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**Part II**

**Department of  
Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**50 CFR Part 285 et al.  
Atlantic Highly Migratory Species (HMS)  
Fisheries, Fishery Management Plan, Plan  
Amendment, and Consolidation of  
Regulations; Proposed Rule**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

50 CFR Parts 285, 600, 630, 635, 644, and 678

[Docket No. 981216308-8308-01; I.D. 071698B]

RIN 0648-AJ67

## Atlantic Highly Migratory Species (HMS) Fisheries; Fishery Management Plan, Plan Amendment, and Consolidation of Regulations

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

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

**SUMMARY:** NMFS proposes regulations to implement the draft Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and draft Amendment 1 to the Atlantic Billfish Fishery Management Plan (Billfish FMP). The proposed regulations would address requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) as required by the Atlantic Tunas Convention Act (ATCA), and consolidate existing regulations, organized by species, for the conservation and management of highly migratory species (HMS) into one part of the Code of Federal Regulations (CFR), organized by theme, as part of the President's Regulatory Reinvention Initiative.

NMFS previously published a Notice of Availability for the HMS FMP and for Amendment 1 to the Billfish FMP. NMFS extends the comment period for the HMS FMP and reopens the comment period for the Billfish FMP to coincide with the proposed rule. NMFS will announce public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule, the draft HMS FMP, Amendment 1 to the Billfish FMP and associated supporting documents in a separate Federal Register document. NMFS requests comments specifically on the revised Initial Regulatory Flexibility Analysis (IRFA), updated since publication of the Draft HMS FMP, and the IRFA associated with the billfish management measures.

**DATES:** Comments on the proposed rule, the HMS FMP, Amendment 1 to the

Billfish FMP and/or supporting documents must be received by March 4, 1999. Public hearings on this proposed rule will be held in February 1999 and will be announced in a separate Federal Register document.

**ADDRESSES:** To submit comments on, or to obtain copies of, the draft HMS FMP, the draft Amendment 1 to the Billfish FMP, the proposed rule and supporting documents, including the revised IRFA, or a summary of these items, contact Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282, phone (301) 713-2347, fax (301) 713-1917. Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Rebecca Lent and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Pat Scida regarding tuna issues at (978) 281-9260; Jill Stevenson regarding swordfish issues at (301) 713-2347; Margo Schulze regarding shark issues at (301) 713-2347; Buck Sutter regarding billfish issues at (727) 570-5447; Karyl Brewster-Geisz regarding limited access at (301) 713-2347; and Chris Rogers regarding the regulatory consolidation at (301) 713-2347.

**SUPPLEMENTARY INFORMATION:** Atlantic HMS included in the HMS FMP are Atlantic swordfish (*Xiphias gladius*), west Atlantic bluefin tuna (*Thunnus thynnus*), Atlantic yellowfin tuna (*T. albacares*), Atlantic bigeye tuna (*T. obesus*), North Atlantic albacore tuna (*T. alalunga*), west Atlantic skipjack tuna (*Katsuwonus pelamis*), 39 species of Atlantic sharks grouped into three management sub-groups. Four species of Atlantic billfish other than swordfish are also Atlantic HMS, and they are included in the Billfish FMP: Atlantic blue marlin (*Makaira nigricans*), Atlantic white marlin (*Tetrapturus albidus*), west Atlantic sailfish (*Istiophorus platypterus*), and west Atlantic spearfish (*T. pfluegeri*). U.S. fishing vessels, both commercial and recreational, fish for Atlantic HMS in the North and South Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. The fisheries for Atlantic tunas, swordfish, sharks, and billfish each have some unique characteristics, but they overlap considerably in participants, gear usage, and species pursued.

Atlantic HMS migrate widely throughout the North and South

Atlantic Ocean, including the Mediterranean Sea, the Gulf of Mexico, and the Caribbean Sea, requiring cooperative management not only among different user groups within the United States, but also between the United States and other fishing nations. In some cases, the United States accounts for only a small portion of the total Atlantic-wide mortality for a species, and unilateral management action could not be expected to have significant effect on the status of the stock. In other cases, the United States accounts for a larger portion of Atlantic-wide fishing mortality, giving it more influence on total fishing mortality levels. In all cases, however, the international component of the fishery is an important consideration in developing and implementing domestic management measures.

To meet requirements of the Magnuson-Stevens Act, NMFS prepared an FMP for Atlantic tunas, swordfish and sharks and an amendment to the Billfish FMP. NMFS published a Notice of Availability of the Draft Amendment 1 to the Billfish FMP on October 9, 1998 (63 FR 54433) with a comment period ending on January 7, 1999 and a Notice of Availability of the Draft HMS FMP on October 26, 1998 (63 FR 57093) with a comment period ending on January 25, 1999. NMFS extends the comment periods for these documents to coincide with the comment period on this proposed rule. Therefore, comments are invited and may address the HMS FMP, Amendment 1 to the Billfish FMP, the supporting documents, the proposed rule or all of these items, but must be received by March 4, 1999 to be considered in the decisions on the HMS FMP, Amendment 1 to the Billfish FMP and the final rule. All comments received by March 4, 1999, whether specifically directed to any of the documents or to the proposed rule, will be considered in the decisions on the final documents and the final rule.

The following is an outline of the information presented in the preamble to this proposed rule:

- I. Background
  - A. Regulatory Consolidation
  - B. Fishery Management Plans
  - C. The HMS Management Process
- II. Management Strategy
  - A. Problems and Objectives
  - B. Management Measures
- III. Quotas and Monitoring/Adjustment Procedures
  - A. Quotas
  - B. Accounting for All Sources of Fishing Mortality
  - C. Quota Adjustment Procedures
- IV. Restrictions on Catch and Retention

- V. Minimize Bycatch and Bycatch Mortality
  - A. Marine Mammal Bycatch
  - B. Finfish Bycatch
- VI. Improve Data Collection and Enforcement
- VII. Administrative and Procedural Changes
- VIII. Limited Access Program
  - A. Permit Categories
  - B. Eligibility Criteria
  - C. Permit Process
  - D. Transfer of Permits
  - E. Vessel Upgrading
  - F. Ownership Limits
- IX. Essential Fish Habitat (EFH)
- X. Minor Administrative and Technical Changes
- XI. Applicability of Regulations in State Waters

## I. Background

### A. Regulatory Consolidation

On November 6, 1996, NMFS published a proposed rule consolidating fishery regulations pertaining to Atlantic HMS (61 FR 57361). Background information about the need for the consolidation appeared in the preamble to that proposed rule and is not repeated here. Since that proposed rule was issued, several significant changes to HMS regulations were made necessary by new legislative requirements, ICCAT recommendations, and several domestic management initiatives including limited access systems for the Atlantic swordfish and shark fisheries. Considering comments submitted to date, NMFS elected to re-propose the technical and administrative changes from the consolidation in the context of the HMS FMP implementation. This proposed rule carries out the President's directive on regulatory reform with respect to existing regulations for the conservation and management of Atlantic HMS in the exclusive economic zone (EEZ), and, as applicable, in regulatory areas beyond the U.S. EEZ.

Regulations pertaining to management of Atlantic HMS are currently found in species-specific sections of the Code of Federal Regulations (50 CFR parts: 285—Atlantic Tunas Fisheries, 630—Atlantic Swordfish Fishery, 644—Atlantic Billfishes, and 678—Atlantic Sharks). These regulations are proposed to be consolidated into a new part: 635—Atlantic Highly Migratory Species. The intent is to make the regulations more concise, clearer, and easier to use than the previous regulations.

### B. Fishery Management Plans

Atlantic HMS that transit the U.S. EEZ are managed under the authority of

the Magnuson-Stevens Act and, in the case of tunas, swordfish, and billfish, also under ATCA. ATCA authorizes the Secretary of Commerce to implement the binding recommendations of ICCAT, to which the United States is a contracting party. ICCAT recommends harvest levels, minimum sizes, and other management measures for implementation by its 25 contracting parties. Through its scientific body, ICCAT conducts stock assessments and other Atlantic HMS-related research. It is the intent of the HMS FMP and Amendment 1 to the Billfish FMP to issue regulations for HMS fishery management under the dual authority of ATCA and the Magnuson-Stevens Act, whenever possible. In some cases, such as for sharks, management authority is limited to the Magnuson-Stevens Act; in other cases, such as for South Atlantic swordfish and southern albacore, the Magnuson-Stevens Act does not apply because the stock does not venture into the U.S. EEZ.

The Magnuson-Stevens Act is the primary legislation affecting domestic management of fisheries in the U.S. EEZ. Further guidance on interactions of HMS fisheries with protected resources is given under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). Provisions of the Magnuson-Stevens Act allow NMFS and the eight regional fishery management councils (the Councils) to develop FMPs that are implemented through regulations to manage the Nation's fishery resources. Generally, FMPs contain objectives for each fishery and guidance on allowable gear types in the fisheries; acceptable harvest levels; restrictions on the time, area, or manner in which fish may be caught; and consideration of how the fishery affects other parts of the marine ecosystem or coastal communities, including essential fish habitat (EFH), non-target finfish, marine mammals, sea turtles, and sea birds.

FMPs and their implementing regulations must be consistent with each of the 10 national standards set forth in the Magnuson-Stevens Act, as well as with the Act's general requirements for the contents of FMPs and the Act's requirement that overfished fisheries be rebuilt. Additionally, FMPs to manage HMS and their implementing regulations must be consistent with section 304(g) of the Magnuson-Stevens Act, which pertains specifically to Atlantic HMS and requires NMFS to consult with the Councils and advisory panels (APs); minimize disadvantages resulting from implementation of domestic conservation and management measures

to U.S. fishermen relative to international fisheries to the extent practicable; provide a reasonable opportunity for fishermen to harvest an allocation, quota, or fishing mortality level allocated to the United States under an international agreement; review, on a continuing basis, and revise as appropriate measures included in this plan; and diligently pursue, through international entities, comparable international management measures. Regarding HMS management, NMFS is also required to ensure that management measures promote international conservation; consider traditional fishing patterns of the U.S. fleet; allocate fishing privileges fairly and equitably; and promote, to the extent practicable, research programs that include tagging and release of HMS.

Currently, Atlantic billfish, swordfish, and sharks are managed under FMPs developed and implemented under the authority of the Magnuson-Stevens Act. No Magnuson-Stevens Act FMP has previously been developed for Atlantic tunas, although regulations have been developed under ATCA with consistency with the Magnuson-Stevens Act in mind. The draft HMS FMP integrates management of Atlantic tunas, swordfish, and sharks by combining management measures for the three species groups into one FMP. NMFS elected to combine the FMP for tunas, swordfish, and sharks in recognition of the multispecies nature of these fisheries and to promote better integration of HMS management. A single management plan for these species will help ease the regulatory burden on user groups and is consistent with the ecosystem-oriented provisions of the National Environmental Policy Act and with the Presidential Regulatory Reform Initiative.

The U.S. fishery for Atlantic billfish is a recreational fishery only (no commercial retention is allowed) and, given its unique characteristics, will continue to be managed separately under the FMP for Atlantic Billfish. However, NMFS recognizes the multispecies nature of all HMS fisheries and the need for well-integrated management of fishing activity for all HMS. Wherever possible, management objectives and practices are integrated, and analyses have been conducted with consideration of the overlapping participation, target species, and habitats of these multispecies fisheries. The HMS FMP and Amendment 1 to the Billfish FMP overlap in certain preferred measures due to the multispecies nature of the recreational and pelagic longline fisheries and the need for combined data collection in all

HMS fisheries. This proposed rule would implement both the integrated HMS FMP and Amendment 1 to the Billfish FMP.

### C. The HMS Management Process

The HMS Management Process encompasses administrative procedures that NMFS follows in developing FMPs and implementing regulations. Congress gave the Secretary of Commerce (Secretary) management authority for Atlantic HMS in 1990, following many years of joint management for several of these species by the five Atlantic, Gulf, and Caribbean Councils and for Atlantic tunas under ICCAT. The Secretary has delegated management of Atlantic HMS to the Administrator of NOAA, who delegated it to the Assistant Administrator for Fisheries, NMFS (AA). Within NMFS, daily responsibility for management of Atlantic HMS fisheries rests with the Office of Sustainable Fisheries, and is carried out by the HMS Management Division.

The development of an FMP or plan amendment commences with the preparation of a document that describes issues in the fisheries and states options for management (the scoping document). The October 1997 scoping document, which covered all HMS species, was used as the basis for discussion at 21 public scoping meetings that were held throughout the management region in October and November 1997 (62 FR 54035, October 17, 1997). Public comments at scoping meetings and during the accompanying comment period were reviewed and considered in preparation of draft HMS FMP documents.

The HMS AP and the Billfish AP were established pursuant to the Magnuson-Stevens Act (section 302 (g)(1)). The HMS AP advised NMFS throughout the development of the scoping document and of the draft FMP. The HMS AP is composed of representatives of the commercial, recreational, environmental, and scientific sectors, as well as one representative from each of the five fishery management councils that work with Atlantic HMS and the Chair, or the Chair's designee, of the U.S. ICCAT Advisory Committee. Each of the Atlantic and Gulf Coast states, as well as the Virgin Islands and Puerto Rico, may send a non-voting representative to AP meetings to participate in the process. The Billfish AP is composed of members of the recreational, commercial, environmental, and scientific communities, as well as fishery management council representatives and non-voting state members. AP

meetings are open to the public, and NMFS rotates meeting locations throughout the management region to provide fishery participants a reasonable opportunity to attend meetings. For all but the final meetings, the HMS and Billfish APs convened at the same locations with agendas arranged to allow joint discussion of overlapping issues.

The HMS AP met six times in development of the draft HMS FMP. At the first meeting, in October 1997, members of both APs provided input on the draft scoping document. The document was extensively revised following the APs' input before it was distributed to the general public (62 FR 54035, October 17, 1997). The second AP meeting, held in Baltimore, MD, in January 1998, focused on Atlantic bluefin tuna (BFT) issues, specifically, on quota allocations and effort controls for the HMS AP. The Billfish AP discussed the implementation of an ICCAT recommendation to reduce billfish landings by 25 percent by 1999, and NMFS subsequently implemented measures through an interim rule under the authority of the Magnuson-Stevens Act. At its third meeting, held in Tampa, FL, in March 1998, the HMS AP and the Billfish AP advised NMFS on criteria that should be considered in overfishing definitions, and developing rebuilding programs for overfished HMS.

The AP reviewed draft sections of the HMS FMP at its fourth meeting in Hauppauge, NY, in May 1998. Draft sections included issues and objectives for management, the management unit, alternatives to rebuild overfished fisheries, and descriptions of fishing activities. In July 1998, the Billfish AP and the HMS AP met in Alexandria, VA, to discuss measures that would minimize bycatch and bycatch mortality in all HMS fisheries, and the HMS AP met separately to discuss shark issues. The HMS AP reviewed the pre-draft HMS FMP at its sixth meeting, held August 27-28, 1998, in Warwick, RI. The Billfish AP reviewed the pre-draft Amendment 1 to the Billfish FMP at its sixth meeting, held September 2-3, 1998, in St. Croix, U.S. Virgin Islands. These draft documents had been extensively revised following each AP meeting.

Restrictions on the billfish fishery to implement the ICCAT recommendation were discussed in several AP meetings and resulted in an interim rule (63 FR 14030, March 24, 1998), which established tournament registration and reporting requirements, and increased minimum sizes for blue and white marlin. An extension of that interim

rule followed (63 FR 51859, September 29, 1998), which further increased the blue marlin minimum size and established a retention limit of one marlin per vessel per day (adjustable by the AA). An amendment to that rule removed the measure that would allow the AA to reduce the retention limit to zero. NMFS also proposes these measures as part of this rule to implement Amendment 1 to the Billfish FMP.

This proposed rule would implement the preferred alternatives identified in the draft HMS FMP (63 FR 57093, October 26, 1998) and Amendment One to the Billfish FMP (63 FR 54433, October, 9, 1998). NMFS will hold a series of public hearings to solicit comments on this proposed rule and the FMP documents. The purpose of the public hearings is to provide NMFS with additional information to evaluate impacts and the effectiveness of the proposed measures. NMFS has updated the economic analyses related to the HMS FMP and Amendment 1 to the Billfish FMP since their publication to include updated analyses of limited access under more recent eligibility criteria, and analyses of billfish measures, respectively. NMFS specifically requests comments on these updated analyses. During the comment period, NMFS will hold additional HMS and Billfish AP meetings.

## II. Management Strategy

The regulations contained in this proposed rule would completely replace current regulations for all Atlantic HMS, including billfish. Thus, NMFS intends that the regulatory text proposed here restates all existing regulations that it intends to retain. In addition to the consolidation of current regulations, NMFS proposes numerous regulatory changes to incorporate new elements of the HMS FMP and Amendment 1 to the Billfish FMP (e.g., rebuilding overfished stocks) and to achieve consistency in the HMS regulations. NMFS has performed a thorough review of the restructured regulatory text to ensure that all changes are noted. However, given the scope of the restructuring, certain changes may not be specifically identified and explained, or unintended changes may have been made. Identification of, and comments on any such inadvertent or unexplained changes are specifically invited.

### A. Problems and Objectives

Amendment 1 to the Atlantic Billfish FMP identifies several management problems affecting billfish stocks: (1) Overfished blue and white marlin stocks, (2) excess fishing mortality

caused by bycatch and discards, (3) compliance with ICCAT recommendation to reduce marlin landings, (4) need for improved data collection, and (5) decreased or unknown stock levels of sailfish and longbill spearfish.

Several management objectives are presented in draft Amendment 1 to the Billfish FMP to address these problems: (1) Prevent overfishing, (2) rebuild stocks and monitor all fishing mortality from directed and incidental catch, (3) promote comparable international conservation, (4) minimize bycatch and bycatch mortality to the extent practicable, (5) coordinate multispecies fisheries, (6) improve data collection, (7) promote live release of billfish, (8) protect EFH, (9) manage for optimum yield, and (10) minimize adverse impacts on recreational and commercial activities. Amendment 1 would add these to the existing objectives of the Billfish FMP.

The following management problems are identified in the HMS FMP: (1) Overfished populations of HMS, (2) excess fishing mortality caused by bycatch and discards, (3) inconsistencies and inadequacies in international compliance with conservation and management measures, (4) the need to assure optimal data collection, (5) the need for integrated and streamlined domestic HMS management, and (6) overcapitalization.

The draft HMS FMP lists several management objectives for the fisheries for Atlantic tunas, swordfish, and sharks, paraphrased here: (1) Prevent overfishing, (2) rebuild stocks, (3) minimize adverse impacts of rebuilding to the extent practicable, (4) control all components of fishing mortality, (5) minimize bycatch and bycatch mortality to the extent practicable, (6) establish a foundation for international negotiation on conservation and management, (7) facilitate compliance with ICCAT recommendations, (8) improve data collection, (9) simplify and streamline HMS management, (10) manage for continuing optimum yield, (11) protect areas identified as EFH for tunas, swordfish, and sharks, and (12) reduce overcapitalization in the Atlantic swordfish and shark commercial fisheries. Conservation and management measures to address these objectives follow.

#### *B. Management Measures*

To address these objectives, NMFS proposes domestic management programs for all HMS. Although the management measures are domestic actions, stock status and rebuilding

programs are designed to be implemented stock-wide. NMFS also suggests specific measures to be addressed internationally by ICCAT. These measures include proposed overfishing status determination criteria, designation of biomass and fishing mortality targets, and a suite of proposed management alternatives that are intended to reduce fishing mortality on overfished species, and to minimize bycatch and bycatch mortality, to the extent practicable.

### **III. Quotas and Monitoring/Adjustment Procedures**

#### *A. Quotas*

Quotas for HMS are implemented and allocated among fishing categories and seasons by the AA. The Director of the Office of Sustainable Fisheries has been delegated the authority to make inseason adjustments among categories and adjustments to each period's quota based on overharvest or underharvest during the previous year.

NMFS proposes rebuilding programs for North Atlantic swordfish in the draft HMS FMP. However, NMFS cannot implement management measures that effectively raise or lower the quota the United States receives from ICCAT. Therefore, this proposed rule incorporates existing U.S. quotas for swordfish stocks. The draft HMS FMP did not identify a preferred rebuilding alternative for bluefin tuna. In the future, the United States may seek to negotiate quotas and other measures that contribute to rebuilding of swordfish and BFT through the international process, including counting dead discards of swordfish against the quota. NMFS proposes that the existing quotas established for North Atlantic swordfish (through 1999) and South Atlantic swordfish (through 2000) under ATCA remain in effect pending new stock assessments (in 1999) and further recommendations of ICCAT.

Based on the results of the 1998 ICCAT meeting, and recommendations regarding BFT, NMFS will prepare an addendum to the HMS FMP. The addendum will specifically address BFT quota and discard issues addressed under ICCAT's recommendation to establish a rebuilding program for west Atlantic BFT. It is NMFS' intent to publish this addendum before the end of 1998 or shortly thereafter. For the large coastal shark (LCS) management unit, NMFS is proposing to separate the LCS unit into two subgroups based on the presence or absence of a mid-dorsal ridge, which is easily identified after the carcass has been dressed. NMFS proposes to use this characteristic to

separate the LCS into a "ridgeback" subgroup (which would include sandbar and silky sharks) and a "non-ridgeback" group (which would include blacktip, spinner, bull, tiger, nurse, lemon, narrowtooth, great hammerhead, scalloped hammerhead, and smooth hammerhead sharks) and to establish separate quotas and management measures for the two subgroups.

NMFS is also proposing to prohibit possession of certain shark species that are uncommon in U.S. waters or are seriously depleted (note discussion under Retention Limits). To reduce mortality on ridgeback LCS, NMFS also proposes to establish a minimum size for retention of ridgeback LCS of 54 inches (137 cm) fork length. Observer data indicate that the primary ridgeback LCS, the sandbar shark, segregates by size and depth. Therefore, NMFS expects a reduction in fishing mortality since fishermen should be able to target larger sandbar sharks. Because of the expectation that this minimum size for ridgeback sharks (in combination with other management measures) will reduce ridgeback LCS harvests by the amount necessary to rebuild this subgroup, NMFS proposes to maintain the current ridgeback LCS harvest levels of 642 mt dressed weight (dw).

NMFS is not proposing to establish a minimum size for non-ridgeback sharks due to indications that the primary non-ridgeback LCS, the blacktip shark, does not segregate by size or depth and that a minimum size would not reduce fishing mortality. To reduce mortality for these species, NMFS is proposing to lower the commercial quota for non-ridgeback LCS by 66 percent from current catch levels to 218 mt dw.

For the pelagic shark management unit, NMFS is proposing to establish a separate porbeagle shark quota of 30 mt dw based on historical harvest levels. NMFS also proposes to subtract that quota from the pelagic shark quota, resulting in a 550 mt dw quota for pelagic sharks, other than porbeagle. This measure is intended to establish separate controls for porbeagle sharks because this species is highly susceptible to overfishing. NMFS is also proposing to prohibit possession of blue sharks and to establish a quota for blue shark dead discards of 273 mt dw, based on a 10-year dead discard average. NMFS is proposing to reduce the pelagic shark quota each year by any overharvest of the blue shark dead discard quota occurring in the previous year. The intent of these measures is to address concerns regarding the high numbers of blue sharks discarded dead by longline fisheries and to create an incentive to reduce blue shark dead

discards, while mitigating the potential adverse impacts of counting dead discards against the available quota.

For the small coastal shark (SCS) management unit, NMFS is proposing to cap the commercial quota at 359 mt dw, which is 10 percent higher than 1997 harvest levels. This measure is intended to allow for limited fishery expansion but would eliminate the potential for excessive growth of this fishery. This measure is also proposed because NMFS believes that SCS landing statistics may substantially underestimate SCS mortality. This is a result of unreported catches of SCS because they are used for bait and thus are not always landed.

In November 1997, ICCAT adopted a recommendation with several measures to address billfish resources throughout the Atlantic Ocean, including reduction of Atlantic blue marlin and Atlantic white marlin landings by at least 25 percent from 1996 levels, starting in 1998, to be accomplished by the end of 1999. Reductions will be assessed in 2000 based on landing data through 1999. Delaying the stock assessment until 2000 (per the 1998 ICCAT recommendation) will allow preliminary evaluation of the effectiveness of landing reductions for over-exploited Atlantic billfish resources. A total of 34.9 mt of Atlantic blue marlin and 3.3 mt of Atlantic white marlin were reported as recreational landings for the U.S. in 1996. Therefore, under the 1997 ICCAT recommendation, the U.S. landing limits for Atlantic blue marlin will be 26.2 mt, and 2.48 mt for Atlantic white marlin.

#### *B. Accounting for All Sources of Fishing Mortality*

NMFS seeks to account for all sources of fishing mortality on HMS stocks. In recreational HMS fisheries, post-release mortality rates are currently unknown; however, recorded dead discards of HMS are minimal. ICCAT currently subtracts an estimate of dead discards of BFT from the total allowable catch to allocate a stock-wide landing quota, a portion of which is then allocated to the United States. NMFS may seek this type of strategy with respect to all species.

For the Atlantic tunas fishery, NMFS proposes to establish a reserve quota for school BFT (27 inches - <47 inches or 69-119 cm curved fork length). The intent of this measure is to provide an "overflow" allowance in the event that projections underestimate actual recreational landings of school-size BFT. This measure would further ensure that the United States does not exceed the 8-percent tolerance established under the ICCAT quota scheme for school BFT. This provision will be

further addressed in the BFT addendum to incorporate recent modifications by ICCAT.

NMFS also proposes to subtract dead discards of sharks in the commercial fishery and to subtract commercial landings of sharks from state waters after Federal closures from the Federal commercial quotas. While these measures may reduce the available LCS commercial quota significantly, accounting for this additional mortality would enhance the rebuilding of shark stocks. For pelagic sharks, this measure could substantially reduce the available commercial quota because recent estimates of dead discards of pelagic sharks approach current quota levels. For SCS, these measures are not expected to reduce the available quota substantially because most SCS that are not landed are kept for bait; they are not discarded, and therefore, would not be included in estimates of dead discards.

Some HMS are collected for the purpose of science, education, or public display. NMFS must account for such mortality, particularly for overfished species. NMFS proposes to establish a separate shark public display quota of 0.5 percent of the LCS annual quota (60 mt whole weight). This measure would make quota accounting and monitoring procedures for sharks collected under the authority of an exempted fishing permit (EFP) consistent with those for Atlantic tunas. BFT collected under the authority of an EFP would be deducted from the Reserve quota or School Reserve quota, depending on size. NMFS also proposes to establish a new permitting and reporting system to monitor EFP collections (refer to Section IV).

For the swordfish fishery, NMFS proposes to deduct recreational landings of swordfish from the Incidental Catch quota until such time that the swordfish population rebuilds and a directed recreational fishery is sustained. This measure would account for recreational fishing mortality of Atlantic swordfish, which is currently incidental to other HMS recreational fisheries. If the recreational fishery directs fishing effort on swordfish successfully in the future, NMFS may establish a recreational fishing quota.

#### *C. Quota Adjustment Procedures*

NMFS proposes to adjust any commercial shark quota overharvest and underharvest in a given period in the same period the following year and to adjust management measures to account for recreational overharvest and underharvest of the recreational harvest limits on an annual basis. These measures support rebuilding of LCS

because they would ensure that overharvesting will be accounted for in setting future harvest limits and will not delay LCS rebuilding.

Additionally, NMFS seeks to simplify the procedures for managing the brief fishing season for LCS. NMFS proposes to establish opening and closing dates of the LCS fishery prior to the fishery opening based on catch rates from previous years. Fishery seasons would be scheduled for a specific period instead of projecting closure dates based on landings information. The Director of the Office of Sustainable Fisheries will file for publication with the Office of the Federal Register a notice of each season's length in a timely manner. NMFS also proposes to adjust overharvest and underharvest levels the following year and to not reopen the fishery within a season if there is a quota underharvest. This measure is intended to increase the stability and predictability of the LCS fishery and to reduce enforcement costs and the administrative burden of projecting fishery closures based on near real-time landings data.

NMFS proposes to add an additional criterion to use in determining the appropriateness of a proposed in-season quota transfer for the BFT fishery: "effects on rebuilding and overfishing." Adding this criterion to other factors to be considered would be consistent with the precautionary approach to fisheries management and the 20-year rebuilding program recently adopted by ICCAT, to be addressed in the addendum to the draft HMS FMP.

NMFS also proposes to change the way quotas are tallied by NMFS by changing the fishing year for Atlantic tunas from the current calendar year to a June 1 through May 31 "fishing year." This would facilitate timely implementation of ICCAT recommendations for the fishing year. Since it is not NMFS' intention to substantially change the fishing practices of Purse Seine vessels targeting Atlantic tunas, the BFT fishing season for the Purse Seine category will continue to open August 15 and close December 31, or when each vessel's individual vessel quota (IVQ) is filled. Purse Seine category vessels may fish for tunas, other than BFT, at any point in the fishing year; however, a Purse Seine category vessel may not fish for other tunas from August 15 through December 31 if that vessel's IVQ for BFT is filled. BFT caught prior to August 15 in the yellowfin tuna purse seine fishery may not be sold, but will be counted against the harvesting vessel's IVQ.

#### IV. Restrictions on Catch and Retention

Retention limits are employed by fishery managers to reduce fishing mortality. In some cases, restrictions on catch may increase bycatch mortality due to the discard of dead fish or post-release mortality. Although post-release mortality in recreational HMS fisheries is currently unknown, it is estimated to be low for most shark species and for many tuna and billfish species if those fish are properly handled.

NMFS proposes to increase the minimum size limits for blue marlin to 99 inches (251 cm) lower jaw-fork length (LJFL) and for sailfish to 63 inches (160 cm) LJFL and to maintain the minimum size for white marlin at 66 inches (168 cm) LJFL. These measures will contribute to the 25 percent reduction in landings required by a 1997 ICCAT recommendation. NMFS further proposes to establish a retention limit of one Atlantic white or blue marlin per vessel per trip, with a provision to adjust the retention limit for each species to zero when the landing limits for that species have been reached. NMFS has drafted an IRFA regarding the economic impacts of these measures on small businesses. Together, the minimum size limits and the retention limit should ensure that the United States meets its international obligations regarding reductions in billfish landings.

To date, no stock assessment of longbill spearfish exists, and NMFS does not know of any directed or substantial incidental fishery for this species. Therefore, NMFS proposes to prohibit the retention of spearfish.

NMFS proposes new restrictions on catch and retention for sharks that reflect a change in management policy regarding sharks from one where possession of only certain species known to be vulnerable to overfishing is prohibited to one where only possession of those species expected to be able to withstand some fishing mortality is allowed. This change in policy employs the precautionary approach and would reduce the number of species authorized for retention by approximately 50 percent. In addition to the five species of LCS currently prohibited from being retained, this measure would prohibit possession by any U.S. fisherman (recreational or commercial) of dusky, night, bignose, Caribbean reef, Galapagos, and narrowtooth sharks from the LCS management unit; longfin mako, blue, bigeye thresher, sevengill, sixgill, and bigeye sixgill sharks from the pelagic shark management unit; and Caribbean sharpnose, smalltail, and Atlantic angel sharks from the SCS

management unit. Prohibiting retention of these sharks is intended to prevent development of directed fisheries or a market for uncommon or seriously depleted species.

Despite reductions in shark retention limits of 50 percent in the recreational fishery in 1997, recreational harvest of LCS was reduced by only 12 percent (in numbers of fish), and, for sandbar and blacktip sharks, recreational harvest increased. NMFS, therefore, concludes that the 1997 retention limit reduction was not effective at implementing the desired 50 percent harvest reduction, and that additional measures are necessary. Therefore, NMFS proposes to prohibit retention of all Atlantic LCS and SCS in the recreational fishery and to set a retention limit of one pelagic shark per vessel per trip. The proposed reduction in retention limits to zero for LCS and SCS and one for pelagic sharks is consistent with national standard 1 to rebuild the overfished LCS stocks and is precautionary regarding pelagic and small coastal shark stocks for which recent assessments have not been conducted.

NMFS also proposes a recreational retention limit of three yellowfin tuna per person per day. This retention limit would help reduce or redistribute recreational landings while allowing for continued access to the fishery by recreational anglers. The Director of the Office of Sustainable Fisheries will file for publication a notice at the Office of the Federal Register of any adjustment to retention limits for Atlantic tunas at least 3 calendar days prior to the change becoming effective.

#### V. Minimize Bycatch and Bycatch Mortality

A 1997 NMFS Biological Opinion (BO), which identifies threats to endangered species and provides alternatives to reduce those threats, concludes that the pelagic longline component of the Atlantic pelagic fishery for tuna, swordfish, and sharks may adversely affect, but is not likely to jeopardize, the continued existence of the northern right whale. It also concludes that the longline fishery may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species. The BO concluded that the driftnet component for tuna, swordfish, and sharks is likely to jeopardize the continued existence of the northern right whale and may adversely affect humpback and sperm whales, Kemp's ridley, green, loggerhead, and leatherback sea turtles. NMFS seeks to minimize bycatch and bycatch mortality of protected species and finfish to the

extent practicable in HMS fisheries and has, thus, evaluated all HMS fisheries with respect to bycatch information.

##### A. Marine Mammal Bycatch

To reduce marine mammal bycatch, NMFS proposes to (1) implement pelagic longline gear restriction and deployment measures recommended by the Atlantic Offshore Cetacean Take Reduction Team (AOCTRT) in the pelagic longline fishery, (2) prohibit the use of driftnet gear for Atlantic tunas, and (3) implement take reduction measures recommended by the Atlantic Large Whale Take Reduction Team in the southeast shark gillnet fishery. These measures are also expected to reduce takes of sea turtles in these fisheries.

(1) NMFS convened the AOCTRT in May 1996 to address interactions between strategic marine mammal stocks and the Atlantic pelagic driftnet and pelagic longline fisheries for tunas, sharks, and swordfish. Cumulatively, these fisheries (and the pair trawl fishery which was operating at that time under an EFP) take incidentally several species of marine mammals at levels that are estimated to be above the Potential Biological Removal (PBR) levels established for these stocks. The AOCTRT included representatives of each of the fisheries, environmental and conservation groups, several states, the Mid-Atlantic Fishery Management Council, independent fisheries, the marine mammal biological community, and NMFS. NMFS proposes to implement the following measures, the majority of which were recommended by the AOCTRT, to reduce marine mammal takes in the pelagic longline fishery:

*Mandatory educational workshops.* Mandatory educational workshops for pelagic longline fishermen are an effective means of reducing bycatch; several workshops have been held thus far. NMFS began workshops in October 1998 for pelagic longline captains, crew, and vessel owners, and proposes that these workshops be mandatory for all vessel owners/operators. These workshops educate fishery participants about the MMPA and the problem of marine mammal interactions, promote open communication at sea concerning interactions, encourage communication between NMFS and fishermen experienced with handling interactions, and provide marine mammal identification keys. Guidance for preventing interactions with and disentanglement of mammals with pelagic longline gear has been developed and is distributed at those workshops.

*Limited access.* NMFS is re-proposing a limited access program for the Atlantic swordfish and shark fisheries.

*Gear length restrictions.* NMFS proposes as an interim measure for one year a requirement that pelagic longlines set in the Mid-Atlantic Bight during August 1 through November 30 do not exceed 24 nautical miles (nm) in length. In 1996, the AOCTRT estimated that this measure could reduce bycatch and bycatch mortality of marine mammals by 20 to 30 percent. However, 1996 and 1997 observer data indicate that the average length of longlines in that area during that time of year is 20 and 22 nm, respectively. Nevertheless, this measure would prevent the use of longer gear in the future and may increase survival of some finfish species, particularly billfish, due to the shorter soak time of the gear. This measure, recommended by the AOCTRT, was intended to be implemented on a trial basis for one year, to be followed by an evaluation of the success of the management measure in reducing bycatch of marine mammals.

*Requirement to move gear after one entanglement.* Because observer and logbook data show that marine mammals and sea turtles are often encountered in clusters, NMFS proposes to require pelagic longline fishermen to retrieve their gear and move their vessels at least 1 nm away after any gear interaction with a marine mammal or sea turtle. This is a common practice among many pelagic longline fishermen and is considered by fishermen to be effective in some areas at reducing bycatch. The AOCTRT estimated that this measure could result in a 40-percent reduction in serious injury and incidental mortality of marine mammals. This measure is also likely to reduce takes of sea turtles.

*Closure of right whale critical habitat.* NMFS is proposing a time/area closure of critical right whale habitat to reduce potential interactions between pelagic longline gear and the endangered northern right whale. NMFS proposes to close critical right whale habitat to pelagic longline fishing in New England and the southeast coastal United States (refer to regulatory text for specific times and areas).

*Other.* Because of current funding constraints, NMFS at this time cannot adopt the recommendation of the AOCTRT and pursue research on acoustic deterrent devices. However, NMFS is interested in identifying gear modifications which may increase post-release survival, including hook types, rig configurations, and so forth. NMFS has developed a research plan to

identify research needs and objectives for a comprehensive plan for HMS and related fisheries. Should funding become available, NMFS would assign a priority to such research needs.

(2) The AOCTRT, in a draft plan submitted to NMFS in 1996 recommended measures for the driftnet fishery to reduce marine mammal bycatch. At this time, NMFS does not propose to implement those measures because of a proposed rule to prohibit the use of this gear for taking swordfish.

In a separate rulemaking (63 FR 55998, October 20, 1998), NMFS proposed to prohibit the use of driftnets in the Atlantic swordfish fishery due to the high management burden of reducing bycatch of marine mammals and sea turtles in a limited fishery that lasts approximately 14 days a year for 12 vessels. Such a ban in the Atlantic swordfish fishery may discourage anyone from entering a driftnet tuna fishery because the possession of swordfish on a vessel with a driftnet on board would be prohibited, thereby decreasing the gross ex-vessel revenues of the driftnet trip. Therefore, extending this proposed ban to include driftnets in the tuna fishery is not expected to have a significant negative economic impact. The final rule implementing the HMS FMP will include any measures finalized as a result of the proposed rule to ban driftnets in the swordfish fishery.

(3) NMFS proposes to adopt measures in the Atlantic Large Whale Take Reduction Plan (ALWTRP) to reduce bycatch of marine mammals in the shark gillnet fishery. The implementing regulations for the ALWTRP, which include observer coverage requirements, gear marking requirements, closed times and areas, and special provisions for strikenetting (refer to interim final rule, 62 FR 39157, July 22, 1997) are applicable to the southeast shark drift gillnet fishery. NMFS proposes to adopt the regulations of the ALWTRP under the authority of the Magnuson-Stevens Act to ensure regulatory consistency.

#### *B. Finfish Bycatch*

To reduce finfish bycatch mortality, NMFS encourages recreational and commercial fishermen to handle released fish carefully. Handling options include leaving a fish in the water and cutting the leader close to the hook or releasing the fish by using a dehooking device. Current billfish regulations stipulate that billfish must be released by cutting the leader. However, public comments and data suggest that dehooking devices are very useful, even for large pelagic fish, and may decrease post-release mortality. Therefore, for billfish, NMFS proposes to allow

alternative mechanisms to remove a hook from a billfish caught on commercial or recreational gear either by cutting the leader close to the hook or by using a dehooking device.

Multiple hooks per bait or lure may increase post-release mortality by increasing the probability that fish are hooked in the gills or throat. NMFS, therefore, takes a precautionary approach and proposes to prohibit the use of more than one hook per bait or lure in the recreational billfish fishery.

To address the incidental catch of undersized swordfish in the pelagic longline fishery, NMFS analyzed catch data from 1987 through 1996. Based on logbook data submitted by pelagic longline fishermen, small swordfish appear to aggregate in areas that include the Charleston Hump, the east coast of Florida, and the Florida Escarpment. Given unknowns related to seasonal distribution of small swordfish, NMFS intends to reduce bycatch of undersized swordfish in an area that consistently produces small swordfish year-round. Fishery-dependent data indicate that catch rates of undersized swordfish (less than 33 lb or 15 kg dw) are high in some areas at certain times of the year but appear to be high year-round in the Florida Straits. NMFS proposes to prohibit the use of pelagic longline gear in the Florida Straits (26–28° N. lat, 78–81° long.) during July–September. Analysis of 1996 pelagic logbook data indicates that swordfish discard ratios are the highest in this area during the third quarter; however if seasonal distribution of small swordfish shifts, reductions in bycatch are still likely to occur. NMFS will evaluate the efficacy of this program in reducing discards of undersized swordfish, given the distribution of swordfish and re-distribution of fishing effort, and may implement other time/area closures in the future to reduce swordfish discards. This measure is likely to have a significant impact on small businesses that regularly fish in that area during the third quarter and may have significant impacts on related businesses such as those that specialize in high-quality swordfish. The Florida Straits consistently produces high quality swordfish due to the proximity of the fishing grounds to port and to the subsequent short fishing trips. (Refer to the Regulatory Impact Review and the IRFA in the FMP for details on estimated economic impacts.)

NMFS recognizes that the proposed measures to minimize juvenile swordfish bycatch mortality may result in significant economic impacts to small businesses. However, long term positive economic impacts resulting from a



larger spawning stock biomass may mitigate the effects of short-term closures such as the closure proposed herein. NMFS is proposing a large closure area to discourage fishermen from fishing the "fringes" of the closed area and thus impeding the discard reduction and lengthening the amount of time needed for rebuilding.

In order to effectively enforce the time/area closure, NMFS proposes to require all vessels with pelagic longline gear on board to submit regular position reports (one report per hour) to NMFS via a vessel monitoring system (VMS) unit meeting NMFS' specifications. The VMS requirement would be extended to all vessels in the pelagic longline fleet with a Directed or Incidental Limited Access Permit because any vessel could fish off the coast of Florida at any given time. A VMS would also reduce the cost of enforcing the time/area closure.

A VMS has a vessel safety feature because it increases communication with shore. Other possible benefits include allowing pelagic longline fishermen reporting from a VMS to offload swordfish after a directed fishery closure, provided no fishing activity takes place after the closure date. In addition, because VMS units would be on board, NMFS proposes to allow longline vessels to transit the North Atlantic Ocean with South Atlantic swordfish on board during a closure of the North Atlantic directed swordfish fishery.

Fishermen should consult with NMFS on VMS requirements before purchasing a VMS unit. The cost of a VMS unit would be approximately \$3,000 to \$5,000, with an additional \$1,000 estimated for installation. Vessel owners would be responsible for the maintenance of the VMS unit and communication costs, which are not likely to exceed \$2.50 per day. Related to bycatch reduction monitoring, NMFS proposes to require that all HMS longline and shark nets be marked on the terminal floats and high flyers, as applicable. This requirement would result in better identification of gear in the enforcement of current regulations and facilitate enforcement of the proposed time/area closure for pelagic longline vessels. Identifying lost gear or gear entangling protected species is also facilitated if the gear has the vessel's official number or, in the case of Atlantic tunas, a vessel's permit number clearly marked. Further, marked gear can be reported for any violation of fishery conservation and management measures. Therefore, NMFS proposes that all harpoon and handline floats be marked as well.

To reduce bycatch mortality in recreational HMS fisheries, NMFS intends to initiate an educational program by (1) distributing information concerning dehooking devices and hook and leader types that may increase post-release survival; (2) informing fishermen about problems of recreational fishery bycatch; (3) promoting a survival ethic concerning released fish; and (4) informing fishermen about reporting requirements that include reporting of bycatch species.

#### **VI. Improve Data Collection and Enforcement**

The proposed rule contains several existing and several new permitting requirements. In all cases except initial limited access permits (ILAPs), vessel and dealer permit applications and instructions for their completion are available from the NMFS Regional Offices (for tuna vessel permits, call 888-USA-TUNA; for tuna dealer permits, call 978-281-9370; for swordfish/shark dealer permits and the first LAP, call 727-570-5326). ILAPs will be issued by the Director of the Office of Sustainable Fisheries. Application forms and instructions for ILAPs and LAPs are available from the HMS Management Division of NMFS at 301-713-2347. Based upon application information and the eligibility criteria, the Office Director will make determinations regarding eligibility for limited access. Inquiries and concerns related to the issuance of ILAPs and LAPs should be directed to the HMS Management Division. After you receive your first LAP, LAP renewals and replacements will be issued by NMFS. Permitting requirements for specific HMS fisheries are detailed in the regulatory text.

The proposed rule contains several new and existing reporting requirements. Pelagic logbook and swordfish and shark dealer reporting forms are available from the Southeast Fisheries Science Center and are mailed regularly to all permit holders in the database. BFT bi-weekly dealer reports and BFT landing report forms, Bluefin Statistical Documents, and BFT dealer tags are available from the HMS Management Division, in Gloucester, MA 978-281-9140. For HMS other than bluefin tuna, in lieu of reporting to the Northeast Science Director (SD) in Woods Hole, MA or the Southeast SD in Miami, FL, reports may be submitted to a state or Federal fishery port agent designated by the SD. BFT landing reports should be submitted by dealers to the HMS Management Division in Gloucester, MA by electronic facsimile or Interactive Voice Response (fax, 978-

281-9393) and by U.S. mail (NMFS-NERO, 1 Blackburn Drive, Gloucester, MA, 01930). Bi-weekly reports on BFT purchases should be submitted to the same address. If you carry a general, Longline, Harpoon, or Trap category Atlantic Tunas permit and you land a large medium/giant BFT but do not sell it, you must contact NMFS enforcement at the time of landing and, if requested, make the fish available for inspection by a NMFS enforcement agent. If you land any size BFT and are permitted in the Angling category or fishing under Angling retention limits with a Charter/Headboat permit, you must report the BFT through the automated catch reporting system by calling 888-USA-TUNA. NMFS will inform fishery participants of reporting requirements and procedures, and alternatives or changes to those requirements, for school, large school, and small medium BFT.

Anglers who voluntarily release HMS are encouraged to tag their released fish. Anglers who catch a BFT during a closed season must tag all released BFT. You may obtain NMFS-issued conventional tags, or request permission to use alternate tags, by contacting the NMFS Cooperative Tagging Program at 800-437-3936.

Mandatory registration of tournaments involving any Atlantic HMS is proposed. Under the proposed measure, tournament operators must notify the NMFS Southeast Fisheries Science Center ("Tournament Registration", 75 Virginia Beach Drive, Miami, FL 33149, fax: 305-361-4219) of the purpose, dates, and location of a fishing tournament for Atlantic HMS at least 4 weeks prior to tournament commencement. When selected by NMFS, this measure is accompanied by reporting requirements for all tournament directors. This measure, proposed in the consolidated rule, and re-proposed here, is currently implemented under a separate interim rulemaking for billfish tournaments only.

To account for limited access and to improve quota monitoring and catch data collection, shark and swordfish vessel permit holders or dealer permit holders would no longer be exempt from obtaining an Atlantic tunas dealer permit to purchase tunas. These permit holders would also be subject to reporting requirements associated with the Atlantic tunas permit. Additionally, the requirement for owners and operators to present the harvesting vessel's permit to the receiving dealer upon transfer of HMS is proposed to be extended to all Atlantic tunas, shark, and swordfish permit holders.

To facilitate enforcement and prevent circumvention of the proposed Certificate of Eligibility requirement, NMFS proposes to extend the authority to designate and restrict, after consultation with the U.S. Customs Service, ports of entry for import into the United States to any Pacific or Atlantic swordfish from any source.

NMFS proposes to create an HMS Charter/Headboat permit in order to identify the universe of these vessels. This universe would be useful in estimating economic and social aspects of the fishery as well as providing a universe for implementing proposed logbook and observer coverage requirements. Charter/Headboat operators who currently report their HMS catch and effort data in non-HMS Federal logbooks would be able to continue to do so. All others would report catch and effort data in the Large Pelagic Logbook and submit to NMFS, Logbook Program, P.O. Box 491500, Key Biscayne, FL 33149-9916. NMFS proposes to require all HMS logbooks to be completed within 24 hours of hauling a longline or shark net set or of completing a day's fishing activities, if a single day trip. This measure would lessen the management and enforcement costs of HMS regulations and would ultimately aid in rebuilding overfished stocks and preventing overfishing. Currently, pelagic logbooks must be submitted to NMFS within 7 days after offloading HMS from a trip.

If selected by NMFS, the HMS Charter/Headboat permit holders, along with all Atlantic tunas permit holders, would be required under this proposal to carry an observer. This would supplement bycatch and bycatch mortality databases as well as provide coverage of catch and discard rates of target and non-target species.

To collect sufficient data from EFPs, NMFS proposes to develop a reporting system regarding collection of sharks for public display. This information would be useful in monitoring the proposed public display quota (see section I).

To facilitate enforcement, NMFS proposes to require that sharks be recreationally landed with heads, tails, and fins attached. This measure is expected to have minimal economic and social impacts, but would greatly facilitate dockside species-specific identification of shark landings for monitoring, management, and enforcement purposes.

Finally, NMFS proposes to extend the prohibition on finning to all sharks, regardless of whether the shark species are defined as part of Federal management unit or are subject to any Federal regulations, as a condition of

the Federal commercial shark permit. This measure is intended to enhance enforcement capabilities by removing a costly and time-consuming administrative burden of verifying species-specific identification of shark fins through genetic testing. Note that the Mid-Atlantic and New England Fishery Management Councils are proposing a finning prohibition in a draft FMP for spiny dogfish.

#### **VII. Administrative and Procedural Changes**

NMFS proposes to dissolve the Shark Operations Team due to the subsequent formation of the HMS Advisory Panel. The HMS AP serves essentially the same advisory function for shark management. By eliminating the Shark Operations Team, NMFS would reduce management costs, avoid duplication of effort, and reduce the burden on interested constituents. Further, NMFS seeks to reduce management costs of administering these panels and would continue to rely on the HMS AP to provide comments on FMPs or FMP Amendments related to shark management.

NMFS proposes to adjust the fishing year to be June 1 through May 31 for the Atlantic tunas and billfish fishery, consistent with the Atlantic swordfish fishery. The Atlantic shark fishing year will continue to be January 1 through December 31.

To further prevent U.S. overfishing, NMFS proposes to extend the management unit definitions for Atlantic blue marlin and Atlantic white marlin to the entire Atlantic Ocean. This would allow for consistent management with other Atlantic HMS and is consistent with the biology of the species (Atlantic-wide stock).

#### **VIII. Limited Access Program**

Vessel permit limited access systems were considered by NMFS in a draft amendment to the Atlantic Sharks FMP (November 8, 1996) for which a proposed rule published on December 27, 1996 (61 FR 68202) and to the Atlantic Swordfish FMP (January 28, 1997) for which a proposed rule published on February 26, 1997 (62 FR 8672). Significant changes to the qualifying criteria and operational characteristics of the limited access systems are being considered by NMFS in response to comments on those proposed rules. Due to the magnitude of changes under development and the need to update ownership records under the revised eligibility criteria, NMFS decided to re-propose the limited access systems as part of the HMS FMP. Furthermore, the proposed rule to

implement the HMS FMP offers an opportunity to propose an expanded limited access program for longline vessels that also includes tunas. Comments on the first limited access proposed rules are summarized with NMFS responses in the HMS FMP. NMFS has also updated the economic analyses since the publication of the HMS FMP to include analyses of limited access under the revised eligibility criteria.

The objectives of the limited access system are to: (1) reduce latent effort by eliminating speculative permit holders who have not participated in the fisheries (i.e., to allow only permit holders who were active and dependent on swordfish or shark fishing before January 1, 1998, and who are still active); (2) provide mechanisms to allow traditional swordfish handgear fishermen (whose permits may have lapsed due to the scarcity of large fish, which they target) to participate fully as the stock recovers; (3) reduce regulatory discards in both directed and incidental fisheries; (4) provide mechanisms to account for the dynamic and multispecies aspects of these fisheries through permit transferability and vessel upgrading provisions; and (5) prevent substantial increases in vessel harvesting capacity of the currently active fleet. A long-term objective for the Atlantic swordfish and shark fisheries is to create a management system in which the U.S. harvesting capacity would be commensurate with resource productivity to achieve the dual goals of economic efficiency and biological conservation.

As described below and in the draft HMS FMP, major changes from the previously proposed rules include: (1) an extension of the eligible permit and landings periods from June 30, 1995, to December 31, 1997, in order to be consistent with the goal of limited access to reduce latent effort only; (2) the establishment of historical evidence or meeting an earned income requirement as the criteria for a swordfish handgear permit; (3) a withdrawal of the proposed decrease in the directed swordfish fishery harvest limit for longline vessels during a directed longline fishery closure; (4) a provision for transferability of incidental catch permits; (5) an elimination of the allowance to submit landings records other than official NMFS fishing vessel logbook records, except for the period January 1, 1991, through June 30, 1993, for sharks; (6) an elimination of the restriction on permit and vessel transferability during the first year of limited access implementation; (7) the clarification that a limited access

permit is a privilege and not a right in perpetuity; (8) an exemption for those persons who purchased a qualifying vessel and its landings history after December 31, 1997, from the requirement to have owned a vessel issued a valid Federal swordfish or shark permit at any time from July 1, 1994 through December 31, 1997; (9) an exemption for persons who first obtained a Federal swordfish or shark permit in 1997 from the requirement to document a second year of Atlantic swordfish or shark landings, and the establishment of the requirement that such persons have documented landings for the calendar year of January 1, 1997, through December 31, 1997, of at least 25 swordfish or 102 sharks for a directed permit or at least one swordfish or shark for an incidental catch permit; (10) the clarification that vessel landing histories cannot be divided among permit holders; (11) the clarification that vessel landings histories cannot be consolidated from several vessels; (12) a modification of the provision for contested eligibility of vessel ownership, or permit, or landings histories; (13) an extension of the eligibility requirements for a limited access permit to persons who fish for, possess, land, or sell swordfish from the South Atlantic swordfish stock (consistent with the 1997 rulemaking for South Atlantic swordfish); and (14) an extension of limited access requirements to the Atlantic Tunas Longline Category permit holders.

#### A. Permit Categories

NMFS proposes to establish a two-tiered commercial fishing permit system in which permits are classified as "directed" or "incidental" based on historical and current permit and landings histories in the relevant HMS fisheries. Five types of permits would be issued: Directed swordfish; incidental swordfish; swordfish handgear; directed shark; and incidental shark. Directed permits would allow holders of such permits to operate under the commercial quotas, trip limits, minimum size restrictions, closures, harvest limits during closures, gear restrictions, and other regulations, that will be established by the HMS FMP. Directed handgear permits would allow holders of such permits to harvest swordfish with handgear, provided no longline gear is on board. Incidental catch permits would allow holders of such permits to harvest a smaller limited number of swordfish or sharks per trip. Limited access permits would be issued only for gears and areas for which a commercial quota has been authorized. Access to both the directed

and incidental swordfish and shark fisheries would be limited. A vessel's owner would be issued only one type of swordfish permit and one type of shark permit.

#### B. Eligibility Criteria

Only persons who: (1) owned a vessel issued a valid Federal swordfish or shark permit at any time from July 1, 1994, through December 31, 1997; (2) have documented landings that meet at least the directed or incidental threshold levels of participation in the swordfish or shark fishery (defined below); and (3) owned a swordfish-permitted or shark-permitted vessel at any time during the period June 1 through August 31, 1998 (swordfish), or July 1 through August 4, 1998 (sharks), would be eligible for a limited access permit. Separate criteria are proposed for a swordfish handgear permit. Recreational anglers would not need a permit to fish for, possess, or land swordfish or sharks; however, they may not sell swordfish or sharks and would be subject to relevant retention limits and other restrictions (e.g., recreational retention limits, size restrictions, gear restrictions)

As part of the eligibility criteria for the directed permit, documented landings of at least 25 swordfish or 102 sharks per year in any 2 calendar years between January 1, 1987, and December 31, 1997 (swordfish), or between January 1, 1991 and December 31, 1997 (shark), would be required. This threshold is roughly equivalent to having landed sufficient swordfish or shark each year on average to earn \$5,000 per year in gross revenue. NMFS estimates that approximately 190 vessels would be eligible for directed swordfish permits and approximately 187 vessels would be eligible for directed shark permits based on these criteria. The actual number of directed permits that are issued may be higher than this estimate if additional landings records or evidence of vessel history transfers are presented in support of an application or appeal.

NMFS would issue swordfish handgear permits only to those persons who provide evidence of having been issued a swordfish permit for use with handgear or having landed swordfish with handgear, or to those who have derived more than 50 percent of their earned income from all commercial fishing through the harvest and first sale of fish or from charter/headboat fishing, or to those who had gross sales of fish greater than \$20,000 harvested from their vessel, during any one of the last three calendar years (earned income requirement). There would be no

requirement of having a permit or landings history specific to the swordfish fishery in order to qualify for a swordfish handgear permit, although historical evidence of swordfish permit and landings history would be accepted.

As part of the eligibility criteria for an incidental swordfish permit, a minimum of 11 swordfish landed between January 1, 1987, and December 31, 1997, and meeting the same earned income requirement as for a directed handgear permit would be required. As part of the eligibility criteria for an incidental shark permit, a minimum of seven sharks landed between January 1, 1991, and December 31, 1997, would be required. NMFS estimates that approximately 70 vessels and 305 vessels would be eligible for incidental swordfish and shark permits, respectively. As with the directed permits, the actual number of incidental permits that are issued may be higher depending on additional record or vessel history transfer submissions.

Vessel landings histories are assumed to belong to the owner of the vessel at the time of actual landing. However, if a vessel was sold and its landings history was included specifically in the original written sales agreement, such landings would accrue to the purchaser instead of the seller for purposes of qualifying for a directed or incidental permit under the limited access system. Because NMFS does not currently maintain records of associated vessel history sales or purchases, NMFS proposes to consider claims that a vessel's landings history was transferred at the time the vessel was sold during the application process.

NMFS is proposing two exemptions to these eligibility criteria in order to be consistent with the overall intent of the limited access system, to accommodate for the dynamic aspect of this fishery since NMFS first began limited access rulemaking in mid-1995, and to address the effects of delays in implementation of this limited access program. The first exemption would exempt persons who purchased a qualifying vessel and its landings history after December 31, 1997, from the requirement to have owned a vessel issued a valid Federal swordfish or shark permit at any time from July 1, 1994, through December 31, 1997. Such persons would have to have purchased vessels and their associated landings histories that meet the landings eligibility criteria specified above, through documented transfer at the time of purchase, and would have to have owned this swordfish-permitted or shark-permitted vessel at any time during the period June 1 through August 31, 1998 (swordfish), or July 1 through

August 4, 1998 (shark). This exemption would provide a mechanism to account for vessel sales since NMFS initiated rulemaking and would not result in any increase in the number of current participants. Without such an exemption, qualifying vessels could be eliminated despite legitimate purchases of vessels and their associated landings histories because the current owner did not own a vessel issued a valid Federal swordfish permit before December 31, 1997. Because NMFS does not currently maintain records of associated vessel history sales or purchases, NMFS proposes to consider such claims on vessel landings history transfer during the application process.

The second exemption would exempt persons who first obtained a Federal swordfish or shark permit in 1997 from the requirement to document a second year of swordfish or shark landings. Rather, such persons would have to document, for the calendar year of January 1, 1997, through December 31, 1997, landings of at least 25 swordfish or 102 sharks for a directed permit, or at least 1 swordfish or shark for an incidental catch permit. This exemption would provide for persons who first obtained Federal swordfish permits in 1997 to be eligible for directed or incidental permits, as appropriate. The requirements to own a vessel issued a valid permit at any time from July 1, 1994, through December 31, 1997, and to own a swordfish-permitted or shark-permitted vessel at any time during the period June 1 through August 31, 1998 (swordfish), or July 1 through August 4, 1998 (shark), would still apply. The rationale for this exemption is that persons who first entered the fishery in 1997 would be incapable of meeting the 2-year landings requirement. NMFS estimates that approximately 4 and 3 additional vessels would qualify for a directed swordfish and shark permits, respectively, and approximately 5 and 21 additional vessels would qualify for an incidental catch swordfish or incidental catch shark permit, respectively, based on this exemption.

Many permit holders who will receive these directed/incidental permits also hold Atlantic Tunas Incidental Category Permits. Nevertheless, to address the multispecies nature of the pelagic longline fishery, anyone who had an Atlantic Tunas Incidental Category Permit between January 1, 1998, and August 31, 1998, would receive a swordfish and a shark incidental permit. Also, anyone with a swordfish permit would receive a shark incidental permit and an Atlantic Tunas Longline Category Permit. A total of 738 vessels would be expected to receive at least

one type of limited access permit. More vessels could receive permits under the application and appeals processes.

Given the limited quota available to U.S. vessels in the South Atlantic swordfish fishery, NMFS does not intend to allow expansion of pelagic longline fishing effort in that area. On July 25, 1997 (62 FR 40039), NMFS published a proposed rule to establish commercial quotas for swordfish from the South Atlantic stock. In that rulemaking, NMFS provided the public the opportunity to comment on the proposal that vessel permits to fish for swordfish from the South Atlantic stock be limited to those who qualify for a directed permit under the previously proposed limited access system for swordfish. At the time, NMFS noted that most vessels that have fished for swordfish in the South Atlantic have also landed swordfish from the North Atlantic Ocean. NMFS received no comments during the comment period on this measure and concluded in the final rule (62 FR 55357, October 24, 1997) that permits in the South Atlantic should be limited to those who qualify for a directed swordfish permit under limited access. This proposed rule and the draft HMS FMP reflect that decision.

#### C. Permit Process

Effective 1 June 1999, all Federal swordfish and shark vessel permits issued prior to this date by the NMFS Southeast Regional Office would be invalid. All owners of vessels who wish to fish for, possess, land, or sell swordfish or sharks from the management unit (except those participating in the recreational fishery only or fishing exclusively in state waters) would be required to obtain an initial limited access permit from the Director of the Office of Sustainable Fisheries.

After NMFS conducts an analysis of landings and permit histories, all those who owned swordfish-permitted vessels and owned or operated shark-permitted vessels at any time during the period June 1 through August 31, 1998 (swordfish), or July 1 through August 4, 1998 (shark), would be notified by letter of their eligibility status for the directed or incidental swordfish and shark fisheries. NMFS would issue initial limited access permits to those who qualify. Those permits would be valid through the marked expiration date.

If a vessel owner or operator is informed that he or she does not qualify for a limited access permit, but he or she believes that there is credible evidence to the contrary, he or she may apply for either a directed or incidental catch permit and provide the appropriate

documentation to NMFS within 90 days. Similarly, if a vessel owner or operator is notified that he or she qualifies for an incidental catch permit, but he or she believes that there is credible evidence of eligibility for a directed permit, he or she may apply for a directed permit and provide the appropriate documentation to NMFS within 90 days. NMFS would notify no one as to his or her status for handgear permits. If a person believes he or she is eligible for a handgear permit, that person may apply to NMFS within 90 days. NMFS would then evaluate all applications and accompanying documentation, and notify the applicant of its decision either to issue or deny the permit. If denied, the applicant may appeal the decision by submitting an appeal, in writing, to NMFS within 90 days of receipt of the notice of denial. Oral hearings would not be provided. Provisional limited access permits, as appropriate, would be issued for use by the appellant pending the outcome of an appeal until the final agency decision has been rendered. The sole grounds for appeal would be that NMFS reviewed incorrect or incomplete landings data in the eligibility analysis or improperly considered the applicant's earned income documentation, if applicable. No "hardship" appeals would be considered.

Landings documentation that would be considered in support of an application or an appeal would be restricted to official NMFS logbook records of landings that were received by NMFS prior to March 2, 1998 (60 days after the cutoff date for eligible landings) and that reflect landings during the time the person held a valid permit. Landings records from sources other than fishing vessel logbooks would not be accepted because mandatory permitting and reporting requirements existed during the entire permit eligibility and landings time frame, except for sharks landed from January 1, 1991, through June 30, 1993. For sharks landed from January 1, 1991, through June 30, 1993, landings documentation that would be considered in support of an application or appeal for a shark limited access permit would be restricted to official, verifiable sales slips or receipts from registered dealers, and state landings records. Dealer sales slips or receipts would have to show definitively the species and the vessel's name or other traceable indication of the harvesting vessel. Dealer records would have to contain a sworn affidavit by the dealer confirming the accuracy of the records.

Additionally, landings records during periods that a vessel did not have a

valid Federal permit would not be accepted. Landings histories may not be divided among permit holders; only complete catch histories of sold vessels would be accepted. This restriction is intended to prevent increases in fleet capacity that would result from multiple vessels qualifying for a limited access permit based on a single vessel's catch history. Similarly, landings may not be consolidated among vessels; permit holders may not pool landings from several ineligible vessels to meet eligibility requirements. This restriction is intended to prevent increases in fleet capacity that would result from the pooling of multiple ineligible vessel catch histories.

In the event that more than one vessel owner claims eligibility for a limited access permit based on one vessel's ownership, permit, or landings history, the applicants claiming the vessel's ownership or permit or landings history would have to determine which person will receive the limited access permit. NMFS would not determine the outcome of contractual conflicts, but the applicants would have to resolve the contested issue and inform NMFS.

#### D. Transfer of Permits

Directed and incidental permits would be transferable with the sale of the permitted vessel, or to a transfer vessel, or to a replacement vessel owned or purchased by the original permittee, but not under any other circumstances. Such transfers would be subject to upgrading restrictions (described in the following paragraph). Swordfish handgear permits would be transferable, but only for use with handgear.

After the initial limited access permits (ILAPs) are issued in 1999, the eligibility criteria to which initial limited access permit holders are subject would no longer apply; the only requirement would be to have been issued a limited access permit in the preceding year. Similarly, transferees/buyers of limited access vessel permits would not be subject to the initial limited access eligibility criteria; only transfer restrictions would apply (i.e., vessel upgrading and ownership restrictions, if applicable). After the issuance of ILAPs, all renewals or transferred permits would be issued as limited access permits (LAPs) by NMFS.

#### E. Vessel Upgrading

NMFS proposes that any vessel to which a LAP is transferred, defined as the "transfer" vessel, have no more than a 20-percent increase in vessel horsepower or 10-percent increase in length overall, gross registered tonnage, net tonnage, and hold capacity as the

vessel originally issued the limited access permit. This restriction would apply to replacement vessels, transfer vessels, and to the refurbishment of existing permitted vessels. These proposed upgrading criteria are based on proposed guidelines recently adopted by the Mid-Atlantic and New England Fishery Management Councils. Since HMS vessels are also affected by upgrading restrictions of fisheries under management by these two Councils, NMFS is attempting to achieve consistency on upgrading restrictions.

#### F. Ownership Limits

NMFS proposes to restrict the number of permitted vessels that any one person could own or control to no more than five percent of the directed fleet.

#### IX. Essential Fish Habitat (EFH)

The HMS FMP and the Amendment 1 to the Billfish FMP identify EFH as required by the Magnuson-Stevens Act. Because they range over vast expanses of the ocean, factors that control or limit habitat use by HMS are largely unknown or are difficult to determine. However, to the extent possible, EFH has been described and identified based on scientific publications, expert knowledge, and analysis of presence/absence and relative abundance data, when available. Where information is available (e.g., temperature/salinity tolerances, and/or current or water mass information), it has been used to narrow the extent of EFH within the areas most commonly used by the species.

Analyses of fishing practices led to the conclusion that adverse impacts on EFH from HMS fishing gears are negligible. However, there are potential threats from gears of other fisheries that warrant further investigation. Non-fishing activities with the potential to adversely affect EFH are described in the draft HMS and Billfish FMP documents along with conservation measures based on recommendations made in the past by NMFS regional staff and consistent with conservation measures delineated by the Councils that have jurisdiction over other species that occur in the same areas as those identified as EFH in the HMS and Billfish FMPs and supporting documents.

Research recommendations include investigation of HMS habitat associations and preferences, life history studies and early life stage species identification, habitat characterizations (e.g., for nursery and spawning areas), improved tagging and tracking technology, and the role of habitat in survival and productivity for the various life stages. The EFH portions of the

HMS FMP and Amendment 1 to the Billfish FMP do not have any measures requiring regulatory implementation at this time.

#### X. Minor Administrative and Technical Changes

These measures represent administrative and technical changes to HMS regulations or changes to the regulations that are necessary to implement the draft HMS FMP or draft Amendment 1 to the Billfish FMP. They may not be explicitly addressed in the draft HMS FMP or in draft Amendment 1 to the Billfish FMP. NMFS issued a proposed rule to consolidate HMS regulations for tunas, sharks, swordfish, and billfish on November 6, 1996 (61 FR 57361). Five public hearings were held to receive comments on the proposed rule. Additionally, numerous written comments were received by mail and fax. Most of these comments focused on the identified substantive changes to the regulations rather than on the consolidated format. The following changes to the regulations were identified in the previously proposed consolidated rule or have been made in response to the comments received on that proposed rule or are necessary to implement measures in the draft HMS FMP and draft Billfish Amendment.

1. The incidental catch permit category for Atlantic tunas would be eliminated and redefined as "longline" to reflect the existing authorization of directed longline fisheries for tunas other than bluefin tuna and as "traps" to account for unavoidable catch of bluefin tuna by pound nets, traps and weirs. As a consequence of this reorganization and to address enforcement issues concerning unauthorized landing of bluefin tuna under the Incidental catch quota, fixed gear other than "traps" and purse seines for non-tuna fisheries will be no longer allowed to land BFT. Additionally, due to the limited Incidental catch quota, an incidental catch limit of one BFT per year is established for trap fishermen. This measure would also eliminate confusion with Incidental limited access permits.

2. To achieve consistency between regulations applicable to all HMS, the definition of rod and reel gear would be modified to include the use of electrically operated reels. Although electric reels are permitted under current billfish regulations, conflicts with the consolidated regulations would arise when fishing for, or incidentally taking, Atlantic tunas. Therefore, the broader definition would be made applicable to all HMS.

3. The handgear exemption for fishing vessels and dealers of Atlantic tunas, shark, and swordfish permits, in Puerto Rico and the U.S. Virgin Islands would be eliminated. These vessel owners and dealers would be required to obtain the appropriate permits and follow all reporting requirements. These exemptions were created because it was presumed catch data could be accessed from other information collection programs. However, it has not been possible to access this information in a timely manner. Given the likelihood of continuing restricted quotas for tunas, swordfish, and sharks, accurate and timely reporting of all catch is necessary.

4. The permit category for BFT buy-boats would be eliminated as obsolete. For the last several years, the retention limit for General category vessels has been set at one fish per day, thus precluding the need to offload BFT at sea. In addition, compliance with applicable vessel and dealer reporting requirements would be difficult to achieve under at-sea transfer conditions. ICCAT has also recommended prohibiting transfer of BFT at sea.

5. The 30-day allowance for swordfish and shark dealers to operate under the permit of the previous business owner would be removed to achieve consistency with tuna dealer permit regulations.

6. Regulations that are no longer necessary on tuna vessel reporting, as approved under OMB control number 0648-0168, would be replaced by the vessel logbook requirements approved under OMB control number 0648-0016.

7. To facilitate enforcement and to achieve consistency with regulations applicable to all HMS, the allowance to transfer HMS at sea by transfer vessels would be removed. This allowance was originally implemented for purse seine fishermen using transport vessels for cannery deliveries, a practice that no longer occurs in the Atlantic Ocean. The allowance for at-sea transfer of BFT among permitted purse seine vessels would remain.

8. The distinction between selected and non-selected vessels for the purposes of shark logbooks would be dropped because all vessels have been selected in recent years under the previously implemented mandatory reporting requirement.

9. The time frame for reporting and submitting the bi-weekly BFT dealer report would be adjusted to the time frame applicable for the bi-weekly dealer report for swordfish, sharks, and other Atlantic tunas. Thus, all dealer reports regarding these three species groups would be due not later than the

20<sup>th</sup> day of the month for HMS received on the 1<sup>st</sup> through the 15<sup>th</sup> days of each month, and not later than the 5<sup>th</sup> day of the following month for HMS received on the 16<sup>th</sup> through the last day of each month.

10. Current regulations that prohibit sale of billfish are unclear concerning the sale of such related species as striped marlin, black marlin, shortbill spearfish. The consolidation would clarify the regulatory text to achieve consistency with the prohibition on sale as implemented through the certificate of eligibility requirements for sale of billfish and related species. All billfish species found in commerce would be considered to be Atlantic billfish unless accompanied by a Certificate of Eligibility.

11. Regulations applicable to the swordfish donation program would be removed as unnecessary codified text. Donation programs for swordfish or any of the regulated HMS could be established and adequately enforced under a specific letter of authorization.

12. Current regulations prohibit a change of tuna permit category after May 15. This restriction was imposed so that a vessel could not fish in more than one quota category subsequent to the June 1 commencement of the Harpoon and General category BFT fishing seasons. Existing regulations have not prevented some vessel operators from fishing under the bluefin tuna Incidental category prior to May 15 and in the General category after June 1. Under this proposed rule, Atlantic tunas permit category changes would be limited to one change each year, between January 1 and May 15. No permit changes would be permitted from May 16 through December 31, regardless of sale of a vessel. This would prevent commercial vessel operators from fishing for bluefin tuna in more than one commercial quota category in a single year. To be consistent among all categories, the one-per-year limit on category changes for Atlantic Tunas permits would also apply to recreational vessels obtaining Angling category permits.

13. To facilitate enforcement of minimum size and retention limit regulations and to facilitate identification of species, all Atlantic tunas would be required to be landed with the tail attached.

14. The set-aside of swordfish quota for the harpoon segment of the directed fishery would be removed because it is unnecessary. A prior rulemaking established the swordfish fishing year and first semiannual quota period beginning June 1. When the fishing year and the first semiannual period began

on January 1, a set-aside was needed because the summer harpoon fishery could be precluded by a directed fishery closure at the end of the period. The change in fishing year has eliminated this problem.

15. Gear restrictions applicable to specific categories of tuna permits would be limited to fishing activity for bluefin tuna. In a prior rulemaking, the requirement for tuna permits was extended from BFT to all Atlantic tunas. Gear restrictions necessary to implement category quotas for bluefin tuna were carried over to apply to all Atlantic tunas. Because Atlantic tunas other than bluefin are not subject to quotas, gear restrictions are not necessary, with the exception of driftnets.

16. Much of the regulatory text regarding restrictions on imports would be removed as obsolete since ATCA has been amended. The Department of State will be consulted during the comment period for this proposed rule, as necessary, to ensure that the revised trade restrictions regulations comply with ATCA. NMFS implemented a final rule in 1997 that banned the import of BFT from Belize, Honduras, and Panama as a result of an ICCAT recommendation. Further, NMFS proposed trade restrictions for Atlantic swordfish on October 13, 1998 (63 FR 54661). The final rule to implement the HMS FMP will include any finalized trade restrictions that result from that separate rulemaking for swordfish.

17. Except for applications for an initial limited access permit, vessel and dealer permit applicants will have up to 30 days to submit required information not supplied with original applications, otherwise, the application will be considered abandoned. Information changes must be reported within 30 days for permits to remain valid.

18. Logbook requirements approved under OMB control number 0648-0016 would apply to commercial and for-hire tuna vessels only if selected by NMFS. Initially, a sample of vessels from each permit category, (except for Charter/headboat permit holders, which will all be selected), will be selected to evaluate reporting forms and reporting schedules.

19. To enhance flexibility in business decisions, purse seine notification would be set at 24 hours prior to sailing or landing, with automatic waiver of inspection requirements if not undertaken within 24 hours of notification.

20. To be consistent with revised 50 CFR 600.745, § 635.32 incorporates new policies and procedures on issuance of letters of authorization, exempted

fishing permits, and scientific research permits.

21. Technical changes were made to reflect NMFS reorganization by changing references from Regional Director to Regional Administrator and from Science and Research Director to Science Director. Where necessary, cross references to regulations in other CFR parts were updated.

22. The method of taking tuna measurements was amended to conform with instructions given in past years and to reflect an analysis of measurement conversion data obtained in 1996.

23. Given the increased use of inseason retention limit adjustments to restrict harvest in the BFT Angling category to seasonal and geographic subquotas, the retention limit for school, large school, and small medium BFT is established at one per vessel, per day. This retention limit may be adjusted inseason through one or more specification notices published in the **Federal Register**.

24. Changes were made to the BFT trophy catch provisions applicable within the Gulf of Mexico to clarify that anglers may retain large medium or giant BFT onboard vessels permitted in the Angling or Charter/Headboat categories if taken incidental to fishing for other species.

25. Specific regulatory text was added to prohibit purchase or possession by dealers of undersized Atlantic swordfish landed by fishing vessels of the United States.

26. Technical revisions were made to the bluefin tuna statistical document (BSD) program. Current regulations require that a BSD be completed and provided to NMFS for import or export of bluefin tuna. NMFS has recently acquired import records from U.S. Customs that indicate non-compliance with the BSD program, particularly for imports. Revisions are necessary to clarify procedures for BSD filing by defining import, importer, export and exporter, and by specifying circumstances under which a BSD must be completed. These revisions do not materially change the requirements, but provide more explicit instructions for the benefit of both tuna dealers and NMFS/Customs enforcement.

27. Revisions are also made to the ICCAT port inspection scheme. At its 1997 meeting, ICCAT recommended revisions to its port inspection scheme, to which the United States is a party. These revisions are technical in nature and serve to clarify the authority for inspections, procedures for inspections, and the requirements for reports to flag states and the ICCAT Secretariat. The

revisions are not substantive and only standardize procedures already in place for most contracting parties that have adopted the port inspection scheme.

28. A revision to the Angling category trophy fish tagging requirement is made to provide coordination with harvest tagging programs for school, large school, and small medium fish as implemented by NMFS or by any of the States. In coordinating such programs, the burden on anglers and NMFS enforcement will be reduced.

29. NMFS has removed the notification requirement for vessels transiting the Panama Canal with regulated species on board. This requirement was originally implemented for purse seine vessels offloading Pacific tuna catch at canneries in Puerto Rico. NMFS believes that fishing and offloading practices have changed so as to make this regulation obsolete.

30. The effective date of all regulatory amendments and inseason actions will be the date of filing with the Office of the Federal Register or, if subject to delayed effectiveness, on the prescribed period of delay based on the date of filing. Existing regulations variously refer to dates of filing or publication, with the publication delay normally three or four days. The discrepancies arise from balancing the need for timely action with the need for advance notification. Given the ability to rapidly communicate with fishery interest groups via the HMS Fax Information Network and NOAA weather radio, standardizing the effective date relative to filing will allow NMFS to be more responsive without unduly restricting the advance notification required by fishery participants.

#### **XI. Applicability of Regulations in State Waters**

State regulations applicable to ICCAT-managed species (Atlantic tunas, swordfish, and billfishes) that are less restrictive than Federal regulations or are not effectively enforced are subject to preemption by Federal regulations under section 971g(d) of ATCA. Pursuant to 971g(e) of ATCA, the Secretary of Commerce is required to perform a continuing review of the laws and regulations of all states for which preemption by Federal regulations applies and the extent to which such laws and regulations are enforced. Also, under section 306(b)(1) of the Magnuson-Stevens Act, after notice and an opportunity for a hearing, Federal regulations may apply within state waters if the state has taken action or omitted to take action which will substantially and adversely affect the

carrying out of Federal FMPs and the regulations to implement them (16 U.S.C. 1801 *et seq.*).

In an effort to review those regulations and make determinations about preemption, NMFS contacted the following states: Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Michigan, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, Puerto Rico, and the U.S. Virgin Islands.

As of October 1998, NMFS has received replies from the following states: Florida, Georgia, Louisiana, Massachusetts, New Jersey, North Carolina, and Virginia. With the issuance of this proposed rule, NMFS will again contact the states to request information regarding state regulations applicable to ICCAT-managed HMS and the gear used in fisheries targeting or catching them.

NMFS will be conducting public hearings in several states regarding the proposed regulations to implement the HMS FMP and Billfish Amendment. In addition, NMFS will contact all Atlantic Coast states and territories to determine if additional hearings on the FMPs and proposed regulations are necessary, particularly regarding the preemption issue. NMFS intends to coordinate and consult with all Atlantic Coast states and territories to meet management objectives and to achieve regulatory consistency.

#### **Classification**

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*

NMFS has concluded that this proposed rule to implement the HMS FMP would have a significant economic impact on a substantial number of small entities. Specifically, the time/area closure for pelagic longline fishermen in the Florida Straits, the non-ridgeback LCS quota reduction, and limited access measures for the shark fishery would have a significant economic impact on affected entities. In combination, the proposed alternatives for sharks and swordfish would also have a significant economic impact on a substantial number of small entities. Accordingly, an IRFA has been prepared to accompany the HMS FMP. A summary of the IRFA regarding these issues follows:



### *Time/Area Closure for Pelagic Longline Fishing*

NMFS proposes to ban the use of pelagic longline gear in the Florida Straits between July and September. The preferred time/area closure would likely have significant economic impacts for 17 of the 20 vessels that fish in that area at that time.

NMFS considered several alternatives that would reduce catches of small swordfish and that could have less severe economic impacts on the pelagic longline fishery participants. The alternatives included continuing the existing minimum size (33 lb, or 15 kg dw) and counting dead discards against the swordfish quota. If ICCAT adopts a recommendation that dead discards should count against the quota, NMFS will further consider this measure in future rulemaking. Although these alternatives may have lesser economic impacts on the pelagic longline fishery participants and provide incentives to reduce small swordfish catch, neither measure guarantees reduced discards of undersized swordfish.

NMFS also considered the alternative of closing other areas with high swordfish discard rates in addition to the Florida Straits. NMFS rejected this alternative for several reasons, including the significant economic impacts expected on additional pelagic longline participants. NMFS may consider closing these areas in the future if deemed necessary to reduce the bycatch of undersized swordfish. Although the status quo alternative (no time/area closure) would have less of an economic impact in the short term, this alternative was rejected because it is not expected to meet the statutory objectives of reducing the discard rate and rebuilding the stock. Thus, in the long term, the status quo alternative may have even greater significant impacts for all pelagic longline participants.

### *Non-Ridgeback LCS Quota Reduction*

NMFS proposes to separate the current LCS management unit into ridgeback and non-ridgeback LCS and to reduce the quota for non-ridgeback LCS by 66 percent (by weight). This alternative is expected to minimize adverse economic impacts on LCS fishermen by allowing higher harvest levels than those maintained if the LCS management unit were kept as a single unit. This measure should rebuild ridgeback LCS stocks consistent with the Magnuson-Stevens Act requirements to rebuild overfished fisheries and to consider the impacts of fishery resources on communities. NMFS estimates that 53 participants may cease

business operations due to this alternative.

NMFS considered other alternatives, including keeping the LCS management unit as a single group, with status quo reduced, and zero harvest levels, as well as implementing a phased-in quota for non-ridgeback LCS. Some of these quota alternatives, such as a closure, would meet the management objectives of rebuilding LCS stocks, and would have significant negative economic impacts in the short term, but would have economic benefits in the long term. Other alternatives considered, such as status quo, would have little or no negative economic impacts in the short term, but they would have significant negative economic impacts in the long term if the stock continued to decline. Additionally, the status quo alternative may possibly have no positive economic benefits and would not meet the statutory objectives to rebuild the LCS stock. NMFS chose the alternative that minimizes the short and long term economic impacts while also rebuilding LCS stocks.

### *Limited Access to the Atlantic Swordfish and Shark Fisheries*

The proposed limited access system would affect all current permit holders in the Atlantic swordfish and shark fisheries and those vessels fishing for Atlantic tunas with longlines. The intent of limited access is to exclude only those fishermen whose logbook records indicate they are neither active nor dependent on the swordfish and shark fisheries except that tuna longliners would automatically receive a swordfish or shark limited access permit to authorize landing of incidental catch. The proposed limited access program for swordfish is not expected to have a significant economic impact on a substantial number of small entities. However, a similar analysis indicates that, due to the proposed limited access system for the shark fishery, a significant number of shark vessels (48) would be forced to cease business operations. NMFS found that many of these vessels were directing for sharks in 1997 (the year used in the analysis) but had left the fishery in 1998, and, therefore, would not qualify under the proposed limited access system. Thus, NMFS believes that many of the vessels that the analysis indicates would not be eligible for permits may have already left the fishery due to circumstances other than limited access. Because this limited access system is not intended to remove any active entity dependent on the fishery, NMFS may reconsider the requirement of having held a permit during the open season in

1998 for sharks, based on comments received on this proposed rule.

The other alternatives regarding the implementation of limited access for swordfish and shark fisheries include a range of permit and landings history (eligibility) alternatives, incidental harvest limits, and permit transfer and vessel upgrade restrictions. While these alternatives might have lesser economic impacts on the fishery participants, NMFS believes those alternatives may be inconsistent with the objectives of removing inactive permits and limiting increases in the harvesting capacity of the fleet.

The draft HMS RIR/IRFA provides further discussion of the economic effects of all the alternatives considered in the draft HMS FMP.

To ensure that the impacts of the Amendment 1 to the Billfish FMP are fully analyzed, NMFS has prepared an IRFA pursuant to 5 U.S.C. 603 without regard to whether the proposed action would have a significant economic impact on a substantial number of small entities. A summary of the IRFA follows:

#### *Adjustment to Billfish Retention Limit*

NMFS proposes to institute a retention limit of one Atlantic billfish per vessel per trip with an additional provision that would reduce the retention limit for blue and/or white marlin to zero if landing limits for Atlantic blue marlin and/or white marlin are reached (26.2 mt and 2.48 mt, respectively). Cumulative landings would be determined from the most recent tournaments and from other state or federal data sources. Implementation of a zero retention limit, or just the possibility of such, may affect participation in Atlantic billfish tournaments. NMFS has received indications that tournaments may be canceled or may experience a significant reduction in participation if fishermen are not allowed to land a billfish that meets the legal size constraints. The zero retention limit provision was included in this proposed rule to avoid exceeding the 1997 ICCAT recommended landing levels for blue and white marlin. In other words, this measure would allow recreational fishermen to land billfish until the landing limits are reached. NMFS believes that this measure, while it may reduce tournament participation in the short-term, will aid in rebuilding the stocks, thus increasing participation in the long term.

NMFS considered other alternatives to reduce the landings of Atlantic billfish, including prohibiting possession of Atlantic billfish by all



U.S.-flagged recreational vessels. This alternative was not selected because it was considered to be too drastic in lowering landings unnecessarily. In addition, the mortality of Atlantic billfish recreationally caught by U.S. anglers is small relative to Atlantic-wide mortality levels. Thus, the short- and long-term negative economic impacts experienced by entities who rely on the billfish recreational fishery would exceed any advantages of this measure on rebuilding billfish stocks. This alternative would also put U.S. fishermen at a disadvantage compared with fishermen from other countries.

Another alternative considered would allow Atlantic blue marlin and Atlantic white marlin to be landed only during fishing tournaments and from charter vessels. All other recreational landings of Atlantic marlin (this alternative did not include sailfish) would be prohibited. Although this alternative might minimize any negative economic impacts on tournament sponsors and charter vessel owners, NMFS rejected this alternative because it would have a discriminatory impact on private vessels operating outside tournaments.

The last alternative considered would prohibit landing of billfish in conjunction with a tournament to be released (i.e., require all tournaments to be "no-kill"). Atlantic billfish could still be landed during other recreational efforts. NMFS believes that this alternative would not reduce Atlantic billfish landings or economic impacts because Atlantic billfish tournaments are currently moving toward alternative means to measure angler success in catching billfish.

#### *Adjustment to a Higher Minimum Size Limit*

NMFS considered other alternatives to reduce the landings of Atlantic billfish, including the minimum sizes implemented in the interim rule. This alternative would also provide NMFS the authority to increase the minimum size limits in season, rather than decreasing the retention limits to ensure compliance with the ICCAT landings limits for marlins. NMFS believes that this alternative could restrict landings to the allowable level without undue economic impacts because very large Atlantic billfish could still be landed in tournaments or for mounting purposes by private anglers. In this way, the potential for landing a very large billfish would still provide an incentive for fishing activity. Implementation of this alternative would require an accurate monitoring system for NMFS to provide sufficient notice of size limit adjustments to tournaments.

The draft RIR/IRFA for Amendment 1 to the Billfish FMP provides further discussion of the economic impacts of all the alternatives considered.

This proposed rule contains new and revised collection-of-information requirements, subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), and restates several current requirements. The new and revised collections have been submitted to OMB for approval. In particular, six new reporting requirements would include position reports from a vessel-monitoring system for all pelagic longline vessels; gear marking and vessel identification requirements for longline and shark net gear, and for handgear and harpoon floats; permits for all HMS Charter/Headboat vessels; observer requirements for HMS Charter/Headboat vessels if selected; logbooks for all Atlantic tuna vessels and HMS Charter/Headboat vessels; and revised reporting procedures for EFPs. The following requirements have been approved by OMB or have been submitted to OMB for approval:

1. Requirement for HMS Charter/Headboat Permits in § 635.4, estimated at 30 minutes per initial permit application and 6 minutes per renewal, has been submitted for OMB clearance in association with this proposed rule. However, no additional burden is anticipated as nearly all HMS charter/headboats are permitted under currently approved permitting collections (0648-0202; 0648-0205; 0648-0327), any of which will serve to meet this requirement.

2. Atlantic tunas vessel permits in § 635.4 (approved under OMB control number 0648-0327), estimated at 30 minutes per initial permit application and 6 minutes per renewal; and Atlantic tunas dealer permits in § 635.4 (approved under OMB control number 0648-0202), estimated at 5 minutes per permit action.

3. Shark and swordfish vessel permits in § 635.4 (approved under OMB control number 0648-0205), estimated at 20 minutes per permit action; and shark and swordfish dealer permits in § 635.4 (approved under OMB control number 0648-0205), estimated at 5 minutes per permit action. Importer permitting requirements for swordfish in § 635.4, estimated at 5 minutes per application, for which a proposed rule published on October 13, 1998 (63 FR 54661), have since been approved by OMB under 0648-0205.

4. Dealer reporting and recordkeeping requirements for Atlantic bluefin tuna in § 635.5 (approved under OMB control

number 0648-0239), estimated at 3 minutes for daily reports, 14 minutes per bi-weekly report of fish purchases, and 1 minute to affix tags and label containers.

5. Dealer reporting and recordkeeping requirements for swordfish, sharks, and Atlantic tunas in § 635.5 (approved under OMB control numbers 0648-0013 and/or 0648-0239) estimated at 15 minutes per bi-weekly report of fish purchases and 3 minutes per negative report. Importer reporting requirements for swordfish in § 635.5, estimated at 15 minutes per bi-weekly report, for which a proposed rule published on October 13, 1998 (63 FR 54661), have since been approved by OMB under 0648-0013.

6. Vessel reporting and recordkeeping requirements for swordfish and sharks in § 635.5 (currently approved under OMB control number 0648-0016) estimated at 10 minutes per logbook entry, including the attachment of tally sheets, and 2 minutes for "no-fishing" reports. NMFS has submitted a request to OMB for vessel reporting requirements for Atlantic tunas and HMS charter boats in § 630.5 estimated at 12 minutes per logbook entry and 2 minutes for a negative catch report. NMFS intends to randomly select 10 percent of the tuna vessels and all HMS charter boats on an annual basis. While NMFS intends to consolidate HMS logbooks under a new information collection, there will be an initial trial period for tuna vessels and HMS charter/headboats with the pelagic logbook forms currently approved under 0648-0016. After evaluation of the program, NMFS will request OMB approval to issue logbooks tailored to the specific reporting requirements of individual fishery segments

7. Fishing tournament registration and selective reporting in § 635.5 (approved under OMB control number 0648-0323) estimated at 10 minutes per report.

8. Swordfish and shark limited access permit documentation requirements in § 635.16 (approved under OMB control number 0648-0325) estimated at 1.5 hours per response.

9. Vessel identification requirements for permitted HMS vessels in § 635.6 estimated at 45 minutes per vessel, have been submitted to OMB for approval.

10. HMS gear marking requirements in § 635.6, estimated at 15 minutes per action and pertaining to longline gear (terminal floats and hi-flyers), shark nets (terminal floats) and harpoon and handgear floats, have been submitted to OMB for approval.

11. Notification for at-sea observer requirements for Atlantic tuna, swordfish, and shark vessels in § 635.7, estimated at 2 minutes per response, has

been consolidated and submitted for OMB approval.

12. Position reporting and communication from a vessel monitoring system in §§ 635.9 and 635.69, estimated at 0.033 seconds per position report or 5 minutes per vessel per year, 4 hours for installation, and 2 hours for annual maintenance, has been submitted to OMB for clearance.

13. BFT purse seine inspection requests in § 635.21 (approved under OMB control number 0648-0202) estimated at 5 minutes per request.

14. Angler reporting of trophy BFT in § 635.23 (approved under OMB control number 0648-0239) estimated at 3 minutes per report, and Angler reporting of school and medium tuna in § 635.5 (approved under OMB control number 0648-0328) estimated at 5 minutes per response.

15. HMS catch and release program requirements in § 635.26 (approved under OMB control number 0648-0247) estimated at 2 minutes per tagging card.

16. Documentation requirements for sale of billfish in § 635.31 (approved under OMB control number 0648-0216) estimated at 20 minutes for dealers purchasing from vessels and 2 minutes for subsequent purchasers.

17. Swordfish Certificate of Eligibility in § 635.46, estimated at 60 minutes per document, for which a proposed rule published on October 13, 1998 (63 FR 54661), has since been approved under OMB control number 0648-0363. Bluefin Tuna Statistical Document in § 635.42 (approved under OMB control number 0648-0040) estimated at 20 minutes per document.

18. Revised application and reporting requirements under EFPs in § 635.32, estimated at 30 minutes per application, 5 minutes per fish collection report, and 30 minutes per annual summary report, have been submitted for OMB clearance.

19. Archival tag reporting requirements in § 635.33, estimated at 1.5 hours for implantation reports and 30 minutes per fish catch report, have been approved by OMB under control number 0648-0338.

20. Bluefin tuna statistical documents in § 635.42, estimated at 20 minutes per fish import report, and government validation of BSDs in § 635.44, estimated at 2 hours per occurrence, have been approved by OMB under control number 0648-0040.

Written requests for purse seine allocations for Atlantic tunas as required under § 635.27 are not currently approved by OMB. Requests for purse seine allocations are not subject to the PRA because, under current regulations, a maximum of five vessels could be subject to reporting

under this requirement. Since it is impossible for 10 or more respondents to be involved, the information collection is exempt from the PRA clearance requirement.

Certificate of eligibility requirements for imports of fish subject to trade restrictions under § 635.40 are not currently approved by OMB. These regulations were required under ATCA and were originally issued prior to the enactment of the PRA. NMFS would consult with OMB prior to implementing any trade restrictions under this section. While ATCA and the implementing regulations at § 635.40 authorize unilateral trade action by the United States, it is more likely that multilateral action would be taken upon a recommendation of ICCAT. In such case, notice and comment rulemaking procedures under ATCA would apply and OMB clearance for information collections would be requested prior to issuance of a proposed rule.

Public comment is sought regarding whether these proposed new or revised collections-of-information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimates; 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 the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Highly Migratory Species Management Division and OMB (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a 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.

NMFS initiated formal consultation for all HMS fisheries on September 25, 1996, under section 7 of the ESA. NMFS requested an additional formal consultation on the HMS FMP and Billfish Amendment on May 12, 1998. The consultation request concerned the possible effects of management measures in the Amendment 1 to the Billfish FMP and the HMS FMP, including implementation of AOCTRP measures for the pelagic longline fishery. In a BO issued on May 29, 1997, NMFS concluded that operation of the harpoon fishery is not likely to adversely affect the continued existence of any endangered or threatened species under NMFS jurisdiction and that

operation of the longline fishery may adversely affect, but may not jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. Conversely, it was concluded that driftnet fishing for swordfish in the Northeast and Mid-Atlantic and for sharks in the Southeast jeopardized the continued existence of the northern right whale. NMFS proposed on October 20, 1998 (63 FR 55998), to prohibit the use of driftnets in the Atlantic swordfish fishery. Another rulemaking implemented a take reduction plan for Atlantic large whales in the southeastern United States under the MMPA (62 FR 39157, July 22, 1997). This proposed rule, if implemented, would further reduce the likelihood of interactions between HMS fishing gears and northern right whales and endangered sea turtles through gear modifications and educational workshops for pelagic longline fishermen that were recommended by the AOCTRT.

This proposed rule has been determined to be significant for purposes of E.O. 12866.

#### List of Subjects

##### 50 CFR Part 285

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

##### 50 CFR Parts 600, 630, 635, 644, and 678

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties. Dated: January 12, 1999.

#### **Rolland A. Schmitt,**

*Assistant Administrator, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR chapters II and VI are proposed to be amended as follows:

#### **50 CFR Chapter II**

##### **PART 285—ATLANTIC TUNAS FISHERIES [REMOVED]**

1. Under the authority of 16 U.S.C. 971 *et seq.*, part 285 is removed.

#### **50 CFR Chapter VI**

##### **PART 630—ATLANTIC SWORDFISH FISHERY [REMOVED]**

##### **PART 644—ATLANTIC BILLFISHES [REMOVED]**

##### **PART 678—ATLANTIC SHARKS [REMOVED]**

2. Under the authority of 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*, parts 630, 644, and 678 are removed.

**PART 600—MAGNUSON-STEVENS ACT PROVISIONS**

3. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

4. In § 600.10, the definitions for “Albacore”, “Angling”, “Atlantic tunas”, “Atlantic Tunas Convention Act”, “Bigeye tuna”, “Billfish”, “Bluefin tuna”, “Blue marlin”, “Carcass”, “Catch limit”, “Charter vessel”, “Fillet”, “Fish weir”, “Headboat”, “Land”, “Longbill spearfish”, “Pelagic longline”, “Person”, “Postmark”, “Pound net”, “Purchase”, “Round”, “Sailfish”, “Sale or sell”, “Shark net”, “Skipjack tuna”, “Strikenet for sharks”, “Swordfish”, “Trip”, “White marlin”, and “Yellowfin tuna” are added in alphabetical order to read as follows:

**§ 600.10 Definitions.**

\* \* \* \* \*

*Albacore* means the species *Thunnus alalunga*, or a part thereof.

\* \* \* \* \*

*Angling* means fishing for or catching of, or the attempted fishing for or catching of, fish by any person (angler) with a hook attached to a line that is hand-held or by rod and reel made for this purpose.

\* \* \* \* \*

*Atlantic tunas* means bluefin tuna, albacore, bigeye tuna, skipjack tuna and yellowfin tuna found in the Atlantic Ocean.

*Atlantic Tunas Convention Act* means the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971h.

\* \* \* \* \*

*Bigeye tuna* means the species *Thunnus obesus*, or a part thereof.

*Billfish* means blue marlin, longbill spearfish, sailfish, or white marlin.

*Bluefin tuna* means the species *Thunnus thynnus*, or a part thereof.

*Blue marlin* means the species *Makaira nigricans*, or a part thereof.

*Carcass* means a fish that has been gilled and/or gutted and the head and some or all fins have been removed, but that is otherwise in whole condition.

*Catch limit* means the total allowable harvest or take from a single fishing trip or day, as defined in this section.

\* \* \* \* \*

*Charter vessel* means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire.

\* \* \* \* \*

*Fillet* means to remove slices of fish flesh from the carcass by cuts made parallel to the backbone.

\* \* \* \* \*

*Fish weir* means a large catching arrangement with a collecting chamber that is made of non-textile material (wood, wicker) instead of netting as in a pound net.

\* \* \* \* \*

*Headboat* means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire.

\* \* \* \* \*

*Land* means to begin offloading fish, to offload fish, or to arrive in port or at a dock, berth, beach, seawall, or ramp.

*Longbill spearfish* means the species *Tetrapturus pfluegeri*, or a part thereof.

\* \* \* \* \*

*Pelagic longline* means a suspended monofilament longline with greater than 3 hooks or leaders that is supported along its length by floats and is marked on the surface by high-flyers. It is a rebuttable presumption that a longline marked with floats and high-flyers in water depths greater than 50 fathoms (91 m) is a pelagic longline.

*Person* means any individual, partnership, corporation, or association subject to the jurisdiction of the United States.

\* \* \* \* \*

*Postmark* means independently verifiable evidence of the date of mailing, such as a U.S. Postal Service postmark, United Parcel Service, or other private carrier postmark, certified mail receipt, overnight mail receipt, or a receipt issued upon hand delivery to a representative of NMFS authorized to collect fishery statistics.

*Pound net* means a set net. The trap portion is composed of netting with a vertical side, a top, a cover, and non-return valves fitted inside. This may be moored with anchors and casks and held open with stretcher poles or floats.

\* \* \* \* \*

*Purchase* means the act or activity of buying, trading, or bartering, or attempting to buy, trade, or barter.

\* \* \* \* \*

*Round* means a whole fish—one that has not been gilled, gutted, beheaded, or definned.

\* \* \* \* \*

*Sailfish* means the species *Istiophorus platypterus*, or a part thereof.

*Sale or sell* means the act or activity of transferring property for money or credit, trading, or bartering, or attempting to so transfer, trade, or barter.

\* \* \* \* \*

*Shark net*, sometimes called a shark gillnet or shark driftnet, means a flat net with webbing of 5 inches or greater stretched mesh and a twine size of 0.52 mm diameter or greater. The shark net is unattached to the ocean bottom, whether or not it is attached to a vessel, and it is designed to be suspended vertically in the water to entangle the head or other body parts of a shark that attempts to pass through the meshes.

*Skipjack tuna* means the species *Katsuwonus pelamis*, or a part thereof.

\* \* \* \* \*

*Strikenet for sharks* means to fish with strikenet gear and to land or have on board an amount of shark that exceeds the recreational catch limit.

\* \* \* \* \*

*Swordfish* means the species *Xiphias gladius*, or a part thereof.

\* \* \* \* \*

*Trip* means the time period that begins when a fishing vessel departs from a dock, berth, beach, seawall, ramp, or port to carry out fishing operations and that terminates with a return to a dock, berth, beach, seawall, ramp, or port.

\* \* \* \* \*

*White marlin* means the species *Tetrapturus albidus*, or a part thereof.

*Yellowfin tuna* means the species *Thunnus albacares*, or a part thereof.

5. Section 600.15 is amended by redesignating paragraphs (a)(2) through (a)(6) as paragraphs (a)(5) through (a)(9), by redesignating paragraphs (a)(7) through (a)(11) as paragraphs (a)(11) through (a)(15), and by adding paragraphs (a)(2) through (a)(4) and paragraph (a)(10) to read as follows:

**§ 600.15 Other acronyms.**

(a) \* \* \* \*

(2) *ATCA*—Atlantic Tunas Convention Act

(3) *BFT* (Atlantic bluefin tuna) means the subspecies of bluefin tuna, *Thunnus thynnus thynnus*, or a part thereof, that is found in the Atlantic Ocean.

(4) *BSD* means the ICCAT bluefin tuna statistical document.

\* \* \* \* \*

(10) *ICCAT* means the International Commission for the Conservation of Atlantic Tunas.

\* \* \* \* \*

6. Part 635 is added to read as follows:

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

Subpart A—General Sec.

635.1 Purpose and scope.

635.2 Definitions.

635.3 Relation to other laws.

- 635.4 Permits and fees.
- 635.5 Recordkeeping and reporting.
- 635.6 Vessel and gear identification.
- 635.7 At-sea observer coverage.
- 635.8 Educational workshops.
- 635.9 Vessel monitoring.
- Subpart B—Limited Access
- 635.16 Limited access permits.
- Subpart C—Management Measures
- 635.19 BFT size classes.
- 635.20 Size limits.
- 635.21 Gear operation and deployment restrictions.
- 635.22 Recreational retention limits.
- 635.23 Retention limits for BFT.
- 635.24 Commercial retention limits for sharks and swordfish.
- 635.26 Catch and release.
- 635.27 Quotas.
- 635.28 Closures.
- 635.29 Transfer at sea.
- 635.30 Possession at sea and landing.
- 635.31 Restrictions on sale and purchase.
- 635.32 Specifically authorized activities.
- 635.33 Archival tags.
- 635.34 Adjustment of management measures.
- Subpart D—Restrictions on Imports
- 635.40 Restrictions to enhance conservation.
- 635.41 Species subject to documentation requirements.
- 635.42 Documentation requirements.
- 635.43 Contents of documentation.
- 635.44 Validation requirements.
- 635.45 Import restrictions for Belize, Honduras, and Panama.
- 635.46 Import restrictions on swordfish.
- Subpart E—International Port Inspection
- 635.50 Basis and purpose.
- 635.51 Authorized officer.
- 635.52 Vessels subject to inspection.
- 635.53 Reports.
- 635.54 Ports of entry
- Subpart F—Enforcement
- 635.69 Vessel monitoring systems.
- 635.70 Penalties.
- 635.71 Prohibitions.
- Appendix A to Part 635—Species Tables

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

#### Subpart A—General

##### § 635.1 Purpose and scope.

(a) *Atlantic tunas, billfish, and swordfish.* The regulations in this part govern the conservation and management of Atlantic tunas, billfish, and Atlantic swordfish under the authority of the Magnuson-Stevens Act and ATCA. They implement the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and in the Fishery Management Plan for Atlantic Billfishes. The Atlantic tunas regulations govern conservation and management of Atlantic tunas in the management area and apply to a person or vessel subject to the jurisdiction of the United States. The Atlantic billfish regulations govern conservation and management in the management area

and apply to a person or vessel subject to the jurisdiction of the United States. The swordfish regulations govern conservation and management of North and South Atlantic swordfish in the management unit. North Atlantic swordfish are managed under the authority of both ATCA and the Magnuson-Stevens Act. South Atlantic swordfish are managed under the sole authority of ATCA. The swordfish regulations apply to a person or vessel subject to the jurisdiction of the United States.

(b) *Shark.* The regulations in this part govern sharks under the authority of the Magnuson-Stevens Act and implement management measures in the Fishery Management Plan for Atlantic HMS. The shark regulations in this part govern conservation and management of sharks in the management area and apply to a person or vessel subject to the jurisdiction of the United States.

##### § 635.2 Definitions.

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

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

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

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

*Bottom longline* means a monofilament longline with greater than 3 hooks or leaders that is maintained on the ocean floor along its length by weights and is marked on the surface by marker buoys and/or high flyers.

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

*Cape Cod Bay closed area* means the area bounded by lines connecting the following coordinates: 42°04.8' N. lat., 70°10' W. long.; 42°12' N. lat., 70°15' W. long.; 42°12' N. lat., 70°30' W. long.; 41°46.8' N. lat., 70°30' W. long.; and on the south and east by the interior shore line of Cape Cod, MA.

*Certificate of Eligibility (COE)* means the certificate that accompanies a shipment of imported swordfish indicating that the swordfish or swordfish parts are not from the Atlantic Ocean or if they are, are derived from a swordfish weighing more than 33 lb (15 kg) dw.

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

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

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

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

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

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

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

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

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

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

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

*Export* means shipment of fish or fish products to a destination outside the customs territory of the United States for which a Shipper's Export Declaration (Customs Form 7525) is required. Atlantic HMS destined from one foreign country to another, which transits the United States and for which a Shipper's Export Declaration is not

required to be filed, will not be considered an export under this definition.

*Exporter* means the principal party responsible for effecting export from the United States as listed on the Shipper's Export Declaration (Customs Form 7525) or any authorized electronic medium available from U.S. Customs.

*First transaction in the United States* means the time and place at which the swordfish, is filleted, cut into steaks, or processed in any way that physically alters it after being landed in or imported into the United States.

*Fishing record* means all records of navigation and operations, as well as all records of catching, harvesting, transporting, landing, purchase, or sale.

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

*Fishing year* means—

(1) For Atlantic tunas, billfish, and swordfish—June 1 through May 31 of the following year; and

(2) For shark—January 1 through December 31.

*FL* (fork length) means the straight-line measurement of a fish from the tip of the snout to the fork of the tail. The measurement is not made along the curve of the body.

*Florida Straits* means the area off the east coast of Florida between 26° N. lat. and 28° N. lat. and 78° W. long. and 81° W. long.

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

*Great South Channel closed area* means the area bounded by lines connecting the following coordinates: 41°40' N. lat., 69°45' W. long.; 41°00' N. lat., 69°05' W. long.; 41°38' N. lat., 68°13' W. long.; and 42°10' N. lat., 68°31' W. long.

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

*ILAP* means an initial limited access permit issued pursuant to § 635.4.

*Import* means the release of HMS from a nation's Customs' custody and entry into the territory of that nation. HMS are imported into the United States upon release from U.S. Customs' custody pursuant to filing an entry summary document (Customs Form 7501) or any authorized electronic medium. HMS destined from one foreign country to another, which transit the United States and for which an entry summary is not required to be filed, are

not considered an import under this definition.

*Importer*, for the purpose of HMS imported into the United States, means the importer of record as declared on U.S. Customs Form 7501 or any authorized electronic medium.

*Intermediate country* means a country that exports to the United States HMS previously imported by that nation. Shipments of HMS through a country on a through bill of lading or in another manner that does not enter the shipments into that country as an importation do not make that country an intermediate country under this definition.

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

*Large coastal shark* means one of the species, or a part thereof, listed in paragraph (a) of Table 1 in Appendix A to this part.

*Large medium BFT* means a BFT measuring 73 to < 81 inches (185 to < 206 cm) CFL.

*Large school BFT* means a BFT measuring 47 to < 59 inches (119 to < 150 cm) CFL.

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

*Management area* (1) For Atlantic tunas, blue marlin, longbill spearfish, and white marlin, means the Atlantic Ocean,

(2) For sailfish, means the Atlantic Ocean north of 5° N. lat. and west of 30° N. long.,

(3) For North Atlantic swordfish, means the Atlantic Ocean north of 5° N. lat.,

(4) For South Atlantic swordfish, means the Atlantic Ocean south of 5° N. lat., and

(5) For sharks, means the western north Atlantic ocean, including the Gulf of Mexico and the Caribbean Sea.

*Mid-Atlantic Bight* means the area off the mid-Atlantic states between 35° N. lat. and 43° N. lat. to 71° W. long.

*Non-ridgeback shark* means one of the species, or a part thereof, listed in paragraph (a)(2) of Table 1 in Appendix A to this part.

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

*Office Director* means the Director of the Office of Sustainable Fisheries, NMFS.

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

*Pelagic shark* means one of the species, or a part thereof, listed in

paragraph (c) of Table 1 in Appendix A to this part.

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

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

*Regional Administrator (RA)* means the director of the NMFS Regional Office in either the Northeast region (Gloucester, MA) or the Southeast region (St. Petersburg, FL), whichever is applicable.

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

*Ridgeback shark* means one of the species, or a part thereof, listed in paragraph (a)(1) of Table 1 in Appendix A to this part.

*School BFT* means a BFT measuring 27 to < 47 inches (69 to < 119 cm) CFL.

*Shark* means one of the species, or a part thereof, listed in Tables 1 and 2 in Appendix A to this part.

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

*Small medium BFT* means a BFT measuring 59 to < 73 inches (150 to < 185 cm) CFL.

*South Atlantic swordfish or south Atlantic swordfish stock* means those swordfish in the Atlantic Ocean south of 5° N. lat.

*Southeastern United States closed area* means the coastal waters between 28°00' N. lat. and 30°15' N. lat. from the coast to 5 nm (9 km) offshore; and coastal waters between 30°15' N. lat. and 31°15' N. lat. from the coast to 15 nm (28 km) offshore.

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

*Trip limit* means the total allowable take from a single trip as defined in this section.

*Weighout slip* means a document provided by a person who weighs fish or parts thereof that are landed from a fishing vessel to the owner or operator of the vessel. A weighout slip for sharks prior to or as part of a commercial transaction involving shark carcasses or

fins must record the weights of carcasses and any detached fins. A document, such as a "tally sheet," "trip ticket," or "sales receipt," that contains such information is considered a weighout slip.

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

### § 635.3 Relation to other laws.

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

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

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

(d) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing, or exempted educational activity, as specified in § 600.745 of this chapter or in § 635.32.

### § 635.4 Permits and fees.

(a) *Permits.* (1) Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities from a vessel without the appropriate permit, unless otherwise authorized by NMFS.

(2) The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess any Atlantic HMS and must make such permit available for inspection upon request by NMFS. The owner or operator of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection, all valid vessel permits.

(3) Limited access vessel permits issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the takings provision of the Fifth Amendment of the U.S. Constitution. Rather, such permits represent only a harvesting privilege that may be

revoked, suspended, or amended subject to the requirements of the Magnuson-Stevens Act or other applicable law.

(4) A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

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

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

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

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

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

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

(c) *HMS Charter/Headboat Permits.* (1) Vessels that are used as charter boats or headboats to fish for, take, retain, or possess any Atlantic HMS must be permitted to do so. Such permit requirement may be met by the HMS Charter/Headboat Permit issued under this § 635.4 or by a Charter/Headboat Permit issued under §§ 622.4 or 648.4.

(2) The operator of a charter vessel or headboat that has been issued an HMS Charter/Headboat Permit must also have

a valid merchant marine license or uninspected passenger vessel license while fishing for or possessing Atlantic HMS.

(d) *Atlantic Tunas Vessel Permits.* (1) The owner or operator of each vessel used to fish for or take Atlantic tunas or on which Atlantic tunas are retained or possessed must obtain, in addition to any other required permits, one and only one of six category permits: Angling, General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons on board a vessel with a valid Atlantic Tunas Vessel Permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, and size classes applicable to the permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel's valid permit is in the General, Harpoon, Charter/Headboat, Longline, Purse Seine, or Trap Category of the Atlantic Tunas Permit. Persons may not sell Atlantic tunas caught on board a vessel with a permit in the Angling Category.

(3) Except for purse seine vessels for which that permit has been issued under this section, a vessel owner may change the category of the vessel's permit no more than once each year and only from January 1 through May 15. From May 16 through December 31, the vessel's permit category may not be changed, regardless of a change in the vessel's ownership.

(4) An Atlantic Tunas Longline Category Permit can be obtained for a vessel only if the owner or operator of the vessel has both a shark directed or incidental catch limited access permit and a swordfish directed or incidental catch limited access permit.

(5) An owner of a vessel with an Atlantic Tunas Permit in the Purse Seine Category may transfer the permit to another vessel that he or she owns or to a vessel owned by someone else. In either case, a written request for transfer must be submitted to NMFS, to a designated address, accompanied by an application for the new vessel and the existing permit. NMFS will issue no more than 5 Atlantic Tunas Purse Seine Category Permits.

(e) *Commercial Shark Vessel Limited Access Permits.* (1) The owner or operator of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained or possessed with an intention to sell or that are sold must obtain, in addition to any other required permits, only one of two types of commercial limited access shark permits: shark directed limited access permit or shark incidental limited access permit. See § 635.16

regarding the initial issuance of these two types of permits. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational catch limits are intended to be sold.

(2) A commercial limited access permit for shark is not required if the vessel is recreational fishing under recreational catch limits, is operating under a shark EFP, or is fishing exclusively within state waters.

(3) As of June 1, 1999, the only valid Federal commercial vessel permits for shark are those that have been issued under the limited access criteria specified in § 635.16.

(4) An owner or operator issued a permit pursuant to this part must agree, as a condition of such permit, that the vessel's shark fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, landward of the EEZ, or outside the EEZ, and without regard to where such shark or gear are possessed, taken, or landed. However, when a vessel fishes in the waters of a state that has more restrictive regulations on shark fishing, those more restrictive regulations may be applied by that state in its waters.

(f) *Commercial Swordfish Vessel Limited Access Permits.* (1) The owner or operator of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained or possessed with an intention to sell or that are sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. See § 635.16 regarding the initial issuance of these three types of permits.

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

(3) As of June 1, 1999, the only valid commercial Federal vessel permits for swordfish are those that have been issued under the limited access criteria specified in § 635.16.

(4) A limited access permit for swordfish is valid only when the vessel has on board a valid commercial limited access permit for shark and an Atlantic Tunas Longline Category Permit.

(g) *Dealer permits*—(1) *Atlantic tunas.* A valid dealer permit for Atlantic tunas is required to receive, purchase, trade for, or barter for Atlantic tunas from a fishing vessel of the United States an Atlantic tuna or import or export bluefin tuna, regardless of origin.

(2) *Shark.* A valid dealer permit for shark is required to receive, purchase, trade for, or barter for an Atlantic shark from a fishing vessel of the United States.

(3) *Swordfish.* A valid dealer permit for swordfish is required to receive, purchase, trade for, or barter for an Atlantic swordfish from a fishing vessel of the United States or import a swordfish, regardless of origin.

(h) *Applications for permits.* Except for ILAPs, an owner or operator or dealer must submit a complete application and required supporting documents at least 30 days before the date on which the permit is to be made effective. Application forms and instructions for their completion are available from the Office Director (ILAP) or the RA (Dealer Permit and LAP).

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

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

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

(2) *Limited access permits for swordfish and shark.* See § 635.16 for the issuance of ILAPs for shark and swordfish. See paragraph (l) of this section for transfers of ILAPs and LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

(3) *Dealer permits.* (i) An applicant for a dealer permit must provide all the information requested on the application form, including the company name, principal place of business, mailing address, and telephone number.

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

Articles of Association or Incorporation) along with the names, addresses, and telephone numbers of all shareholders owning 5 percent or more of the corporation's stock.

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

(i) *Change in application information.* A vessel owner or operator or dealer must report any change in the information contained in an application for a permit within 30 days after such change. The report must be submitted in writing to the Office Director or the RA. In the case of a vessel permit for Atlantic tunas or an HMS Charter/Headboat Permit, the vessel owner must report the change to NMFS by phone or internet. A new permit will be issued to incorporate the new information, subject to limited access provisions specified in paragraph (l)(2) of this section. For certain informational changes, NMFS may require supporting documentation before a new permit will be issued. If a change in the permit information is not reported within 30 days, the permit is void as of the 31st day after such change.

(j) *Permit issuance.* (1) Except for ILAPs, the Office Director or the RA will issue a permit within 30 days of receipt of a complete and qualifying application. An application is complete when all requested forms, information, and documentation have been received.

(2) NMFS will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(3) For issuance of ILAPs for shark and swordfish, see § 635.16.

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

(l) *Transfer*—(1) *General.* A permit issued under this section is not transferable or assignable to another vessel or owner or operator, or dealer; it is valid only for the vessel and owner or operator, or dealer to which it is issued. If a person acquires a vessel or dealership and wants to conduct activities for which a permit is required, that person must apply for a permit in accordance with the provisions of paragraph (h) of this section; if the acquired vessel is permitted in the



Atlantic tunas fishery in the Purse Seine Category, in accordance with paragraph (d)(5) of this section; or, if the acquired vessel is permitted in either the shark or swordfish fishery, in accordance with paragraph (l)(2) of this section. If the acquired vessel or dealership is currently permitted, an application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

(2) *Shark and swordfish commercial limited access permits.* (i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner or operator may transfer a shark or swordfish ILAP or LAP to another vessel that he or she owns or to a vessel owned by another person. Directed handgear ILAPs and LAPs may be transferred to another vessel but only for use with handgear and subject to upgrading restrictions in paragraph (l)(2)(ii) of this section. Incidental catch ILAPs and LAPs are not subject to the requirements specified in paragraphs (l)(2)(ii) and (iii) of this section.

(ii) Limitations are imposed on upgrading the fishing capacity of vessels that have commercial permits for shark or swordfish. These limitations apply to a permitted vessel or to a transfer or replacement vessel when the permit is transferred. Specifically, an owner or operator may not upgrade the permitted vessel or transfer the permit to another vessel if the upgrade or transfer results in an increase in horsepower of more than 20 percent, or an increase in length overall, gross registered tonnage, net tonnage, or hold capacity of more than 10 percent from the horsepower, length overall, gross registered tonnage, net tonnage, or hold capacity of the vessel issued an ILAP. Only one upgrade in each of these vessel characteristics is allowed. Upgrades to a vessel's length overall, gross registered tonnage, net tonnage, or hold capacity must be made at the same time. However, an upgrade in horsepower may be made separately from an upgrade in the other vessel characteristics listed here.

(iii) No person may own or control more than 5 percent of the vessels that have swordfish directed commercial permits or more than 5 percent of the vessels that have shark directed commercial permits.

(iv) For ILAP or LAP transfers to a replacement vessel, an owner of a vessel issued an ILAP or LAP pursuant to this part must request the RA to transfer the ILAP or LAP to another vessel owned by the same owner, subject to requirements

specified in paragraph (l)(2)(ii) of this section, if applicable. The owner must return the current valid ILAP or LAP to the RA with a complete application for a LAP, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' documentation or state registration must accompany a completed application.

(v) For ILAP or LAP transfers to a different person, the transferee of an ILAP or LAP must request the RA to transfer the original ILAP or LAP, subject to requirements specified in paragraphs (l)(2)(ii) and (iii) of this section, if applicable. The following must accompany the completed application: The original ILAP or LAP with signatures of both parties on the back of the permit, the bill of sale of the ILAP or LAP, and copies of both vessels' documentation or state registration.

(vi) For ILAP or LAP transfers with the sale of the permitted vessel, the transferee of the vessel and ILAP or LAP issued to that vessel must request the RA to transfer the ILAP or LAP, subject to requirements specified in paragraphs (l)(2)(ii) and (iii) of this section, if applicable. The following must accompany the completed application: The original ILAP or LAP with signatures of both parties on the back of the permit, the bill of sale of the ILAP or LAP and the vessel, and a copy of the vessels' documentation or state registration.

(vii) The owner or operator of a vessel issued an ILAP or LAP who sells the permitted vessel, but retains the ILAP or LAP, must notify the RA within 30 days after the sale of the change in application information in accordance with paragraph (i) of this section. If the owner or operator wishes to transfer the ILAP or LAP to a replacement vessel, he/she must apply and follow the procedures in paragraph (l)(2)(iv) of this section.

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

(m) *Renewal*—(1) *General.* Persons must apply annually for a vessel or dealer permit for Atlantic tunas, sharks, swordfish and HMS Charter/Headboats. A renewal application must be submitted to the RA at least 30 days before a permit's expiration to avoid a

lapse of permitted status. NMFS will renew a permit provided that the specific requirements for the requested permit are met, all reports required under the Magnuson-Stevens Act have been submitted, including those described in § 635.5, and the applicant is not subject to a permit sanction or denial under paragraph (a)(7) of this section.

(2) *Limited access permits for shark and swordfish.* As of June 1, 2000, the owner or operator of a vessel of the United States that fishes for, possesses, lands, or sells shark or swordfish from the management unit, or takes or possesses such shark or swordfish as incidental catch, must have a LAP issued pursuant to the requirements in § 635.4(e) and (f). However, any ILAP that expires June 30, 2000, is valid through that date. Only valid ILAP or LAP holders in the preceding year are eligible for a LAP.

#### § 635.5 Recordkeeping and reporting.

(a) *Vessels*—(1) *Logbooks.* If an owner or operator of an HMS Charter/Headboat vessel, an Atlantic Tunas vessel, or a commercial shark or swordfish vessel, for which a permit has been issued under § 635.4 (a),(c),(d), (e), and (f) respectively, is selected in writing by NMFS, he must maintain a fishing record on a logbook specified by NMFS. Entries are required on the vessel's fishing effort, and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the form within 24 hours and, for a 1-day trip, before offloading. The owner or operator must submit the form postmarked within 7 days of offloading all Atlantic HMS.

(2) *Weightout slips.* If an owner or operator is required to maintain and submit logbooks under paragraph (a)(1) of this section, and Atlantic HMS harvested on a trip are sold, the owner or operator must obtain and submit copies of weightout slips for those fish. Each weightout slip must show the dealer to whom the fish were transferred, the date they were transferred, and the carcass weight of each fish for which individual weights are normally recorded. For fish that are not individually weighed, a weightout slip must record total weights by species and market category. The owner or operator must also submit copies of weightout slips with the logbook forms required under paragraph (a)(1) of this section.

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



(1) *Atlantic HMS other than BFT.* (i) Dealers must report Atlantic tunas (including BFT), Atlantic swordfish and swordfish imports, and Atlantic sharks received on the first through the 15th of each month; the report must be submitted to NMFS postmarked not later than the 20th of that month. Reports of such fish received on the 16th through the last day of each month must be postmarked not later than the 5th of the following month. If a dealer did not receive Atlantic tunas, swordfish or swordfish imports, or sharks during a reporting period, he must submit a report to a designated NMFS address so stating, and the report must be postmarked as specified for the reporting period.

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

(iii) In lieu of providing a report required under paragraph (b)(1)(i) of this section to NMFS by mail, the dealer may give the report to a state or Federal fishery port agent designated by NMFS. A report given to such port agent must be delivered not later than the prescribed postmark date for the reporting period.

(2) *BFT—(i) Reports of BFT.* The dealer must submit a completed landing report to a designated NMFS location by electronic facsimile (fax) or an Interactive Voice Response System on BFT received not later than 24 hours from receipt. The landing report must be signed by the permitted vessel's owner or operator immediately upon transfer of the fish and must verify the name and permit number of the vessel that landed the fish. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number are correctly recorded on the landing report. In addition, the dealer must submit that landing report to the designated NMFS address postmarked within 24 hours of the purchase or receipt of each BFT. The dealer must also submit a biweekly report on forms supplied by NMFS. For BFT received on the first through the 15th of each month, the dealer must submit the biweekly report forms to NMFS postmarked not later than the 20th of that month. Reports of receipt of such BFT received on the 16th through the last day of each month must be postmarked not later than the 5th of the following month.

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

(A) *Affixing dealer tags.* A dealer or a dealer's agent must affix a dealer tag to each BFT purchased or received immediately upon its offloading from a vessel. The dealer or dealer's agent must affix the tag to the tuna between the fifth dorsal finlet and the keel.

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

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

(c) *BFT not sold.* (1) Except as specified in paragraph (c)(2) of this section, persons that catch and land a large medium or giant BFT and do not transfer it to a dealer who has a dealer permit for Atlantic tunas, must contact NMFS enforcement at the time of landing such BFT and, if requested, make the tuna available so that a NMFS enforcement agent may inspect the fish and attach a tag to it.

(2) Persons that catch and land a large medium or giant BFT that is counted against the Angling category quota must report it through the automated catch reporting system by calling 1-888-USA-TUNA. In any state where a NMFS or state-level harvest tag or catch-card reporting program is in effect for school, large school, or small medium BFT, such tags must also be used on large medium and giant BFT reported under this paragraph (c)(2).

(d) *Anglers.* In addition to the requirements in paragraph (c) of this section, the owner of a vessel that has an Angling category permit for Atlantic tunas will be notified by NMFS of the reporting requirements and procedures for school, large school, and small medium BFT. Alternative reporting procedures may be established by

NMFS in cooperation with states and may include telephone, dockside or mail surveys, mail-in or phone-in reports, tagging programs, or mandatory BFT check-in stations. A statistically based sampling of persons fishing under the Angling category may be used for these alternative reporting programs. Once notified by NMFS of the reporting requirements and procedures, each person so notified must comply with those requirements and procedures.

(e) *Tournament operators.* Persons that conduct a fishing tournament involving scores or awards for the catch of Atlantic HMS, whether or not retained, from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, must notify NMFS of the purpose, dates, and location of the tournament at least 4 weeks prior to commencement of the tournament. If selected for reporting, a tournament operator must maintain and submit to a designated NMFS address a record of catch and effort on forms available from NMFS. Completed forms must be submitted to NMFS postmarked not later than the 7th day after the conclusion of the tournament and must be accompanied by a copy of the tournament rules.

(f) *Inspection.* Any person authorized to carry out enforcement activities under the regulations in this part has authority, without warrant or other process, to inspect, at any reasonable time, catch on board a vessel or on the premises of a dealer, logbooks, catch reports, statistical records, sales receipts, or other records and reports required by this part to be made, kept, or furnished. An owner or operator of a fishing vessel that has been issued a permit under § 635.4 must allow NMFS to inspect and copy any required reports and the records, in any form, on which the completed reports are based. A dealer who has been issued a permit under § 635.4 must allow NMFS to inspect and copy any required reports and the records, in any form, on which the completed reports are based.

(g) *Additional data and inspection.* Additional data on Atlantic HMS may be collected by statistical reporting agents, as designees of NMFS, and by authorized officers. A person who fishes for or possesses an Atlantic HMS is required to make such fish or parts thereof available for inspection by NMFS upon request.

#### § 635.6 Vessel and gear identification.

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

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

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

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

(iii) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long and at least 10 inches (25.4 cm) in height for all other vessels.

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

(c) *Gear identification.* (1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses a handline, harpoon, longline, or shark net, must display the vessel's registration number or Atlantic Tunas permit number on each float attached to a handline or harpoon and on the terminal end floats and high-flyers (if applicable) on a longline or shark net used by the vessel. A high-flyer is a flag, radar reflector, or radio beacon transmitter attached to a longline. The vessel's number must be at least 1 inch (2.5 cm) in height in block arabic numerals in a color that contrasts with the background color of the float or high-flyer.

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

(3) Provisions on gear marking for the southeast U.S. shark driftnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32 (b) of this title.

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

(a) NMFS may select for observer coverage any trip of a vessel that has a HMS Charter/Headboat permit, an Atlantic Tunas permit, or a shark or swordfish permit, issued under § 635.4 (a), (c), (d), (e), and (f), respectively. NMFS will advise a vessel owner, in writing, when his or her vessel is selected for observer coverage. The owner or operator of a vessel that is selected must notify NMFS before commencing any fishing trip that may result in the harvest of Atlantic HMS. Notification procedures will be

specified in a selection letter sent by NMFS.

(b) The owner or operator of a vessel on which a NMFS-approved observer is embarked must comply with §§ 600.725 and 600.746 of this chapter and:

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

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

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

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

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

#### § 635.8 Educational workshops.

No later than June 1, 2000, each operator of a vessel that uses a pelagic longline to fish for Atlantic HMS must attend an educational workshop on measures to reduce the incidental catch of protected species. A certificate of attendance at such workshop must be available on such vessel and made available for inspection upon the request of NMFS.

#### § 635.9 Vessel monitoring.

(a) An owner or operator of a vessel that fishes for Atlantic HMS with a pelagic longline must have an operating vessel monitoring system (VMS) unit on board each trip. Only VMS units that have been approved by NMFS for use in the fisheries for Atlantic HMS will meet this requirement.

(b) No person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit, or attempt any of the same.

(c) When a VMS unit fails, or when notified by NMFS that a unit appears to have failed, the vessel owner or operator must communicate to a designated NMFS location the vessel's position at least every 2 hours starting when the failure is discovered or NMFS's notification is received. Each position so reported must be communicated to NMFS within 2 hours of the time of the position. The vessel's owner or operator must replace or repair a failed VMS unit prior to the vessel's next trip.

### Subpart B—Limited Access

#### § 635.16 Limited access permits.

As of June 1, 1999, the only valid commercial vessel permits for shark and swordfish are those that have been issued under the limited access criteria specified in this section.

(a) *Eligibility requirements for ILAPs—(1) Directed permits.* To be eligible for a directed ILAP in the shark or swordfish fishery, a vessel owner or an operator that qualified that vessel for a Federal commercial permit must demonstrate past participation in the respective fishery by having:

(i) Been the owner or qualifying operator of a vessel that was issued a valid permit for the respective fishery at any time during the period July 1, 1994, through December 31, 1997; and

(ii) Documented landings from the respective Federally permitted vessel that he or she owned or was the qualifying operator of at least:

(A) One hundred and two sharks per year for any 2 calendar years during the period January 1, 1991, through December 31, 1997, provided the landings after July 1, 1993, occurred when the permit was valid; or

(B) Twenty-five swordfish per year for any 2 calendar years during the period January 1, 1987, through December 31, 1997, provided the landings occurred when the permit was valid; and

(iii) Been the owner or qualifying operator of a vessel that:

(A) Had a valid Federal shark permit at any time during the period July 1, 1998, through August 4, 1998, or

(B) Had a valid Federal swordfish permit at any time during the period June 1, 1998, through August 31, 1998.

(2) *Incidental catch permits.* To be eligible for an incidental ILAP in the shark or swordfish fishery, a vessel owner or an operator that qualified that vessel for a Federal commercial permit must demonstrate past participation in the respective fishery by having:

(i) Been the owner or qualifying operator of a vessel that was issued a valid permit for the respective fishery at any time during the period July 1, 1994, through December 31, 1997; and

(ii) Documented landings from the respective federally permitted vessel that he or she owned or was the qualifying operator of at least:

(A) Seven sharks during the period January 1, 1991, through December 31, 1997, provided the landings after July 1, 1993, occurred when the permit was valid; or

(B) Eleven swordfish during the period January 1, 1987, through December 31, 1997, provided the

landings occurred when the permit was valid; and

(iii) Been the owner or qualifying operator of a vessel that:

(A) Had a valid Federal shark permit at any time during the period July 1, 1998, through August 4, 1998, or

(B) Had a valid Federal swordfish permit at any time during the period June 1, 1998, through August 31, 1998; and

(iv) Met either the gross income from fishing or the gross sales of fish requirement specified in paragraph (a)(3)(i) or (ii) of this section; or

(v) Been the owner of a vessel that had a permit for Atlantic tuna in the Incidental category at any time from January 1, 1998, through August 31, 1998; or

(vi) Been the owner of a vessel that is eligible for a directed or incidental ILAP for swordfish.

(3) *Handgear permits.* To be eligible for a swordfish handgear ILAP—

(i) The owner's gross income from commercial fishing (i.e., harvest and first sale of fish) or from charter/headboat fishing must be more than 50 percent of his or her earned income, during one of the 3 calendar years preceding the application; or

(ii) The owner's gross sales of fish harvested from his or her vessel must have been more than \$20,000, during one of the 3 calendar years preceding the application; or

(iii) The owner must provide documentation of having been issued a swordfish permit for use with harpoon gear; or

(iv) The owner must document his or her historical landings of swordfish with handgear through logbook records, verifiable sales slips or receipts from registered dealers or state landings records.

(b) *Landings histories.* For the purposes of the landings history criteria in paragraphs (a)(1)(ii) and (a)(2)(ii) of this section,

(1) The owner or qualifying operator of a permitted vessel at the time of a landing retains credit for the landing unless ownership of the vessel has been transferred and there is a written agreement signed by both parties to the transfer, or there is other credible written evidence that the original owner transferred the landings history to the new owner.

(2) A vessel's landings history may not be divided among owners. A transfer of credit for landings history must be for the entire record of landings under the previous owner or operator.

(3) Vessel landings histories may not be consolidated among vessels. Owners or operators may not pool landings

histories to meet the eligibility requirements.

(4) If more than one person claims eligibility for an ILAP based on a vessel's ownership or permit or landings history, the applicants claiming the ownership or permit or landings history must determine which person will receive the ILAP. NMFS will issue only one ILAP based on a vessel's ownership or permit or landings history.

(c) *Alternative eligibility requirements for initial permits.* (1) Persons that acquired ownership of a vessel and its landings history after December 31, 1997, are exempt from the requirement to have owned a federally permitted shark or swordfish vessel at any time during the period July 1, 1994, through December 31, 1997. The acquired landings history must meet the criteria for a directed or incidental catch permit specified in paragraph (a)(1)(ii)(A), (a)(1)(ii)(B), (a)(2)(ii)(A) or (a)(2)(ii)(B) of this section, and such persons must have had a valid Federal shark permit at any time during the period July 1, 1998, through August 4, 1998, or a valid Federal swordfish permit at any time during the period June 1, 1998, through August 31, 1998.

(2) If a person first obtained a shark or swordfish permit in 1997, the required shark landings for a directed or incidental catch permit specified in paragraphs (a)(1)(ii) and (a)(2)(ii) are modified as follows:

(i) To qualify for a directed shark or swordfish ILAP, respectively, such persons must document landings from a Federally permitted vessel of at least:

(A) One hundred and two sharks in calendar year 1997, provided such landings occurred when the permit was valid, or

(B) Twenty-five swordfish in calendar year 1997, provided such landings occurred when the permit was valid.

(ii) To qualify for an incidental shark or swordfish catch ILAP, respectively, such persons must document landings from a federally permitted vessel of at least one shark or swordfish in calendar year 1997, provided such landings occurred when the permit was valid.

(d) *Procedures for initial issue of limited access permits—*(1) *Notification of status.* (i) Shortly after the final rule is published, the Division Chief will notify by certified mail each owner or qualifying operator of a vessel that had a valid Federal shark permit during the period July 1, 1998, through August 4, 1998, each owner of a vessel that had a valid Federal swordfish permit during the period June 1, 1998, through August 31, 1998, and each owner of a vessel that had a valid Atlantic tuna Incidental

category permit at any time from January 1, 1998, through August 31, 1998, of the initial determination of the owner's eligibility for a directed or incidental catch ILAP. The Division Chief will make the initial determination based on the criteria in paragraphs (a)(1), (a)(2), and (c)(2) of this section and records available to NMFS. The Division Chief will not make initial determinations of eligibility for a vessel permit under the alternative eligibility requirements specified in paragraph (a)(3) or (c)(1) of this section.

(ii) If NMFS determines that all qualifications for a directed or incidental catch ILAP have been met, no further action is required—the appropriate permit for the vessel will be included with the notification. An ILAP issued by NMFS will be valid through the marked expiration date.

(iii) A person must apply to the Division Chief for the appropriate permit if—

(A) He or she does not agree with the initial determination;

(B) He or she believes that he or she qualifies for a directed or incidental catch ILAP but did not receive a letter from the Division Chief regarding eligibility status; or

(C) He or she believes that he or she qualifies for a swordfish handgear permit.

(2) *Applications for ILAPs.* (i) Application forms and instructions are available from the Division Chief. A completed signed application form and required supporting documents must be submitted by the vessel owner or operator; or in the case of a corporate-owned vessel, an officer or shareholder; or in the case of a partnership-owned vessel, a general partner.

(ii) An application for a directed or incidental catch ILAP must be received by the Division Chief no later than 90 days after the final rule is published. An application for an initial swordfish handgear permit must be received by the Division Chief no later than 180 days after the final rule is published. An application received by the Division Chief after these dates will not be considered.

(iii) Each application must be accompanied by documentation showing that the criteria for the requested permit have been met. Vessel landings of sharks through June 30, 1993, may be documented by verifiable sales slips or receipts from registered dealers or by state landings records. Vessel landings of sharks after July 1, 1993, and all vessel landings of swordfish may be documented only by fishing vessel logbook records that NMFS received before March 2, 1998.

NMFS will not count a landing when the vessel did not have a valid Federal permit.

(iv) Information submitted on an application and documentation in support of an application are subject to verification by comparison with Federal, state, and other records and information. Submission of false information or documentation may result in disqualification from initial participation in the shark fishery and may result in Federal prosecution.

(v) If the Division Chief receives an incomplete application in a timely manner, NMFS will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Division Chief's notification, the application will be considered abandoned.

(3) *Actions on applications.* Within 30 days of receipt of a complete application, the Division Chief will take one of the following actions:

(i) If the eligibility requirements are met, the Division Chief will issue the appropriate ILAP which will be valid through the marked expiration date.

(ii) If the information and documentation presented in the application are insufficient, inconsistent with vessel ownership, landings history, and other information available from NMFS' records, or cannot be verified, the Division Chief will notify the applicant that the information supplied is not adequate to warrant issuance of the requested permit. The applicant will have 30 days to submit to the Division Chief corroborating documents in support of the application or to submit a revised application.

(iii) If, based on the information and documentation supplied with the application, the Division Chief determines that the applicant does not meet the eligibility criteria for the requested vessel permit, the Division Chief will deny the application. Each letter of denial will be sent via certified mail. If, based on the documentation supplied, the Division Chief believes the applicant is qualified for an incidental catch vessel permit instead of the requested directed ILAP, he or she will notify the applicant of the denial of the requested directed ILAP but will issue the incidental catch ILAP.

(4) *Appeals.* (i) If an application for an ILAP is denied or an incidental catch ILAP is issued instead of the requested directed ILAP, the applicant may appeal the denial to the Office Director. The sole grounds for appeal is that the original denial by the Division Chief was based on incorrect or incomplete information. No other grounds will be considered. An appeal must be in

writing, must be received by the Office Director within 90 days of the notice of denial, must specify the grounds for the appeal, and must include documentation supporting the grounds for the appeal. Documentation of vessel landings of sharks through June 30, 1993, that the Office Director may consider in support of an appeal are verifiable sales slips or receipts from registered dealers, or state landings records. The only documentation of vessel landings of sharks after July 1, 1993, that the Office Director will consider in support of an appeal are official NMFS logbook records that NMFS received prior to March 2, 1998. The Office Director will not accept vessel landings records of sharks dated after July 1, 1993, from periods in which a vessel did not have a valid Federal shark permit. The only documentation of vessel landings of swordfish that the Office Director will consider in support of an appeal are official NMFS logbook records that NMFS received prior to March 2, 1998. Photocopies of documentation (e.g., permits, logbook reports) will be acceptable for initial submission. The Office Director may request originals at a later date, which would be returned to the appellant via certified mail.

(ii) Upon receipt of a written appeal with supporting documentation, the Office Director may issue a provisional ILAP that is valid for the pendency of the appeal. This provisional permit will be valid only for use with the specified gear and will be subject to all regulations contained in this part.

(iii) The Office Director will appoint an appeals officer who will review the appeal documentation and other available records. The appeals officer will make findings and a recommendation, which shall be advisory only, to the Office Director.

(iv) The Office Director will make a final decision on the appeal and send the appellant notice of the decision by certified mail. The Office Director's decision is the final administrative action of the Department of Commerce on the application.

(v) If the appeal is denied, the provisional permit will become invalid 5 days after receipt of the notice of denial, which NMFS will send by certified mail. If the appeal is accepted, NMFS will issue an appropriate permit.

(5) *Contested eligibility criteria.* If more than one person claims eligibility for an ILAP based on contested vessel's ownership, permit, or landings histories, the owners or operators claiming the ownership/permit/landings histories must determine which person will receive the ILAP. The Division

Chief or Office Director will issue only one permit based on a vessel's ownership/permit/landings histories. In the event that the parties are unable to reach resolution, NMFS will not issue a permit to any of the parties.

(e) *Transfers of limited access permits.* For provisions on transfer of limited access permits, see § 635.4(l).

(f) *Renewals of limited access permits.* For provisions on renewal of limited access permits, see § 635.4(m).

## Subpart C—Management Measures

### § 635.19 BFT size classes.

The CFL of any BFT found with the head removed will be calculated using the following formula: CFL equals pectoral fin curved fork length (PFCFL) multiplied by a factor of 1.35. The CFL, as taken or determined by conversion of the PFCFL, will be the sole criterion for determining the size class of a beheaded BFT. This formula may be changed if additional information becomes available by filing a notice at the Office of the Federal Register of the new formula.

### § 635.20 Size limits.

(a) *General.* CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas.

(b) *BFT, bigeye tuna, and yellowfin tuna.* (1) No person may take, retain, or possess a BFT, bigeye tuna, or yellowfin tuna in the Atlantic Ocean that is less than 27 inches (69 cm) CFL;

(2) Further, no person may retain or possess a BFT with the head removed that is less than 20 inches (51 cm), PFCFL.

(3) No person may remove the head of a bigeye tuna or yellowfin tuna if the remaining portion is less than 27 inches (69 cm), CFL.

(c) *Billfish.* No person may take a billfish from, or retain or possess a billfish in its management area that is less than the following minimum size limits:

(1) Blue marlin--99 inches (251 cm), LJFL.

(2) White marlin--66 inches (168 cm), LJFL.

(3) Sailfish--63 inches (160 cm), LJFL.

(d) *Sharks.* No person may take, retain, or possess any species classified as a ridgeback LCS shark in or from the Atlantic EEZ, that is less than 54 inches (137 cm), FL, or, if the head and fins have been removed, 30 inches (76 cm), from the forward edge of the cut where the first dorsal fin is removed to the precaudal pit. If the precaudal pit has been removed, such measurement will be to the posterior edge of the carcass.

(e) *Swordfish*. (1) No person may take, retain, or possess a swordfish on board a fishing vessel in the Atlantic Ocean that is less than 29 inches (73 cm), CK. CK length will be the sole criterion for determining the size of Atlantic swordfish caught.

(2) A swordfish or part thereof that weighs less than 33 lb (15 kg), dw, is deemed to have been harvested by a vessel of the United States and in violation of the minimum size if less than 29 inches (73 cm) CK unless it is accompanied by a certificate of eligibility. The certificate should attest that the swordfish was imported, and either harvested from other than the Atlantic Ocean, or that the fish part was derived from an Atlantic swordfish that weighed at least 33 lb (15 kg) dw at harvest. Refer to § 635.46(b) for the requirements related to the certificate of eligibility.

(3) A swordfish or part thereof will be monitored for compliance with the minimum size requirement from the time it is landed in or imported into the United States to the first point of transaction and including the time and place that it is filleted, cut into steaks, or processed in any way that physically alters it.

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

(a) *All Atlantic HMS fishing gears*. (1) An Atlantic HMS harvested in its management area that is not retained must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water.

(2) If a billfish is caught by a hook, the fish must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water.

(b) *General*. No person may use any gear to fish for Atlantic HMS other than those gears specifically authorized in this part. A vessel using or having on board in the Atlantic Ocean any unauthorized gear may not have on board an Atlantic HMS.

(c) *Pelagic longlines*. (1) From August 1, 1999, through November 30, 1999, no person may deploy a pelagic longline that is more than 24 nautical miles (nm) (44.5 km) in length in the Mid-Atlantic Bight.

(2) No person that fishes in the following areas during the following periods and has a pelagic longline on board may possess Atlantic tunas or swordfish. No person may use a pelagic longline in the following areas and periods:

(i) Southeastern United States closed area—December 1 through March 31.

(ii) Great South Channel closed area—March 1 through June 30.

(iii) Cape Cod Bay closed area—February 1 through April 30.

(iv) Florida Straits—July 1 through September 30.

(3) When the gear being fished by a person aboard a vessel that has a permit for Atlantic HMS hooks or entangles a marine mammal or sea turtle, the operator of the vessel must immediately release the animal, retrieve his fishing gear, and move at least 1 nm (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

(d) *Authorized gear*—(1) *Atlantic tunas*. No person that fishes for, takes, retains, or possesses Atlantic tunas may have on board or use any gear other than that authorized for the category for which the Atlantic tunas permit has been issued for the harvesting vessel. Gear types authorized for each Atlantic tunas permit category are:

(i) *Angling*. Rod and reel (including downriggers) and handline.

(ii) *Charter/Headboat*. Rod and reel (including downriggers), bandit gear, and handline.

(iii) *General*. Rod and reel (including downriggers), handline, harpoon, and bandit gear.

(iv) *Harpoon*. Harpoon.

(v) *Longline*. Longline.

(vi) *Purse Seine*. Purse seine.

(A) *Mesh size*. (1) A purse seine used in directed fishing for BFT must have a mesh size equal to or smaller than 4.5 inches (11.4 cm) in the main body (stretched when wet) and must have at least 24-count thread throughout the net.

(2) NMFS may exempt an owner or operator from the mesh requirements in paragraph (d)(2)(i) of this section if the exemption will not result in significant injury or mortality to BFT that are encircled by the net but manage to escape.

(B) *Inspection of purse seine vessels*.

Persons that own or operate a purse seine vessel conducting a directed fishery for Atlantic tunas must have their fishing gear inspected for mesh size by an enforcement agent of NMFS prior to commencing fishing for the season in any fishery that may result in the harvest of Atlantic tunas. Such persons must request such inspection at least 24 hours before commencement of the first fishing trip of the season. If NMFS does not inspect the vessel within 24 hours of such notification, the inspection requirement is waived. In addition, at least 24 hours before commencement of offloading any BFT

after a fishing trip, such persons must request an inspection of vessel and catch by notifying NMFS. If NMFS does not inspect the vessel at offloading, the inspection requirement is waived.

(vii) *Trap*. Pound net and fish weir. Trap gear is authorized for BFT only.

(2) *Billfish*. (i) Persons may possess a billfish in or take a billfish from its management area only if it is harvested by rod and reel. Regardless of how taken, persons may not possess a billfish in or take a billfish from its management area on board a vessel using or having on board a pelagic longline.

(ii) In a hook-and-line fishery for billfish, persons may not use more than one hook per bait or lure.

(3) *Sharks*. (i) No person may possess a shark in or take a shark from its management area by any gear other than rod and reel, longline, or driftnet.

(ii) No person may use a driftnet with a total length of 2.5 km or more to fish for sharks. No person may have on board a vessel a driftnet with a total length of 2.5 km or more.

(iii) Provisions on gear deployment for the southeast U.S. shark net fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32 (f) of this title.

(4) *Swordfish*. (i) No person may possess Atlantic swordfish taken by any gear other than rod and reel, harpoon, handline, or longline unless he or she possesses an Incidental LAP for swordfish. A swordfish from its management area may not be taken by a driftnet, and may not be retained, or possessed by a vessel with a driftnet on board.

(ii) A swordfish will be deemed to have been harvested by a driftnet when it is onboard, or offloaded from a vessel using or having onboard a driftnet.

(iii) A swordfish will be deemed to have been harvested by handgear when it is onboard, or offloaded from a vessel using or having onboard handgear if such vessel does not have a longline on board.

**§ 635.22 Recreational retention limits.**

(a) *General*. Recreational retention limits apply to billfish taken from or possessed in the management area, a shark taken from or possessed in the Atlantic EEZ, and a yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel trip limit and the cumulative retention limit based on the number of persons aboard. The retention limits apply to a person who fishes in any manner, except a person aboard a vessel that has on board the commercial vessel permit issued under

§ 635.4 for the appropriate species/species group. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

(b) *Billfish*. One white marlin, blue marlin or sailfish may be retained per vessel per trip. No longbill spearfish may be retained. NMFS may decrease the retention limit for blue and/or white marlin to zero if NMFS projects that the landings limit for the applicable species will be reached. Such decrease will be based on a review of current landings data, and any other relevant factors. NMFS will file for publication notification of any decrease in retention limit with the Office of the Federal Register at least 3 calendar days prior to the decrease becoming effective.

(c) *Sharks*. (1) *Large coastal sharks, prohibited sharks, small coastal sharks*. None may be retained.

(2) *Pelagic shark*. One pelagic shark per vessel per trip may be retained.

(d) *Yellowfin tuna*. Three yellowfin tunas per person per day may be retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be retained on board a vessel.

#### § 635.23 Retention limits for BFT.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28.

(a) *General category*. (1) A person aboard a vessel that has a General Category Atlantic Tunas Permit may not possess, retain, land, or sell a BFT in the school, large school, or small medium size class.

(2) On an RFD, a person aboard a vessel that has a General Category Atlantic Tunas Permit may not possess, retain, land, or sell a BFT in the large medium or giant size class. On days other than RFDs, when the General Category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the **Federal Register**. An RFD applies only when the General Category fishery is open.

(3) Regardless of the length of a trip, no more than a single day's retention limit of large medium or giant BFT may be possessed or retained aboard a vessel that has a General Category Atlantic Tunas Permit. On days other than RFDs, when the General Category is open, no person aboard such vessel may continue to fish and the vessel must immediately proceed to port once the applicable limit for large medium or giant BFT is retained.

(4) To provide for maximum utilization of the quota for BFT, NMFS

may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will publish notification in the **Federal Register** of any adjustment in the allowable daily retention limit specified in paragraph (b)(2) of this section. NMFS will file such notification at the Office of the Federal Register at least 3 calendar days prior to the change becoming effective.

(b) *Angling category*—(1) *Large medium and giant BFT*. (i) No large medium or giant BFT may be retained, possessed, landed, or sold in the Gulf of Mexico, except one per vessel per year, which may be caught incidentally to fishing for other species.

(ii) One per vessel per year may be retained, possessed, and landed in non-Gulf of Mexico areas.

(iii) When a large medium or giant BFT has been caught and retained under paragraph (b)(1) of this section, no person aboard the vessel may continue to fish and the vessel must immediately proceed to port. Large medium and giant BFT caught by a person aboard a vessel with an Angling Category Atlantic Tunas Permit may not be sold or transferred to any person for a commercial purpose. The owner or operator of the vessel must report the large medium or giant BFT via the automated catch reporting system by telephone within 24 hours of landing.

(2) *School, large school, or small medium BFT*. One per vessel per day may be retained, possessed, or landed. Regardless of the length of a trip, no more than a single day's allowable catch of school, large school, or small medium BFT may be possessed or retained aboard a vessel that has an Angling Category Atlantic Tunas Permit.

(3) *Changes to retention limits*. To provide for maximum utilization of the quota for BFT spread over the longest period of time, NMFS may increase or decrease the retention limit for any size class BFT or change a vessel trip limit to an angler limit and vice versa. Such increase or decrease will be based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will file such notification at the Office of the Federal Register at least 3 calendar days prior to the change becoming effective.

(c) *HMS Charter/Headboat*. (1) When fishing in the Gulf of Mexico, the restrictions applicable to the Angling

category specified in paragraphs (b)(1) and (2) of this section apply to a vessel that has an HMS Charter/Headboat permit.

(2) When fishing other than in the Gulf of Mexico when the fishery for the General category is closed, the restrictions applicable to the Angling category specified in paragraphs (b)(1) through (3) of this section apply on a vessel that has an HMS Charter/Headboat permit.

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

(d) *Harpoon category*. A vessel that has a Harpoon Category Atlantic Tunas Permit may retain, possess, or land multiple giant BFTs per day, but only one large medium BFT per vessel per day may be retained, possessed, or landed.

(e) *Purse Seine category*. Persons that own or operate a vessel that has a Purse Seine Category Atlantic Tunas Permit,

(1) May retain, possess, land, or sell large medium BFT in amounts not exceeding 15 percent, by weight, of the giant BFT landed on that trip, provided that the total amount of large medium BFT landed by that vessel during the fishing year does not exceed 10 percent, by weight, of the total amount of giant BFT allocated to that vessel for that fishing year.

(2) May retain, possess or land BFT smaller than the large medium size class that are taken incidentally when fishing for skipjack tuna or yellowfin tuna in an amount not exceeding 1 percent, by weight, of the skipjack tuna and yellowfin tuna landed on that trip. Landings of BFT smaller than the large medium size class may not be sold and are counted against the Purse Seine category BFT quota allocated to that vessel.

(f) *Longline category*. An owner or operator of a vessel that has a Longline Category Atlantic Tunas Permit may retain, possess, land, or sell large medium and giant BFT taken incidentally in fishing for other species. Limits on such retention/possession/landing/sale are as follows:

(1) For landings south of 34°00' N. lat., one large medium or giant BFT per vessel per trip may be landed, provided that for the months of January through April at least 1,500 lb (680 kg), and for the months of May through December at least 3,500 lb (1,588 kg), either dw or round weight, of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold.

(2) For landings north of 34°00' N. lat., landings per vessel per trip of large medium and giant BFT may not exceed 2 percent by weight, either dw or round weight, of all other fish legally caught, retained, and offloaded from the same trip and which are recorded on the dealer weighout slip as sold.

(g) *Trap category.* Persons that own or operate a vessel that has a Trap Category Atlantic Tunas Permit may retain, possess, land, and sell each fishing year only one large medium or giant BFT that is taken incidentally while fishing for other species with a pound net or fish weir.

#### § 635.24 Commercial retention limits for sharks and swordfish.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28.

(a) *Sharks.* (1) Persons that own or operate a vessel that has a directed ILAP or LAP for shark issued pursuant to § 635.16 may retain, possess or land no more than 4,000 lb (1,814 kg), dw, of LCS per trip.

(2) Persons that own or operate a vessel that has an incidental catch ILAP or LAP for sharks may retain, possess or land no more than five LCS and 16 SCS and pelagic sharks, combined, per trip.

(b) *Swordfish.* Persons that own or operate a vessel that has an incidental catch permit for swordfish may retain, possess, or land no more than two swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state, except persons that own or operate a vessel in the squid trawl fishery that has such permit may retain, possess, or land no more than five swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state. A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel.

#### § 635.26 Catch and release.

(a) *BFT.* (1) Notwithstanding other provisions of this part, an angler may

fish for BFT under a tag and release program, provided the angler tags all BFT so caught with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the catching of the tagged BFT. If NMFS-issued or NMFS-approved conventional tags are not on board a vessel, all anglers aboard that vessel are ineligible to fish under the tag and release program.

(2) Persons may obtain NMFS-issued conventional tags, reporting cards, and detailed instructions for their use from the NMFS Cooperative Tagging Center. Persons may use a conventional tag obtained from a source other than NMFS to tag BFT, provided the use of such tags is registered each year with the Cooperative Tagging Center and the NMFS program manager has approved the use of a conventional tag from that source. An angler using an alternative source of tags wishing to tag BFT may contact the NMFS Cooperative Tagging Center at the Southeast Fishery Science Center.

(3) An angler registering for the HMS tagging program is required to provide his or her name, address, phone number and, if applicable, the identity of the alternate source of tags.

(b) *Sharks.* Notwithstanding other provisions of this part, a person may fish for white sharks (*Carcharodon carcharias*), blue sharks (*Prionace glauca*), or Atlantic sharpnose sharks (*Rhizoprionodon terraenovae*) with rod and reel under a catch and release program, provided the person tags and releases such fish to the sea immediately with a minimum of injury.

#### § 635.27 Quotas.

(a) *BFT.* Consistent with ICCAT recommendations, NMFS has divided the fishing year's total amount of BFT that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories of Atlantic Tunas permits and the HMS Charter/Headboat permit holders. Allocations of quota are according to the following percentages: General - 47.1 percent; Angling - 19.7 percent, which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent; Purse Seine - 18.6 percent or 250 mt, whichever is less; Longline - 8.1 percent; and Trap - 0.1 percent. In addition, NMFS is holding in reserve 2.5 percent of the quota of BFT for inseason adjustments, to compensate for overharvest in any category other than the Angling category school BFT

subquota or for fishery independent research. NMFS may apportion a quota allocated to any category to specified fishing periods or to geographic areas. BFT quotas are specified in whole weight.

(1) *General category quota.* (i) Catches from vessels for which General Category Atlantic Tunas Permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota. See § 635.23(c)(3) regarding catches by vessels with an HMS Charter/Headboat permit that are counted against the General category quota. The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category quota is 47.1 percent of the overall U.S. quota, available for periods as follows:

(A) June 1 through August 31—60 percent;

(B) September 1 through September 30—30 percent; and

(C) October 1 through May 31—10 percent.

(ii) NMFS will adjust each period's quota based on overharvest or underharvest in the prior period.

(iii) When the remainder of the fishing year's quota is projected to be 10 mt, NMFS will file a notification at the Office of the Federal Register that sets aside the remaining quota for an area comprising the waters north of 38°47' N. lat. and south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running south-southeast 150 degrees true. The daily catch limit for this set-aside area will be one large medium or giant BFT per vessel per day. Upon the effective date of the set-aside, fishing for, possessing, retaining, or landing large medium or giant BFT must cease in all waters outside the set-aside area.

(iv) The remainder of each preceding category may be caught, retained, possessed, and landed north of 38° 47' N. lat.

(2) *Angling category quota.* The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which Angling Category Atlantic Tunas Permit or an HMS Charter/Headboat permit have been issued is 19.7 percent of the overall U.S. BFT quota. No more than 2.3 percent of the Angling category quota may be large medium or giant BFT and no more than 8 percent of the overall U.S. BFT quota may be school BFT. The Angling category includes the school BFT held in reserve described under paragraph (a)(7)(ii) of this section.



The size class subquotas for BFT are further subdivided as follows:

(i) Under paragraph (a)(7)(ii) of this section, 47.2 percent of the school BFT Angling category quota, minus the school BFT quota held in reserve may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(ii) 47.2 percent of the large school/small medium BFT Angling category quota, may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(iii) 66.7 percent of the Large medium and Giant BFT Angling category quota may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels for which Longline category Atlantic tunas permits have been issued is 8.1 percent of the overall U.S. quota. No more than 78.9 percent of the Longline Category quota may be caught, retained, possessed, or landed in the area south of 34°00' N. lat.

(4) *Purse Seine category quota.* (i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine Category Atlantic Tunas Permits have been issued is 18.6 percent of the overall U.S. quota or 250 mt, whichever is less. The purse seine fishery under this quota commences on August 15 each year.

(ii) An owner or operator of a vessel for which a Purse Seine Category Atlantic Tunas Permit has been issued must apply in writing to NMFS for an allocation of BFT from the Purse Seine category quota. The application must be postmarked no later than April 15 for an allocation of the quota that becomes available on August 15.

(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel owners so requesting. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine Category Atlantic Tunas permits. An owner of a purse seine vessel intending to fish for more than one allocation in any fishing season must provide written notice of such intent to NMFS 15 days before commencing fishing. An owner of a purse seine vessel who transfers his or her allocation to another purse seine vessel may not use his or her vessel in any fishery in which BFT might be caught for the remainder of the fishing year after his or her allocation is transferred.

(iv) An owner of a vessel for which a Purse Seine Category Atlantic Tunas

Permit has been issued may apply to NMFS to permanently consolidate Purse Seine Category vessel permits issued under § 635.4. Upon written approval of consolidation by NMFS, the Purse Seine Category Atlantic Tunas Permit of a transferring vessel will be canceled, and the receiving owner may apply for allocations of BFT commensurate with the number of consolidated permits. An owner of a purse seine vessel whose permit is canceled through consolidation may not use his or her vessel in any fishery in which BFT might be caught.

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels for which Harpoon Category Atlantic Tunas Permits have been issued is 3.9 percent of the overall U.S. quota.

(6) *Trap category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Trap Category Atlantic Tunas Permits have been issued is 0.1 percent of the overall U.S. BFT quota.

(7) *Reserve.* (i) The total amount of BFT that is held in reserve for inseason adjustments and fishery-independent research using quotas or subquotas other than the Angling category school BFT subquota, is 2.5 percent of the overall U.S. BFT quota. NMFS may allocate any portion of this Reserve for inseason adjustments to any category quota in the fishery, other than the Angling category school BFT subquota.

(ii) The total amount of school BFT that is held in reserve for inseason adjustments and fishery independent research is 18.5 percent of the total school BFT quota for the Angling category as described under paragraph (a)(2) of this section; which is in addition to the amounts specified in paragraph (a)(7)(i) of this section. NMFS may allocate any portion of the school BFT held in reserve for inseason adjustments to the Angling category.

(iii) NMFS will file notification of any inseason adjustment at the Office of the Federal Register before such allocation is to become effective. Before making any such adjustment, NMFS will consider the following factors:

(A) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock.

(B) The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made.

(C) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount

of BFT before the end of the fishing year.

(D) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded.

(E) Effects of the transfer on BFT rebuilding and overfishing.

(F) Effects of the transfer on accomplishing the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.

(8) *Inseason adjustments.* Within a fishing year, NMFS may transfer quotas among categories or, as appropriate, subcategories. If it is determined, based on the factors in paragraphs (a)(7)(iii)(A) through (F) of this section and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the reserve as specified in paragraphs (a)(7)(i) and (ii) of this section. NMFS will file a notification of any inseason adjustment with the Office of the Federal Register before such transfer is to become effective.

(9) *Annual adjustments.* If NMFS determines, based on landings statistics and other available information, that a BFT quota in any category, or, as appropriate, subcategory, has been exceeded or has not been reached, NMFS may subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year, provided that the total of the adjusted quotas and the reserve is consistent with a recommendation of ICCAT regarding country quotas. NMFS will file at the Office of the Federal Register a notice of the amount to be subtracted or added and the basis for the quota reductions or increases.

(b) *Shark—(1) Commercial quotas.*

The commercial quotas for shark specified in paragraphs (b)(1)(i) through (iv) of this section apply to persons fishing aboard vessels for which commercial Federal vessel permits for shark have been issued under § 635.4 and to persons who sell shark harvested solely from state waters. Commercial quotas are specified for each of the categories of large coastal shark, small coastal shark, and pelagic shark.

(i) *Large coastal sharks.* The annual commercial quota for large coastal sharks is 860 mt dw, apportioned between ridgeback and non-ridgeback shark and divided between two semiannual fishing seasons, January 1 through June 30, and July 1 through December 31. The length of each season will be determined based on the projected catch rates, available quota,



and other relevant factors. NMFS will file a notice of each season's length at the Office of the Federal Register in a timely manner. The quotas for each fishing season (unless otherwise specified in the **Federal Register**) are as follows:

- (A) Ridgeback shark—321 mt dw.
- (B) Non-ridgeback shark—109 mt dw.

(ii) *Small coastal shark*. The annual commercial quota for small coastal shark is 359 mt dw, divided between two equal semiannual periods, January 1 through June 30, and July 1 through December 31. The quota for each semiannual period is 179.5 mt, dw.

(iii) *Pelagic sharks*. The annual commercial quotas for pelagic sharks are 30 mt dw for porbeagle sharks and 550 mt dw for all other pelagic sharks (unless otherwise specified in the **Federal Register**). These quotas are divided between two equal semiannual periods, January 1 through June 30, and July 1 through December 31. The quotas for each semiannual period are as follows:

- (A) Porbeagle sharks—15 mt dw.
- (B) Pelagic sharks, other than porbeagle sharks—225 mt dw.

(iv) *Annual adjustments*. (A) NMFS will adjust the next year's semiannual quotas for large coastal, small coastal, and pelagic sharks to reflect actual catches during any semiannual period. For example, a commercial quota underage or overage in the season that begins January 1 will result in an equivalent increase or decrease in the following year's quota for that season, provided that the annual quotas are not exceeded. NMFS will file a notice of any adjustment at the Office of the Federal Register.

(B) The annual quota for dead discards of blue shark, which is a prohibited shark, is 545 mt whole weight (273 mt dw). NMFS will reduce the annual commercial quota for pelagic shark for the next fishing year by the amount that this quota is exceeded.

(C) Sharks taken or discarded dead are counted against the applicable directed fishery quota. Sharks taken and landed from state waters are counted against the applicable directed fishery quota.

(v) *Public display quota*. The annual quota for persons who collect sharks under an EFP is 60 mt whole weight (43 mt dw).

- (2) [Reserved]

(c) *Swordfish*. (1) Consistent with ICCAT recommendations, the fishing year's total amount of swordfish that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction is divided into quotas for the North Atlantic swordfish stock and the South Atlantic swordfish stock.

The quota for the North Atlantic swordfish stock is further divided into semi-annual directed fishery quotas and an incidental catch quota for fishermen targeting other species. A swordfish from the North Atlantic swordfish stock landed before the effective date of a closure of the directed fishery by a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the directed fishery quota. A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish has been issued, landed consequent to recreational fishing, or landed after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the incidental catch quota. The entire quota for the South Atlantic swordfish stock is reserved for longline vessels for which a directed fishery permit for swordfish has been issued; retention of swordfish caught incidental to other fishing activities is prohibited in the Atlantic Ocean south of 5° N. lat.

(i) *North Atlantic swordfish stock*. (A) The annual directed fishery quota for the North Atlantic swordfish stock is 2073.4 mt dw, divided into two equal semiannual quotas of 1036.6 mt dw, one for the period June 1 through November 30, and the other for the period December 1 through May 31 of the following year.

(B) The annual incidental catch quota for the North Atlantic swordfish stock is 300 mt dw.

(ii) *South Atlantic swordfish stock*. The annual directed fishery quota for the South Atlantic swordfish stock is 289 mt dw. Incidental harvest of swordfish is prohibited in the Atlantic Ocean south of 5° N. lat.

(2) *Inseason adjustments*. (i) NMFS may adjust the December 1 through May 31 semiannual directed fishery quota to reflect actual catches during the June 1 through November 30 semiannual period, provided that the fishing year's directed fishery quota is not exceeded.

(ii) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed fishery quota.

(iii) If NMFS determines that it is necessary to close the directed swordfish fishery prior to the scheduled end of a semi-annual season, any estimated overharvest or underharvest of the directed fishery quota for that semi-annual period will be used to adjust the annual incidental catch quota accordingly.

(iv) NMFS will file a notice at the Office of the Federal Register of any inseason swordfish quota adjustment and its apportionment made under this paragraph (c)(3) of this section.

(3) *Annual adjustments*. (i) As necessary, NMFS will reevaluate the quotas specified in paragraphs (c)(1) and (2) of this section based on consideration of the following factors:

(A) Swordfish stock abundance assessments;

(B) Swordfish stock age and size composition;

(C) Catch and effort in the swordfish fishery; and

(D) Consistency with ICCAT recommendations.

(ii) Except for the carryover provisions of paragraph (c)(3)(iii) of this section, NMFS will file a notice of any adjustment at the Office of the Federal Register, providing for a minimum 30-day comment period.

(iii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that area. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual periods. NMFS will file a notice at the Office of the Federal Register of any adjustment or apportionment made under this paragraph (c)(3)(iii) of this section.

#### § 635.28 Closures.

(a) *BFT*. (1) When a BFT quota, other than the Purse Seine category quota specified in § 635.27(a)(4), is reached, or is projected to be reached, NMFS will file a notice of closure at the Office of the Federal Register. On and after the effective date and time of such notification, for the remainder of the fishing year, fishing for, retaining, possessing, or landing BFT under that quota is prohibited until the opening of the subsequent quota period.

(2) From August 15 through December 31, the owner or operator of a vessel that has been allocated a portion of the Purse Seine category quota under § 635.27(a)(4) may fish for BFT, yellowfin, bigeye, albacore, or skipjack tuna from January 1 through August 14. Landings of BFT taken incidental to fisheries targeting other Atlantic tunas or in any fishery in which BFT might be caught will be deducted from the individual vessel's quota for the following fishing season (i.e., August 15 through December 31). Upon reaching its individual vessel allocation of BFT, the vessel may not participate in a directed purse seine fishery for Atlantic

tunas for the remainder of the fishing year.

(3) If NMFS determines that variations in seasonal distribution, abundance, or migration patterns of BFT, or the catch rate in one area, precludes anglers in another area from a reasonable opportunity to harvest a portion of the Angling and Charter/Headboat categories quota, NMFS may close all or part of the fishery under that category and may reopen it at a later date if NMFS determines that BFT have migrated into the other area. In determining the need for any such temporary or area closure, NMFS will consider the following factors:

(i) The usefulness of information obtained from catches of a particular geographic area of the fishery for biological sampling and for monitoring the status of the stock;

(ii) The current year catches from the particular geographic area relative to the catches recorded for that area during the preceding 4 years;

(iii) The catches from the particular geographic area to date relative to the entire category and the likelihood of closure of that entire category of the fishery if no allocation is made;

(iv) The projected ability of the entire category to harvest the remaining amount of BFT before the anticipated end of the fishing season.

(b) *Shark.* (1) The commercial fishery for large coastal shark will remain open for fixed semiannual seasons, as specified at § 635.27(b)(1)(i). From the effective date and time of a season closure until an additional quota becomes available, the fishery for large coastal sharks is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4.

(2) When a semiannual quota for small coastal sharks or pelagic sharks specified in § 635.27(b)(1)(ii) and (iii) is reached, or is projected to be reached, NMFS will file for publication a notification to that effect with the Office of the Federal Register. NMFS will file a notification of closure at the office of the **Federal Register** at least 5 days before the closure becomes effective. From the effective date and time of the closure until an additional quota becomes available, the fishery for the appropriate shark species group is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant § 635.4.

(3) When the fishery for a shark species group is closed, a vessel that has a commercial Federal permit for sharks may not possess or sell a shark of that species group, and a permitted shark

dealer may not purchase from a fishing vessel a shark of that species group, whether or not the fishing vessel has a commercial permit for shark, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage.

(c) *Swordfish*—(1) *Directed fishery closure.* When the annual or semiannual directed fishery quota specified in § 635.27(c)(1)(i) or (c)(2) is reached, or is projected to be reached, NMFS will file for publication (at least 14 days before the closure becomes effective) a notification to that effect with the Office of the Federal Register. From the effective date and time of the closure until additional directed fishery quota becomes available, the directed fishery for the appropriate stock is closed and the following catch limits apply:

(i) When the directed fishery for the North Atlantic swordfish stock is closed,

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a longline. However, legally taken swordfish from the South Atlantic swordfish stock may be possessed in the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel with a longline provided the harvesting vessel does no fishing on that trip in the Atlantic Ocean north of 5° N. lat. and reports positions with a vessel monitoring system, subject to the provisions in § 635.69. NMFS may change this incidental catch retention limit upon filing for publication notification of the change with the Office of the Federal Register. The effective date of such change will be at least 14 days after the date such notification is filed. Changes in the incidental catch limits will be based upon the length of the directed fishery closure and the estimated rate of catch by vessels fishing under the incidental catch quota.

(B) No swordfish may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel that has been issued a handgear permit under § 635.4(f)(1).

(ii) When the directed fishery for the South Atlantic swordfish stock is closed, swordfish from that stock taken incidental to fishing for other species may not be retained.

(2) *Incidental catch closure.* When the annual incidental catch quota specified in § 635.27(c)(1)(ii) is reached, or is projected to be reached, NMFS will file for publication a notification to that

effect with the Office of the Federal Register. From the effective date and time of such notification until an additional incidental catch quota becomes available, no swordfish may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state, and a swordfish in or from the Atlantic Ocean north of 5° N. lat. may not be sold. However, legally taken swordfish from the South Atlantic swordfish stock may be possessed in the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel with a longline, provided the harvesting vessel does not fish on that trip in the Atlantic Ocean north of 5° N. lat. and submits position reports from a vessel monitoring system as specified in § 635.69.

#### § 635.29 Transfer at sea.

(a) Persons may not transfer an Atlantic tuna, billfish, or swordfish at sea in the Atlantic Ocean, regardless of where the fish was harvested. However, an owner or operator of a vessel for which a Purse Seine Category Atlantic Tunas Permit has been issued under § 635.4 may transfer large medium and giant BFT at sea from the net of the catching vessel to another vessel for which a Purse Seine Category Atlantic Tunas Permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its vessel allocation.

(b) Persons may not transfer a shark at sea in the EEZ regardless of where the shark was harvested, and persons may not transfer at sea a shark taken in the EEZ regardless of where the transfer takes place.

#### § 635.30 Possession at sea and landing.

(a) *Atlantic tunas.* (1) Persons that own or operate a fishing vessel that possesses an Atlantic tuna in the Atlantic Ocean or that lands an Atlantic tuna in an Atlantic coastal port must maintain such Atlantic tuna through offloading either—

(i) In round form; or

(ii) Eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached.

(2) Persons that own or operate a purse seine vessel must have each large medium and giant BFT in the vessel's catch weighed, measured, and the information recorded on the required landing cards at the time of offloading and prior to transporting such BFT from the area of offloading.

(b) *Billfish.* Persons that own or operate a fishing vessel that possesses a billfish in its management area or lands a billfish in an Atlantic coastal port must maintain such billfish with its

head, fins, and bill intact through offloading. Persons may eviscerate such billfish, but it must otherwise be maintained whole.

(c) *Shark*. (1) The practice of "finning," i.e., removing only the fins and returning the remainder of the shark to the sea, is prohibited in the EEZ and on board a vessel for which a commercial vessel permit for shark has been issued. The prohibition on finning applies to all species of sharks. For a list of species known to occur in the U.S. EEZ, refer to Tables 1 and 2 of Appendix A to this part.

(2) Persons that own or operate a vessel that has been issued a commercial permit for shark may not fillet a shark at sea. Persons may eviscerate and remove the head and fins, but must retain the fins with the dressed carcasses. While on board and when offloaded, the wet shark fins may not exceed 5 percent of the weight of the shark carcasses.

(3) Persons that own or operate a vessel that has been issued a commercial permit that lands shark in an Atlantic coastal port, must have all fins weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing. Such weights must be recorded on the weighout slips specified in § 635.5(a)(2). Persons may not possess a shark fin on board a fishing vessel after the vessel's first point of landing. The wet fins may not exceed 5 percent of the weight of the carcasses.

(4) Persons aboard a vessel that does not have a commercial permit for shark must maintain a shark in or from the EEZ intact through landing—the head, tail, or fins may not be removed. The shark may be bled.

(d) *Swordfish*. Persons that own or operate a fishing vessel that possesses a swordfish in the Atlantic Ocean or lands a swordfish in an Atlantic coastal port, must maintain such swordfish in round or dressed form through off-loading. However, a swordfish that is damaged by shark bites may be retained and offloaded if the remainder of the carcass is at least 29 inches (73 cm) CK.

#### § 635.31 Restrictions on sale and purchase.

(a) *Atlantic tunas*. (1) Persons that own or operate a vessel that possesses an Atlantic tuna may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit, or a General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas. Persons may not sell a BFT smaller than the large medium size class. However, a large medium or giant BFT taken by a person on a vessel with an HMS

Charter/Headboat permit fishing in the Gulf of Mexico, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may not be sold (See § 635.23(c)). Persons may sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas.

(2) Dealers may purchase Atlantic tunas only from a vessel that has a valid commercial permit for Atlantic tunas in the appropriate category.

(3) Dealers or seafood processors may not purchase or sell a BFT smaller than the large medium size class unless it is lawfully imported and is accompanied by a BSD, as specified in § 635.42(a).

(4) A BFT in the possession of a dealer or seafood processor is deemed to be from the Atlantic Ocean. However, a BFT will not be deemed to be from the Atlantic Ocean if—

(i) It was landed in a Pacific state and remains in the state of landing, or

(ii) It is accompanied by a BSD, as specified in § 635.42(a).

(b) *Billfish*. (1) Persons may not sell or purchase a billfish caught in its management area.

(2) A billfish or a closely related species, namely, black marlin, *Makaira indica*, striped marlin, *Tetrapturus audax*, or shortbill spearfish, *Tetrapturus angustirostris*, or a part thereof, in the possession of a dealer or seafood processor is considered, for purposes of this part, to be a billfish from its Atlantic Ocean management area. However, a billfish or a closely related species will not be considered to be from its management area if—

(i) It was landed in a Pacific state and remains in the state of landing, or

(ii) It is accompanied by a Certificate of Eligibility that documents that it was harvested from other than its management area.

(c) *Shark*. (1) Persons that own or operate a vessel that possesses a shark in or from the EEZ may sell such shark only if the vessel has a valid commercial permit for shark. Persons may possess and sell a shark only when the fishery for that species group has not been closed, as specified in § 635.28(b)(3).

(2) Persons that own or operate a vessel on which a shark in or from the EEZ or state waters is possessed, may sell such shark only to a dealer that has a valid permit for shark.

(3) Persons that own or operate a fishing vessel may not sell fins from a shark harvested in the EEZ, or harvested in the Atlantic Ocean by a vessel for which a commercial permit for shark has been issued, that are disproportionate to the weight of shark carcasses landed; i.e., the fins may not

exceed 5 percent of the weight of the carcasses.

(4) Only dealers that have a valid permit for shark may purchase a shark from the owner or operator of a fishing vessel. Dealers may purchase a shark only from an owner or operator of a vessel who has a valid commercial permit for shark, except that dealers may purchase a shark from an owner or operator of a vessel who fishes exclusively in state waters and, thus, does not have a commercial permit for shark. Dealers may purchase a shark from an owner or operator of a fishing vessel only when the fishery for that species group has not been closed, as specified in § 635.28(b)(3).

(5) Dealers may not purchase from an owner or operator of a fishing vessel shark fins that are disproportionate to the weight of shark carcasses landed, i.e., the fins may not exceed 5 percent of the weight of the carcasses.

(d) *Swordfish*. (1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed, may sell such swordfish only if the vessel has a valid commercial permit for swordfish. Persons may sell such swordfish only to a dealer that has a valid permit for swordfish.

(2) Dealers may purchase a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel who has a valid commercial permit for swordfish.

#### § 635.32 Specifically authorized activities.

(a) Consistent with the provisions of § 600.745 of this chapter, NMFS may authorize, for the conduct of scientific research, the acquisition of information and data, public display, or the reduction of bycatch, economic discards or regulatory discards, activities otherwise prohibited by the regulations contained in this part. Activities subject to the provisions of this section may include, but are not limited to, scientific research resulting in, or likely to result in, the take, harvest or incidental mortality of Atlantic HMS, exempted fishing and exempted educational activities, or programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks. Such activities must be authorized in writing and are subject to all conditions specified in any letter of authorization, exempted fishing permit or scientific research permit issued in response to requests for authorization. For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments.

For the purposes of all regulated species covered under this part, other than Atlantic sharks, the requirements of § 600.745(a) and (c)(1) of this chapter are mandatory. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be counted against the quota category as specified in the written authorization.

(b)(1) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid shark EFP is required to fish for, take, retain, or possess a shark in or from the Atlantic EEZ for the purposes of public display under the shark public display quota specified in § 635.27(b)(2). A valid shark EFP must be on board the harvesting vessel, must be available when the shark is landed, must be available when the shark is transported to the display facility, and must be presented for inspection upon request of an authorized NMFS employee. A shark EFP is valid for the specific time, area, gear, and species specified on it.

(2) To be eligible for a shark EFP, a person must provide all information concerning his or her identification, numbers by species of sharks to be collected, when and where they will be collected, vessel(s) and gear to be used, description of the facility where they will be displayed, and any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(3) Written reports on fishing activities and disposition of catch must be submitted to NMFS for each fish collected within 24 hours of the collection. An annual written summary report of all fishing activities and disposition of all fish collected under the permit must also be submitted to NMFS. Specific reporting requirements will be provided by NMFS with the EFP.

#### § 635.33 Archival tags.

(a) *Implantation report.* Any person affixing or implanting an archival tag into a regulated species must obtain authorization from NMFS pursuant to § 635.32. Persons so authorized to conduct archival tag implantation must provide a written report to NMFS indicating the type and number of tags, the species and approximate size of the fish as well as any additional information requested in the authorization.

(b) *Landing.* Notwithstanding other provisions of this part, persons may catch, possess, retain, and land an Atlantic HMS in which an archival tag has been implanted or affixed, provided such persons comply with the

requirements of paragraph (c) of this section.

(c) *Landing report.* Persons that retain an Atlantic HMS that has an archival tag must contact NMFS, prior to or at the time of landing; furnish all requested information regarding the location and method of capture; and, as instructed, remove the archival tag and return it to NMFS or make the fish available for inspection and recovery of the tag by a NMFS scientist, enforcement agent, or other person designated in writing by NMFS.

(d) *Quota monitoring.* If an Atlantic HMS landed under the authority of paragraph (b) of this section is subject to a quota, the fish will be counted against the applicable quota for the species consistent with the fishing gear and activity which resulted in the catch. In the event such fishing gear or activity is otherwise prohibited under applicable provisions of this part, the fish shall be counted against the reserve quota established for that species.

#### § 635.34 Adjustment of management measures.

(a) Consistent with the Convention, ATCA, and this part, NMFS may change the commencement date for BFT fishing for any vessel permit or quota category. Such change may be made when NMFS determines that the changed date will enable scientific research on the status of the stock to be conducted more effectively and will not prevent the quotas for the affected fishery from being reached, based on historical catch data or other relevant information. NMFS will file a notice at the Office of the Federal Register of any change in a commencement date at least 60 days before commencement of the affected fishery.

(b) NMFS may adjust the catch limits for BFT, as specified in § 635.23, and the quotas for BFT, shark, and swordfish, as specified in § 635.27.

(c) In accordance with the framework procedures in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfishes, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: optimum yield; total allowable catch; quotas; recreational and commercial catch limits, including target catch requirements; size limits; fishing years or fishing seasons; species in the management unit and the specification of the species groups to which they belong; permitting and reporting requirements; monitoring and tracking programs; time/area restrictions; allocations among user groups; gear

restrictions; effort limitations; and actions to implement ICCAT recommendations, if appropriate.

#### Subpart D—Restrictions on Imports

##### § 635.40 Restrictions to enhance conservation.

(a) *Determinations.* Upon a determination by NMFS that species of fish subject to regulation or under investigation by ICCAT (yellowfin, bigeye, BFT, swordfish, billfishes, albacore and skipjack tunas, and bonito) are ineligible for entry into the United States under 16 U.S.C. 971d(c)(4) or (c)(5), NMFS, with the approval of the Secretary and the concurrence of the Secretary of State, will publish a finding to that effect in the **Federal Register**. Effective upon the date of filing of such finding in the **Federal Register**, every shipment of fish in any form of the species found to be ineligible will be denied entry unless it is established by satisfactory proof pursuant to paragraph (b) of this section that a particular shipment of such fish is eligible for entry. Entry will not be denied and no such proof will be required for any such shipment that, on the date of such publication, was in transit to the United States on board a vessel operating as a common carrier.

(b) *Proof of admissibility.* (1) For the purposes of paragraph (a) of this section and section 6(c) of ATCA, a shipment of fish in any form of the species under regulation or under investigation by ICCAT offered for entry, directly or indirectly, from a country named in a finding published under paragraph (a) of this section is eligible for entry if the shipment is accompanied by a completed certificate of eligibility attached to the invoice certifying that the fish in the shipment:

(i) Are not of the species specified in the published finding;

(ii) Are of the species named in the published finding, but were not taken in the regulatory area; or

(iii) Are of the species named in the published finding, but are products of an American fishery and are lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the published finding solely for transshipment.

(2) If the fish are offered for entry under paragraph (b)(1)(i) or (b)(1)(ii) of this section, the certificate must be executed by a duly authorized official of the country named in the published finding and the certificate must be validated by a consular officer or consular agent of the United States.

Such validation must be attached to the certificate of eligibility.

(3) If the fish are offered for entry under paragraph (b)(1)(iii) of this section, the certificate must be executed by a consular officer or consular agent of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The "Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries" required by 19 CFR 10.79 must contain a further statement as follows: "We further declare that the said fish were caught by us in full compliance with part 635, title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress."

(c) *Removal of import restrictions.* Upon a determination by NMFS that the conditions no longer exist that warranted the imposition of import restrictions in the finding published pursuant to paragraph (a) of this section, NMFS, with the approval and the concurrence of the Secretary of State, will remove the import restriction through notification in the **Federal Register** effective on the date of filing of the notification. The restriction will be removed, provided that, for 1 year from such date of publication, every shipment of fish in any form that was subject to the finding published pursuant to paragraph (a) of this section will continue to be denied entry, unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States certifying that no portion of the shipment is composed of fish taken prior to or during the import restriction.

**§ 635.41 Species subject to documentation requirements.**

Imports into the United States and exports or re-exports from the United States of all BFT or BFT products, regardless of ocean area of catch, are subject to the documentation requirements of this subpart.

(a) Documentation is required for BFT identified by the following item numbers from the Harmonized Tariff Schedule:

(1) Fresh or chilled BFT, excluding fillets and other fish meat, No. 0302.39.00.20.

(2) Frozen BFT, excluding fillets, No. 0303.49.00.20.

(b) In addition, BFT products in other forms (e.g., chunks, fillets, canned) listed under any other item numbers from the Harmonized Tariff Schedule

are subject to the documentation requirements of this subpart, except that fish parts other than meat (e.g., heads, eyes, roe, guts, tails) may be allowed entry without said statistical documentation.

**635.42 Documentation requirements.**

(a) *BFT imports.* (1) Imports of all BFT products into the United States must be accompanied at the time of entry (filing of Customs Form 7501 or electronic equivalent) by an original completed approved BSD with the information and exporter's certification specified in § 635.43(a). Such information must be validated as specified in § 635.44(a) by a responsible government official of the country whose flag vessel caught the tuna (regardless of where the fish are first landed).

(2) BFT imported into the United States from a country requiring a BSD tag on all such tuna available for sale must be accompanied by the appropriate BSD tag issued by that country, and said BSD tag must remain on any tuna until it reaches its final import destination. If the final import destination is the United States, the BSD tag must remain on the tuna until it is cut into portions. If the tuna portions are subsequently packaged for domestic commercial use or re-export, the BSD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(3) A dealer who sells BFT that was previously imported into the United States for domestic commercial use must provide on the original BSD that accompanied the import shipment the correct information and importer's certification specified in § 635.43(a)(13) and must note on the top of the BSD the entry number assigned at the time of filing the entry summary. The original of the completed BSD must be postmarked and mailed by said dealer to NMFS within 24 hours of the time the tuna was imported into the United States.

(b) *BFT exports.* (1) A dealer who exports BFT that was harvested by U.S. vessels and first landed in the United States must complete an original numbered BSD issued to that dealer by NMFS. Such an individually numbered document is not transferable and may be used only once by the dealer to which it was issued to report on a specific export shipment. A dealer must provide on the BSD the correct information and exporter certification specified in § 635.43(a). The BSD must be validated as specified in § 635.44(b). A list of such officials may be obtained by contacting NMFS. A dealer requesting U.S. Government validation for exports

should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export shipment.

(2) A dealer who re-exports BFT that was previously imported into the United States through filing an entry summary (Customs Form 7501 or electronic equivalent) must provide on the original BSD that accompanied the import shipment the correct information and intermediate importer's certification specified in § 635.43(a)(13) and must note on the top of the BSD the entry number assigned at the time of filing the entry summary. This requirement does not apply to BFT destined from one foreign country to another which transits the United States and for which an entry summary (Customs Form 7501 or electronic equivalent) is not filed and for which a Shipper's Export Declaration for in-transit merchandise (Customs Form 7513 or electronic equivalent) is filed.

(3) A dealer must submit the original of the completed BSD to accompany the shipment of BFT to its export or re-export destination. A copy of the BSD completed as specified under paragraph (b)(1) or (b)(2) of this section must be postmarked and mailed by said dealer to NMFS within 24 hours of the time the tuna was exported or re-exported from the United States.

(c) *Recordkeeping.* A dealer must retain at his or her principal place of business a copy of each BSD required to be submitted to NMFS pursuant to this section for a period of 2 years from the date on which it was submitted to NMFS.

**§ 635.43 Contents of documentation.**

(a) A BSD, to be deemed complete, must state:

(1) The document number assigned by the country issuing the document.

(2) The name of the country issuing the document, which must be the country whose flag vessel harvested the BFT, regardless of where the tuna is first landed.

(3) The name of the vessel that caught the fish and the vessel's registration number, if applicable.

(4) The name of the owner of the trap that caught the fish, if applicable.

(5) The point of export, which is the city, state or province, and country from which the BFT is first exported.

(6) The product type (fresh or frozen) and product form (round, gilled and gutted, dressed, fillet, or other).

(7) The method of fishing used to harvest the fish (e.g., purse seine, trap, rod and reel).

(8) The ocean area from which the fish was harvested (western Atlantic,

eastern Atlantic, Mediterranean, or Pacific).

(9) The weight of each fish (in kilograms for the same product form previously specified).

(10) The identifying BSD tag number, if landed by vessels from countries with tagging programs.

(11) The name and license number of, and be signed and dated in the exporter's certification block by, the exporter.

(12) If applicable, the name and title of, and be signed and dated in the validation block by, a responsible government official of the country whose flag vessel caught the tuna (regardless of where the tuna are first landed) or by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the BSD.

(13) As applicable, the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by each intermediate and the final importer.

(b) An approved BSD may be obtained from NMFS to accompany exports of BFT from the United States. A BFT dealer in a country that does not provide an approved BSD to exporters may obtain an approved BSD from NMFS to accompany exports to the United States.

(c) A dealer who exports bluefin tuna to the United States may use the approved BSD obtainable from NMFS or a document developed by the country of export, if that country submits a copy to the ICCAT Executive Secretariat and NMFS concurs with the ICCAT Secretariat's determination that the document meets the information requirements of the ICCAT recommendation. In such case, NMFS will provide a list of countries for which BSDs are approved, with examples of approved documents, to the appropriate official of the U.S. Customs Service. Effective upon the date indicated in such notice to the U.S. Customs Service, shipments of BFT or BFT products offered for importation from said country(ies) may be accompanied by either that country's approved BSD or by the BSD provided to the foreign country exporter by NMFS.

#### § 635.44 Validation requirements.

(a) *Imports.* The approved BSD accompanying any import of BFT, regardless of whether the issuing

country is a member of ICCAT, must be validated by a government official from the issuing country, unless NMFS waives this requirement for that country following a recommendation to do so by the ICCAT Secretariat. NMFS will furnish a list of countries for which government validation requirements are waived to the appropriate official of the U.S. Customs Service. Such list will indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate BSDs for that country.

(b) *Exports.* The approved BSD accompanying any export of BFT from the United States must be validated by a U.S. Government official, except pursuant to a waiver, if any, specified on the form and accompanying instructions, or in a letter to the permitted dealer from NMFS. Any waiver of government validation will be consistent with ICCAT recommendations concerning validation of BSDs. If authorized, such waiver of government validation may include:

(1) Exemptions from government validation for fish with individual BSD tags affixed pursuant to § 300.26 of this title or § 635.5(b)(2)(ii); or

(2) Validation by non-government officials authorized to do so by NMFS under paragraph (c) of this section.

(c) *Authorization for non-government validation.* An institution or association seeking authorization to validate BSDs accompanying exports from the United States must apply in writing to NMFS for such authorization. The application must indicate the procedures to be used for verification of information to be validated, list the names, addresses, and telephone/fax numbers of individuals to perform validation, and provide an example of the stamp or seal to be applied to the BSD. NMFS, upon finding the institution or association capable of verifying the information required on the BSD, will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate BSDs accompanying exports from the United States. The effectiveness of such authorization will be delayed as necessary for NMFS to notify the ICCAT Secretariat of non-government institutions and associations authorized to validate BSDs.

#### § 635.45 Import restrictions for Belize, Honduras, and Panama.

All shipments of BFT or BFT products in any form harvested by a vessel of Belize, Honduras, or Panama will be denied entry into the United States unless a validated BSD required under

§§ 635.41 through 635.44, shows that a particular shipment of such BFT was exported from Belize or Honduras prior to August 20, 1997, or exported from Panama prior to January 1, 1998.

#### § 635.46 Import restrictions on swordfish.

The policies and procedures contained in § 635.40, which implement the provisions of section (6)(c) of ATCA with respect to import controls and which specify procedures for the establishment of restrictions on imports of tuna, apply to swordfish taken from the north and south Atlantic stocks.

(a) *General.* To facilitate enforcement of domestic regulations, a swordfish, or part thereof, less than the minimum size specified at § 635.20(e) may not be imported, or attempted to be imported, into the United States unless it is accompanied by a certificate of eligibility attesting either that the swordfish was harvested from an ocean area other than the Atlantic Ocean or that the fish part was derived from a swordfish harvested from the Atlantic Ocean that weighed at least 33 lb (15 kg) dw at harvest.

(b) *Certificate of eligibility.* (1) A shipment of swordfish in any form offered for import into the United States, directly or indirectly, from any country is admissible only if accompanied by a certificate of eligibility. Such a certificate is required for swordfish identified by any item number from the Harmonized Tariff Schedule including but not limited to the following:

(i) Fresh or chilled swordfish steaks, No. 0302.69.20.41.

(ii) Fresh or chilled swordfish, excluding steaks, No. 0302.69.20.49.

(iii) Frozen swordfish steaks, No. 0302.79.20.41.

(iv) Frozen swordfish, excluding fillets, steaks and other fish meat, No. 0302.79.20.49.

(v) Frozen swordfish, fillets, No. 0304.20.60.92.

(2) The certificate of eligibility required under this section must indicate the flag state of the harvesting vessel, the ocean area of harvest and, if the shipment contains swordfish or parts thereof less than the minimum size specified at § 635.20(e), the reason such swordfish is eligible for entry, as specified in paragraph (a) of this section. The certificate must be attached to the invoice accompanying the swordfish shipment from the point of import into the United States to and including the time and place that it is filleted, cut into steaks, or processed in any way that physically alters it.

(3) The certificate of eligibility required under this section must

include the name and title of a responsible government official of the country exporting the swordfish to the United States and must be signed and dated by that official with official government seal affixed, thus validating the information on flag vessel and ocean area of harvest.

(4) A certificate of eligibility may refer to swordfish taken from only one ocean area of harvest (Atlantic, Pacific, or Indian) and by vessels under the jurisdiction of only one nation. If a shipment contains swordfish taken from more than one ocean area, or swordfish harvested by several vessels from different flag states, a separate certificate must accompany the shipment for each ocean area of harvest and for each flag state of the harvesting vessels.

(5) A model certificate of eligibility is available from NMFS. An equivalent form may be used provided it contains all the information required under this section.

#### Subpart E—International Port Inspection

##### § 635.50 Basis and purpose.

The regulations in this subpart implement the ICCAT port inspection scheme. The text of the ICCAT port inspection scheme may be obtained from NMFS.

##### § 635.51 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by an ICCAT contracting party that has accepted the port inspection scheme to serve as an authorized inspector for ICCAT, and who possesses an identification card so stating issued by the authorized officer's national government. A list of such contracting parties may be obtained from NMFS.

##### § 635.52 Vessels subject to inspection.

(a) All U.S. fishing vessels or vessels carrying tuna, and their catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures by an authorized officer when landing or transshipping tuna or when making a port call at a port of any ICCAT contracting party that has accepted the port inspection scheme.

(b) A tuna vessel, or a vessel carrying tuna, that is registered by any of the ICCAT contracting parties that have accepted the port inspection scheme, and the vessel's catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures when

landing or transshipping tuna or when making a port call in the United States.

(c) A vessel entering a port because of force majeure is exempt from inspection by an authorized officer of any of the ICCAT contracting parties that have accepted the port inspection scheme.

(d) The master of a tuna vessel or a vessel carrying tuna must cooperate with a NMFS authorized officer during the conduct of an inspection. Inspections will be carried out so that the vessel suffers minimum interference and inconvenience, and so that degradation of the quality of catch is avoided.

##### § 635.53 Reports.

(a) Apparent violations shall be reported on a standardized ICCAT form or form produced by the national government which collects the same quality of information. The NMFS authorized officer must sign the form in the presence of the master of the vessel, who is entitled to add or have added to the report any observations, and to add his own signature. The authorized officer should note in the vessel's log that the inspection has been made.

(b) Copies of the report form must be sent to the flag state of the vessel within 10 days. Flag states will consider and act on reports of apparent violations by foreign inspectors on a similar basis as the reports of their national inspectors in accordance with their national legislation. The vessel's flag state will notify ICCAT of actions taken to address the violation.

##### § 635.54 Ports of entry.

NMFS shall monitor the importation of BFT and swordfish into the United States. If a NMFS official determines that the diversity of handling practices at certain ports at which BFT or swordfish is being imported into the United States allow for circumvention of the Bluefin Tuna Statistical Document or Certificate of Eligibility requirement, he/she may designate, after consultation with the U.S. Customs Service, those ports at which Pacific or Atlantic bluefin tuna or swordfish from any source may be imported into the United States. NMFS shall announce through filing at the Office of the Federal Register the names of ports so designated and the effective dates of entry restrictions.

#### Subpart F—Enforcement

##### § 635.69 Vessel monitoring systems.

(a) *General.* (1) Owners or operators of vessels fishing with pelagic longlines for swordfish, tunas, or sharks must submit an automatic position report with date,

unique identifier vessel number, and speed and heading data to NMFS every hour beginning when the vessel leaves port to begin a fishing trip or at any time swordfish, sharks, or tunas are possessed on board the vessel.

(2) If a vessel operator is notified by NMFS that his system is not transmitting position reports, he may be ordered to return to port and may not commence fishing until position reports are sent once an hour for 24 hours.

(b) *Hardware specifications.* (1) The VMS hardware must contain an integrated global positioning system with an accuracy to within 100 meters, and must be tamper-proof.

(2) The hardware must be able to perform the following functions:

(i) Transmit automatically generated position reports, event-driven position reports, internet e-mail text messages when optional input interface is connected, and safety and distress alerts and messages,

(ii) Receive e-mail text messages,

(iii) Have the ability to remotely create new message types and to remotely create message templates or forms,

(iv) Allow for variable reporting intervals between 5 minutes and 24 hours,

(v) Have the ability to store 100 position reports in local memory when the hardware is unable to transmit.

(3) The hardware must have an onboard visible or audible alarm that indicates malfunctioning.

(4) The hardware must function uniformly within the entire area of geographic coverage of the vessel. Vessels that fish outside the geographic area of the VMS will be in violation of § 635.9.

(c) *Communications specifications.* (1) The communications service provider must have the ability to:

(i) Transmit automatically generated position reports, event driven position reports, safety and distress alerts and messages, and e-mail text messages when an optional input interface is connected,

(ii) Create new message types and message templates or forms,

(iii) Perform two-way communications for delivery and acceptance of data, supporting messages, position reports, queries, and administrative functions,

(iv) Attach a date and time stamp when the position report is sent to NMFS,

(v) Accommodate a near real-time system for 95 percent of transmissions or a store and forward system for two way messaging,

(vi) Provide auto-forwarding or auto-delivery of messages.



(2) The communications service provider must provide service secure from tampering or interception, including the eading of passwords and data.

#### § 635.70 Penalties.

(a) *General.* See § 600.735 of this chapter.

(b) *Civil procedures for Atlantic tuna.* Because of the perishable nature of Atlantic tuna when it is not chilled or frozen, an authorized officer may cause to be sold, for not less than its reasonable market value, unchilled or unfrozen Atlantic tuna that may be seized and forfeited under ATCA and this part.

#### § 635.71 Prohibitions.

In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person subject to the jurisdiction of the United States to violate any other provision of this part, ATCA, the Magnuson-Stevens Act, or any other rules promulgated under ATCA or the Magnuson-Stevens Act.

(a) *General.* It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Falsify information required on an application for a permit submitted under §§ 635.4 or 635.16.

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without a valid permit on board the vessel, as specified in § 635.4.

(3) Purchase, receive, or transfer for commercial purposes any Atlantic HMS landed by owners or operators of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer for commercial purposes any Atlantic HMS without a valid dealer permit issued under § 635.4.

(4) Sell, offer for sale, or transfer an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4.

(5) Fail to possess and make available a permit on board the permitted vessel, as specified in § 635.4(a).

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in § 635.5.

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(f).

(8) Fail to make available for inspection an Atlantic HMS or its area of custody, as specified in § 635.5(g).

(9) Fail to report the catching of any Atlantic HMS to which a conventional tag has been affixed under a tag and release program.

(10) Falsify or fail to display and maintain vessel and gear identification, as specified in § 635.6.

(11) Fail to comply with the requirements for at-sea observer coverage, as specified in § 635.7 and § 600.746 of this chapter.

(12) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, any authorized officer in the conduct of any search, inspection, seizure or lawful investigation made in connection with enforcement of this part.

(13) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part;

(14) Fail to attend an educational workshop or to present for inspection a certificate of attendance at an educational workshop, as specified in § 635.8.

(15) Tamper with, or fail to operate and maintain a vessel monitoring system unit, as specified in §§ 635.9 and 635.69.

(16) Fish for or possess Atlantic tunas or swordfish with a driftnet on board, as specified in § 635.21 (b), (d)(1), and (d)(4)(ii).

(17) Fail to retrieve fishing gear and move after an interaction with a marine mammal or sea turtle, as specified in § 635.21(c)(3).

(18) Fail to release an Atlantic HMS in the manner specified in § 635.21(a).

(19) Fail to report the retention of an Atlantic HMS that has an archival tag, as specified in § 635.33.

(20) Fail to maintain an Atlantic HMS in the form specified in § 635.30.

(21) Fish for, catch, retain, or possess an Atlantic HMS that is less than its minimum size limit specified in § 635.20.

(22) Fail to comply with the restrictions on use of a pelagic longline or shark net specified in § 635.21 (c), (d)(3)(ii), and (d)(3)(iii).

(23) Import any BFT or swordfish in a manner inconsistent with any ports of entry designated by NMFS as authorized by § 635.54.

(24) Dispose of fish or parts thereof or other matter in any manner after any communication or signal from an authorized officer, or after the approach of an authorized officer.

(b) *Atlantic tunas.* It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Engage in fishing with a vessel that has a permit for Atlantic tuna under § 635.4, unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings any BFT under control (secured to the catching vessel or on board) with no assistance

from another vessel, except as shown by the operator that the safety of the vessel or its crew was jeopardized or other circumstances existed that were beyond the control of the operator.

(2) Import or export bluefin tuna without a dealer permit, as specified in § 635.4(b)(2).

(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a vessel other than one that has on board an Angling category Atlantic tunas permit, an HMS Charter/Headboat permit, or a Purse Seine category Atlantic tunas permit as authorized under § 635.23 (b), (c), and (e)(2).

(4) Fail to inspect a vessel's permit, fail to affix a dealer tag to a large medium or giant BFT, or fail to use such tag properly, as specified in § 635.5(b)(2)(ii).

(5) Fail to report a large medium or giant BFT that is not sold, as specified in § 635.5(c).

(6) As an angler, fail to report a BFT, as specified in § 635.5(d).

(7) Fish for, catch, retain, or possess a BFT with gear not authorized for the category permit issued to the vessel or to have on board such gear when in possession of a BFT, as specified in § 635.21(d)(1).

(8) Fail to request an inspection of a purse seine vessel, as specified in § 635.21(d)(1)(vi)(B).

(9) Fish for or catch BFT in a directed fishery with purse seine nets without an allocation made under § 635.27(a)(4).

(10) Fish for or catch any Atlantic tunas in a directed fishery with purse seine nets from August 15 through December 31 if there is no remaining BFT allocation made under § 635.27(a)(4).

(11) Exceed the recreational catch limit for yellowfin tuna, as specified in § 635.22(d).

(12) Exceed a catch limit for BFT specified for the appropriate permit category, as specified in § 635.23.

(13) As a vessel with a General category Atlantic tuna permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT on a commercial fishing day, as specified in § 635.23(a)(3).

(14) As a vessel with an Angling category Atlantic tunas permit or an HMS Charter/Headboat permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT or fail to report such catch, as specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

(15) As a vessel with an Angling category Atlantic tunas permit or an HMS Charter/Headboat permit, sell,



offer for sale, or attempt to sell a large medium or giant BFT after fishing under the circumstances specified in § 635.23(b)(1)(iii) and (c)(1) through (3).

(16) Retain a BFT caught under the catch and release program specified in § 635.26.

(17) As a vessel with a Purse Seine category Atlantic tuna permit, catch, possess, retain, or land BFT in excess of its allocation of the Purse Seine category quota, or fish for BFT under that allocation prior to August 15, as specified in § 635.27(a)(4).

(18) As a vessel with a Purse Seine category Atlantic tunas permit, land BFT smaller than the large medium size class except as specified under § 635.23(e)(2).

(19) Fish for, retain, possess, or land a BFT when the fishery is closed, as specified in § 635.28(a), except as may be authorized for catch and release under § 635.26.

(20) Approach to within 100 yd (91.5 m) of the cork line of a purse seine net used by a vessel fishing for Atlantic tuna, or for a purse seine vessel to approach to within 100 yd (91.5 m) of a vessel actively fishing for Atlantic tuna, except that two vessels that have Purse Seine category Atlantic tuna permits may approach closer to each other.

(21) Transfer at sea an Atlantic tuna, except as may be authorized for the transfer of BFT between purse seine vessels, as specified in § 635.29(a).

(22) As the owner or operator of a purse seine vessel, fail to comply with the requirements for weighing, measuring, and information collection specified in § 635.30(a)(2).

(23) Fish for, catch, possess, or retain a BFT from the Gulf of Mexico except as specified under § 635.23(f)(1), or if taken incidental to recreational fishing for other species and retained in accordance with § 635.23(b) and (c).

(24) Fail to comply with the restrictions on sale and purchase of an Atlantic tuna, as specified in § 635.31(a) and 635.5(b).

(25) Fail to comply with the documentation requirements for imported or exported BFT or BFT products, as specified in § 635.42.

(26) Import a BFT or BFT product into the United States from Belize, Panama, or Honduras other than as authorized in § 635.45.

(27) For any person to refuse to provide information requested by NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of Atlantic tunas.

(c) *Billfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Retain a billfish on board a vessel with a pelagic longline on board or harvested by gear other than rod and reel, as specified in § 635.21(d)(2).

(2) Use more than one hook per bait or lure in a hook-and-line fishery for billfish, as specified in § 635.21(d)(2)(ii).

(3) Exceed the vessel trip limit for billfish specified in § 635.22(b)(1).

(4) Transfer a billfish at sea, as specified in § 635.29(a).

(5) Fail to maintain a billfish in the form specified in § 635.30(b).

(6) Sell or purchase a billfish, as specified in § 635.31(b).

(d) *Shark*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Exceed a recreational catch limit for shark, as specified in § 635.22(c).

(2) Exceed a trip limit for shark, as specified in § 635.24(a).

(3) Retain, possess, or land a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b)(1) and (2).

(4) Sell or purchase a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b)(3).

(5) Transfer a shark at sea, as specified in § 635.29(b).

(6) Remove the fins from a shark, or from one of the additional shark species listed in Table 2 in Appendix A to this part, and discard the remainder, or otherwise fail to maintain a shark in its proper form, as specified in § 635.30(c)(1) through (c)(4).

(7) Have on board a fishing vessel, sell, or purchase shark fins that are disproportionate to the weight of shark carcasses, as specified in § 635.30(c)(2) and (3).

(8) Fail to have shark fins and carcasses weighed and recorded, as specified in § 635.30(c)(3).

(9) Fail to comply with the restrictions on sale and purchase of a shark, as specified in § 635.31(c).

(10) Retain, possess, sell, or purchase a prohibited shark.

(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support of an application for an ILAP or an appeal of NMFS's denial of an initial limited access permit for shark.

(e) *Swordfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Purchase, barter for, trade for, or import a swordfish without a dealer permit, as specified in § 635.4(g)(3).

(2) Fail to comply with the restrictions on use of a pelagic longline specified in § 635.21(b) and (c).

(3) When the directed fishery for swordfish is closed, exceed the limits specified in § 635.28(c)(1)(i) and (ii).

(4) When the incidental catch fishery for swordfish is closed, possess, land, sell, or purchase a swordfish, as specified in § 635.28(c)(2).

(5) Transfer at sea a swordfish, as specified in § 635.29(a).

(6) Fail to maintain a swordfish in the form specified in § 635.30(d).

(7) Fail to comply with the restrictions on sale and purchase of a swordfish, as specified in § 635.31(d).

(8) Fish for North Atlantic swordfish from, or possess or land North Atlantic swordfish on board a vessel, using or having on board gear other than pelagic longline, harpoon, rod and reel, or handline.

(9) Fish for swordfish from the South Atlantic swordfish stock using any gear other than pelagic longline.

(10) Fail to comply with the documentation requirements for the importation of a swordfish, or part thereof, that is less than the minimum size, as specified in § 635.46.

(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support of an application for an ILAP or an appeal of NMFS's denial of an initial limited access permit for swordfish.

#### Appendix A to Part 635—Species Tables

Table 1 of Appendix A to Part 635—Sharks

- (a) Large coastal sharks:
- (1) Ridgeback sharks:  
Sandbar, *Carcharhinus plumbeus*  
Silky, *Carcharhinus falciformis*
- (2) Non-ridgeback sharks:  
Blacktip, *Carcharhinus limbatus*  
Bull, *Carcharhinus leucas*  
Great hammerhead, *Sphyrna mokarran*  
Lemon, *Negaprion brevirostris*  
Nurse, *Ginglymostoma cirratum*  
Scalloped hammerhead, *Sphyrna lewini*  
Smooth hammerhead, *Sphyrna zygaena*  
Spinner, *Carcharhinus brevipinna*  
Tiger, *Galeocerdo cuvieri*.
- (b) Small coastal sharks:  
Atlantic sharpnose, *Rhizoprionodon terraenovae*  
Blacknose, *Carcharhinus acronotus*  
Bonnethead, *Sphyrna tiburo*  
Finetooth, *Carcharhinus isodon*
- (c) Pelagic sharks:  
Oceanic whitetip, *Carcharhinus longimanus*  
Porbeagle, *Lamna nasus*  
Shortfin mako, *Isurus oxyrinchus*  
Thresher, *Alopias vulpinus*.
- (d) Prohibited sharks:

Atlantic angel, <i>Squatina dumerili</i>	Chain dogfish, <i>Scyliorhinus retifer</i>	Gulper shark, <i>Centrophorus granulosus</i>
Basking, <i>Cetorhinus maximus</i>	Deepwater catshark, <i>Apristurus profundorum</i>	Japanese gulper shark, <i>Centrophorus acuus</i>
Bigeye sand tiger, <i>Odontaspis noronhai</i>	Dwarf catshark, <i>Scyliorhinus torrei</i>	Kitefin shark, <i>Dalatias licha</i>
Bigeye sixgill, <i>Hexanchus vitulus</i>	Iceland catshark, <i>Apristurus laurussoni</i>	Lined lanternshark, <i>Etmopterus bullisi</i>
Bigeye thresher, <i>Alopias superciliosus</i>	Marbled catshark, <i>Galeus arae</i>	Little gulper shark, <i>Centrophorus uyato</i>
Bignose, <i>Carcharhinus altimus</i>	Smallfin catshark, <i>Apristurus parvipinnis</i>	Portuguese shark, <i>Cetoscymnus coelelepis</i>
Blue, <i>Prionace glauca</i>	Dogfish sharks—Squalidae	Pygmy shark, <i>Squaliolus laticaudus</i>
Caribbean reef, <i>Carcharhinus perezi</i>	Bigtooth cookiecutter, <i>Isistius plutodus</i>	Roughskin spiny dogfish, <i>Squalus asper</i>
Caribbean sharpnose, <i>Rhizoprionodon porosus</i>	Blainville's dogfish, <i>Squalus blainvillei</i>	Smallmouth velvet dogfish, <i>Scymnodon obscurus</i>
Dusky, <i>Carcharhinus obscurus</i>	Bramble shark, <i>Echinorhinus brucus</i>	Smooth lanternshark, <i>Etmopterus pusillus</i>
Galapagos, <i>Carcharhinus galapagensis</i>	Broadband dogfish, <i>Etmopterus gracilispinnis</i>	Spiny dogfish, <i>Squalus acanthias</i>
Longfin mako, <i>Isurus paucus</i>	Caribbean lanternshark, <i>Etmopterus hillianus</i>	Sawsharks—Pristiophoridae
Narrowtooth, <i>Carcharhinus brachyurus</i>	Cookiecutter shark, <i>Isistius brasiliensis</i>	American sawshark, <i>Pristiophorus schroederi</i>
Night, <i>Carcharhinus signatus</i>	Cuban dogfish, <i>Squalus cubensis</i>	Smoothhound Sharks—Triakiidae
Sand tiger, <i>Odontaspis taurus</i>	Flatnose gulper shark, <i>Deania profundorum</i>	Florida smoothhound, <i>Mustelus norrisi</i>
Sevengill, <i>Heptranchias perlo</i>	Fringefin lanternshark, <i>Etmopterus schultzi</i>	Smooth dogfish, <i>Mustelus canis</i>
Sixgill, <i>Hexanchus griseus</i>	Great lanternshark, <i>Etmopterus princeps</i>	
Smalltail, <i>Carcharhinus porosus</i>	Green lanternshark, <i>Etmopterus virens</i>	
Whale, <i>Rhincodon typus</i>	Greenland shark, <i>Somniosus microcephalus</i>	
White, <i>Carcharodon carcharias</i>		
<i>Table 2 of Appendix A to Part 635—Additional Shark Species</i>		
Catsharks—Scyliorhinidae		
Blotched catshark, <i>Scyliorhinus meadi</i>		
Broadgill catshark, <i>Apristurus riveri</i>		

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