LAP for Atlantic swordfish or an HMS Commercial Caribbean Small Boat permit may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel fishing with or having on board longline gear. Only vessels that have been issued a valid directed or handgear swordfish LAP, a Swordfish General Commercial permit, or an HMS Commercial Caribbean Small Boat permit under this part may utilize or possess buoy gear.

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(5) A person aboard a vessel issued or required to be issued a valid Swordfish General Commercial permit may only possess North Atlantic swordfish taken from its management unit by rod and reel, handline, bandit gear, buoy gear, green-stick, or harpoon gear.

3. In § 635.21, revise paragraphs (g) and (h) to read as follows:

§ 635.21 Gear operation and deployment restrictions.

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(g) *Buoy gear.*

(1) Except for those permitted under a Swordfish General Commercial permit, vessels utilizing buoy gear may not possess or deploy more than 35 floatation devices, and may not deploy more than 35 individual buoy gears per vessel. Vessels that have been issued, or should have been issued, a Swordfish General Commercial permit may not possess or deploy more than 5 floatation devices, and may not deploy more than 5 individual buoy gears per vessel.

(2) Buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline. Floatation devices may be attached to one but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. Buoy gear may be released and retrieved by hand, or with power assistance, such as with an electric or hydraulic winch. All deployed buoy gear must have some type of monitoring equipment affixed to it including, but not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is affixed, the vessel deploying the buoy gear must possess on board an operable spotlight capable of illuminating deployed floatation devices. If a gear monitoring device is positively buoyant, and rigged to be attached to a fishing gear, it is included in the 35-floatation device vessel limit and must be marked appropriately.

(h) *Speargun fishing gear.* Speargun fishing gear may be utilized or possessed on board when recreational fishing for Atlantic BAYS tunas from vessels issued either a valid HMS Angling or valid HMS Charter/Headboat permit, or when fishing commercially for Atlantic BAYS from vessels issued the Atlantic Tunas General category, the Commercial Caribbean Small Boat, or HMS Charter/Headboat permit (with a commercial endorsement and on non-for-hire trips only). Persons fishing for Atlantic BAYS tunas using speargun fishing gear, as specified in § 635.19, must be physically in the water when the speargun is fired or discharged, and may freedive, use SCUBA, or other underwater breathing devices. Only free-swimming BAYS tunas, not those restricted by fishing lines or other means, may be taken by speargun fishing gear. "Powerheads," as defined at § 600.10 of this chapter, or any other explosive devices, may not be used to harvest or fish for BAYS tunas with speargun fishing gear.

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4. In § 635.31, revise paragraph (a)(1) to read as follows:

§ 635.31 Restrictions on sale and purchase.

(a) * * *

(1) A person who owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit with a commercial sale endorsement; a valid Atlantic Tunas General, Harpoon, Longline, or Trap category permit; or a valid HMS Commercial Caribbean Small Boat permit issued under this part and the appropriate category has not been closed as specified at § 635.28(a). No person may sell a BFT smaller than the large medium size class. No large medium or giant BFT may be sold if caught by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of America at any time or outside the Gulf of America when the General category fishery has been closed (see § 635.23(c)). A person (□ printed page 52661) may sell Atlantic BFT only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part. A person may sell or purchase BAYS tunas harvested with speargun fishing gear. A person issued an Atlantic Tunas General category permit or HMS Charter/Headboat permit with a commercial sale endorsement must land, sell, or transfer a BFT to a dealer that has a valid permit for purchasing Atlantic tunas no later than 0000 local time the day prior to an RFD, as specified at § 635.23(a). If that person is unable to sell or otherwise transfer the BFT to a dealer who has a dealer permit for Atlantic tunas no later than 0000 local time, the person must follow the restrictions applicable to landed but not sold BFT specified at § 635.5(a)(3). In no case shall such person possess a BFT on an RFD.

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5. In § 635.71:

- a.** Revise paragraphs (a)(19) and (a)(53);
- b.** Redesignate paragraphs (a)(54) through (67) as (a)(55) through (68), respectively;
- c.** Add new paragraph (a)(54);
- d.** Revise paragraphs (b)(32) and (35);
- e.** Remove paragraphs (e)(10), (11), and (12);
- f.** Redesignate paragraphs (e)(13) through (18) as (e)(10) through (15), respectively; and

g. Revise newly redesignated paragraph (e)(15).

The revisions and addition read as follows:

§ 635.71 Prohibitions.

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(a) * * *

(19) Utilize secondary gears or bait collection gear as specified in § 635.19(a) to capture, or attempt to capture, any undersized or free swimming Atlantic HMS, or fail to release a captured Atlantic HMS in the manner specified in § 635.21(a).

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(53) Fish for, catch, possess, retain, or land an Atlantic swordfish, shark, or BAYS tuna using or captured on “buoy gear,” as defined at § 635.2, unless the vessel owner has been issued the appropriate permit in accordance with § 635.4(d), (e), and (f).

(54) Possess or deploy more than the maximum number of individual floatation devices when fishing with buoy gear, deploy more than the number of authorized buoy gears per vessel, or deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(g).

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(b) * * *

(32) Fish with or possess speargun fishing gear for Atlantic BAYS tunas without adhering to the gear operation and deployment restrictions required in §§ 635.21(h) and 635.31(a)(1).

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(35) Use speargun fishing gear to fish for BAYS tunas from a vessel that does not possess the appropriate permit(s), as specified at § 635.21(h).

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(e) * * *

(15) As the owner of a vessel permitted, or required to be permitted, in the Swordfish General Commercial permit category, possess North Atlantic swordfish taken from its management unit by any gear other than rod and reel, handline, bandit gear, buoy gear, green-stick, or harpoon gear, as specified in § 635.19(e).

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