

Dated: December 13, 2002.

**John H. Dunnigan,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 020325070-2296-03; I.D. 071299C]

RIN 0648-AM91

#### Atlantic Highly Migratory Species (HMS) Fishing Vessel Permits; Charter Boat Operations

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

**ACTION:** Final rule.

**SUMMARY:** Under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), NMFS amends the consolidated regulations governing the Atlantic HMS fisheries to define operations and regulations for HMS Charter/Headboats (CHBs), require an Atlantic HMS recreational permit, adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarify the regulations regarding the retention of Atlantic bluefin tuna (BFT) in the Gulf of Mexico by recreational and HMS CHB vessels, and allow NMFS to set differential BFT retention limits by vessel type (e.g., charter boats, headboats).

**DATES:** Effective March 1, 2003.

**ADDRESSES:** Copies of supporting documents, including the HMS FMP, are available from the Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. The supporting documents will also be posted on the e-Comments Web site listed under <http://www.nmfs.noaa.gov> and the HMS Web site <http://www.nmfs.noaa.gov/sfa/hmspg.html>. Comments on the burden-hour estimates or other aspects of the collection of information that are part of this rulemaking can be submitted to NMFS, but must also be mailed 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:** Brad McHale at (978) 281-9260.

**SUPPLEMENTARY INFORMATION:** Atlantic tunas, swordfish, and billfish are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator (AA) for Fisheries, NOAA. Sharks are managed solely under the authority of the Magnuson-Stevens Act.

#### Background

Background information about the need for revisions to the HMS regulations was provided in the preamble to the proposed rule (67 FR 20716, April 26, 2002), and is not repeated here. By this final rule, NMFS defines operations and regulations for HMS CHBs; requires an Atlantic HMS recreational permit; adjusts the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits; and clarifies the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and HMS CHB vessels. This final rule also amends the regulatory text to clarify the authority to set differential BFT retention limits by vessel type (e.g., charter boats, headboats) which was restated less clearly when the HMS regulations were consolidated under 50 CFR part 635 (64 FR 29090, May 28, 1999).

#### Changes from the Proposed Rule

This final rule changes some of the proposed revisions to the regulatory text and some paragraphs have been consolidated. In § 635.4, several proposed revisions to paragraphs (b) and (d) have been revised, the references to certain other permit requirements in the proposed revisions to paragraphs (b) and (d) have been consolidated into paragraph (a), and paragraph (c) has been added. These changes were made to clarify the intent of the regulatory text, to reduce duplication and to facilitate enforcement of the regulations.

#### Comments and Responses

NMFS conducted three public hearings on the proposed rule and received written, oral, and electronic comments (through the NMFS e-

Comments pilot project website at <http://www.nmfs.noaa.gov>) over a 30-day comment period. The majority of the comments were in support of the proposed actions. Responses to specific comments on the issues contained in the proposed rule are provided here.

*Comment 1:* NMFS has received comments stating that applying the recreational yellowfin tuna (YFT) retention limit to HMS CHB vessels at all times precludes legitimate commercial activity when the vessels are not carrying fee-paying anglers. Commenters have also indicated that some HMS CHB vessels have historically conducted commercial fishing trips for YFT when not operating as a for-hire vessel. Some commenters stated that the HMS FMP did not specifically address commercial fishing by the for-hire fleet and the impacts of prohibiting such commercial fishing on this segment of the fishery. Other commenters stated that HMS CHB vessels should not have the ability to land as many YFT as they can on commercial vessels because the stock is currently defined as fully exploited and an increase in fishing mortality could have adverse effects.

*Response:* NMFS agrees that applying the recreational YFT retention limit to HMS CHB vessels at all times precludes legitimate commercial activity when the vessels are not carrying fee-paying passengers. The HMS CHB permit is considered a commercial tuna permit in that tunas caught by vessels possessing the permit may be sold. Prior to July 1, 1999, CHB vessels had the ability to retain and sell all YFT that were caught, as long as they met the minimum size requirements. In 2000, commercial handgear landings of YFT totaled 283.7 metric tons (mt), amounting to approximately 4 percent of total U.S. YFT landings, or 9 percent of all commercial landings. Dealer weighout data reported to NMFS included 839 handgear trips that sold YFT from 1998 through 2000, and about 10 percent of these trips were reported by CHBs. Thus, although commercial YFT landings by CHB vessels may be significant to individual vessel operators, they represent less than 1 percent of total U.S. YFT landings.

NMFS has determined that allowing HMS CHB vessels to retain YFT under the commercial limits when not engaged in for-hire activities would not adversely affect the YFT stock. NMFS recognizes the dual nature of the operations of certain vessels issued the HMS CHB permit. Thus, the final rule defines for-hire fishing in a way that would allow such vessels to fish under commercial limits when not engaged in

for-hire fishing. The definition of for-hire fishing is similar to that used in other U.S. fisheries operating in the Caribbean, Gulf of Mexico, and South Atlantic. For those vessels that engage in both for-hire and commercial fishing, the impact of this action is positive, as it clarifies the requirements to allow them to participate in both types of fisheries.

*Comment 2:* Many comments stated that requiring recreational permits for all HMS vessels is long over due. They noted that issuing an HMS Angling category permit will provide critical data by which to accurately assess the status of the Atlantic HMS fishery in the recreational sector. Other commenters stated that this permit requirement will even the playing field and protect the rights of both commercial and recreational fishermen. NMFS also received comments stating that it is essential to know the universe of participants and the total effort that is involved in the recreational sector of HMS fisheries. It was stated that the permits could be used to further our scientific understanding of these HMS. The comment stated that the permit should be merged with the current Atlantic tunas Angling category permit to reduce the burden on the recreational sector. NMFS also received a comment stating that there are other methods of identifying the universe of recreational HMS fishermen, such as coordinating with the states, which would relieve the public of the burden of having to renew the Federal permit on an annual basis.

*Response:* The HMS recreational permit will enable NMFS to more accurately monitor recreational landings and generate catch and release statistics for all recreational HMS, thereby enhancing HMS management and research efforts. Knowledge of the universe of recreational fishermen and of total fishing effort, catch, and bycatch is incomplete at present, with most data collection currently focused on the Atlantic tunas fisheries. Estimates of some of these parameters are currently made using survey instruments, such as the Large Pelagic Survey (LPS) and the Marine Recreational Fisheries Statistics Survey (MRFSS), as well as reporting from registered tournaments. The current Atlantic tunas angling category permit will be replaced with an Atlantic HMS recreational permit system, which will greatly improve information available to NMFS regarding the recreational Atlantic HMS fisheries by providing an accurate measure of participation, which will improve estimates of effort, catch, and bycatch (including discards) for several important species.

*Comment 3:* NMFS received a number of comments stating that, due to the nature of the HMS fisheries, effective management is essential throughout the entire range of the regulated species. These commenters agreed that NMFS must exercise jurisdiction over U.S.-flagged vessels regardless of where a vessel is fishing.

*Response:* NMFS recognizes that state-federal jurisdictional issues are complex. NMFS will work with the individual states to evaluate how permit conditions applied to recreational vessels issued Federal permits may resolve jurisdictional concerns. Upon completing discussions with the states, NMFS may address this issue in a separate rulemaking.

*Comment 4:* Many comments stated that the different retention limits for inspected headboats are justifiable provided that there is a maximum retention limit placed upon the vessel.

*Response:* With the BFT retention limits generally defined in terms of the number of fish that can be retained per vessel, a maximum retention limit can be inequitable for U.S. Coast Guard (USCG) inspected vessels authorized to carry a larger number of passengers. This action clarifies the HMS regulations for setting differential retention limits by vessel type (e.g., charter boat vs. headboat).

*Comment 5:* Several comments stated that the E-comments system is a step in the right direction in providing the public with efficient means to submit comments, and in allowing NMFS to take more stakeholders' insights into account when making final rules. Some commenters also stated that having the ability to see previously submitted comments enhances their understanding of the proposed changes and the potential impacts.

*Response:* NMFS' E-comments pilot project was a success. NMFS will expand the use of this system and will continue to explore ways to use technology to enhance the public's ability to learn about and participate in NMFS rulemaking activities.

*Comment 6:* Some commenters stated that the HMS CHB recreational trip definition should be coordinated with the regional fishery management councils, NMFS law enforcement, and USCG to minimize the confusion and complexity with different definitions in different fisheries.

*Response:* NMFS coordinated with other management bodies and enforcement agencies to develop a recreational trip definition for HMS CHB vessels. This issue was discussed at length during the 2001 Advisory Panel (AP) meeting, and there was

general consensus among the AP members that defining a charter trip in a manner similar to that used in the NMFS Southeast Region regulations (based on paying passengers aboard and/or the number of persons aboard, with three people or less on board constituting a "commercial" trip and more than three on board constituting a "charter" trip) is appropriate for HMS, especially regarding the YFT bag limit issue.

*Comment 7:* A few comments received stated that it is unacceptable to charge every fisherman \$27.00 per year for the use of the HMS resources. These commenters felt that the fee was a means of generating funds for the Federal government and that NMFS could establish a permit program and obtain the same information without charging a fee. Other commenters stated that the fee is reasonable.

*Response:* Under the Magnuson-Stevens Act, NMFS is authorized to charge fees for permits to participants in fisheries conducted in the U.S. exclusive economic zone. Administrative costs recovery is a NOAA policy, and the fee is calculated annually to recover the costs attributable to the automated permit and reporting system. Under current law, these funds cannot be directly applied to NMFS' programs, but must be deposited into the General Fund of the United States Treasury.

### Classification

These regulatory amendments are 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.* The Assistant Administrator (AA) for Fisheries, NOAA, has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and for the management of the Atlantic HMS fisheries.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) at the proposed rule stage that, if implemented, this final rule would not have a significant economic impact on a substantial number of small entities. No comments were received that would alter the basis for this determination. However, as noted above, a few of the comments received expressed concern about charging a fee for the use of the HMS resources. These commenters felt that the permit fee was a means to generate funds for the Federal government and that NMFS could establish a permit program without

charging a fee. However, under the Magnuson-Stevens Act, NMFS is authorized to charge fees for permits issued to participants in fisheries conducted in the U.S. exclusive economic zone. Further, administrative cost recovery is NOAA's policy, and the minimal fee (currently \$27 per year) is calculated annually to recover the costs attributable to the automated permit and reporting system. Under current law, these funds cannot be directly applied to NMFS' programs, but must be deposited into the General Fund of the United States Treasury. Given the prior certification to SBA, neither an Initial nor a Final Regulatory Flexibility Analysis was prepared.

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

NMFS prepared an Environmental Assessment (EA) for this final rule, and the AA has concluded that there would be no significant impact on the human environment. The EA presents analyses of the anticipated impacts of these final actions and the other alternatives considered. A copy of the EA and other analytical documents prepared for this final rule are available from NMFS (*see ADDRESSES*).

The regulations implemented through this final rule are not expected to increase endangered species or marine mammal interaction rates. On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. On July 9, 2002 (67 FR 45393), NMFS implemented the reasonable and prudent alternative required by the BiOp. None of the actions in this final rule would have any additional impact on sea turtles as these actions would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No irreversible or irretrievable commitments of resources are expected from the final actions that would adversely affect the implementation of the requirements of the BiOp.

The areas affected by these final actions have been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management

Council, the Caribbean Fishery Management Council, and the HMS Management Division of NMFS. It is not anticipated that the actions will have any adverse impacts on EFH; therefore, no consultation is required.

This final rule contains two new collection-of-information requirements and restates several existing reporting requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The first new collection of information is approved under OMB Control Number 0648-0327 and is an extension of the Atlantic tunas recreational Angling category permit requirement to include fishermen who fish for all Atlantic HMS, including swordfish, sharks, and billfish, with an estimated public reporting burden of 30 minutes per response for initial permit applications and 6 minutes per response for renewing the permit. The second collection is approved under OMB Control Number 0648-0373 and extends gear-marking requirements to persons acquiring this permit who were not previously subject to a permit requirement, with an estimated response time of 15 minutes per float. This final rule also restates a number of collection-of-information requirements that OMB has previously approved. These requirements and their OMB control numbers and estimated response times are: vessel permits for Atlantic tunas and Atlantic HMS Charter/headboats, initial (30 minutes; 0648-0327) and renewal (6 minutes; 0648-327); vessel permits for Atlantic shark and swordfish (20 minutes; 0648-0205); dealer permits for Atlantic sharks and swordfish (5 minutes; 0648-0205); call in recreational landing reports for Atlantic bluefin tuna (5 minutes; 0648-0328); dealer permits for Atlantic tunas (5 minutes; 0648-0202); gear marking (15 minutes; 0648-0373); and vessel marking (45 minutes; 0648-0373).

All estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (*see ADDRESSES*).

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

displays a currently valid OMB control number.

#### List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Statistics, Treaties.

Dated: December 10, 2002.

#### Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 635, is amended as follows:

#### PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

2. In § 635.2, the definition for "For-hire trip" is added, in alphabetical order, to read as follows:

#### § 635.2 Definitions.

\* \* \* \* \*

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

\* \* \* \* \*

3. In § 635.4, paragraphs (a)(1), (a)(2), (a)(5), (b), (d)(1) through (d)(3), (h)(1) introductory text, and (m)(1) are revised, and paragraph (c) is added to read as follows:

#### § 635.4 Permits and fees.

\* \* \* \* \*

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

(2) Vessel permit inspection. The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

(c) HMS Angling permits. The owner of each vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed, must obtain an HMS Angling permit. Atlantic HMS caught, retained, possessed, or landed by persons on board vessels with an HMS Angling permit may not be sold or transferred to any person for a commercial purpose. A vessel issued an HMS Angling permit for a fishing year shall not be issued an HMS Charter/Headboat permit or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership. An Atlantic Tunas Angling category permit issued for the 2002 fishing year shall meet the

vessel permit requirements of this paragraph through May 31, 2003.

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

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

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

\* \* \* \* \*

(h) \* \* \*

(1) Atlantic Tunas, HMS Angling, and HMS Charter/Headboat vessel permits.

\* \* \* \* \*

(m) Renewal--(l) General. Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, or swordfish vessel permit. Except as specified in the instructions for automated renewals, a renewal application must be submitted to NMFS, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit provided that the specific requirements for the requested permit are met, including those described in § 635.4 (l)(2), all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in § 635.5, and the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section.

\* \* \* \* \*

4. In § 635.5, the first sentence of paragraph (c) is revised to read as follows:

**§ 635.5 Recordkeeping and reporting.**

\* \* \* \* \*

(c) Anglers. The owner of a vessel permitted in the HMS Angling or HMS Charter/Headboat category must report all BFT landed under the Angling category quota to NMFS through the automated catch reporting system by calling 1-888-USA-TUNA or posting the required information at <http://www.nmfspermits.com> within 24 hours of the landing. \* \* \*

\* \* \* \* \*

5. In § 635.6, paragraph (b)(1) introductory text and the first sentence of paragraph (c)(1) are revised to read as follows:

**§ 635.6 Vessel and gear identification.**

\* \* \* \* \*

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

\* \* \* \* \*

(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 gillnet, must display the vessel's name, registration number or Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit number on each float attached to a handline or harpoon and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. \* \* \*

\* \* \* \* \*

6. In § 635.22, paragraphs (a), (c), and (d) are revised to read as follows:

**§ 635.22 Recreational retention limits.**

(a) General. Atlantic HMS caught, possessed, retained, or landed under these recreational retention limits may not be sold or transferred to any person for a commercial purpose. Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic EEZ, and to a yellowfin or bluefin 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 retention limit and the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

\* \* \* \* \*

(c) Sharks. One shark from either the large coastal, small coastal or pelagic group may be retained per vessel per trip, subject to the size limits described

in § 635.20(e), and, in addition, one Atlantic sharpnose shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark per person may be possessed on board a vessel. No prohibited sharks listed in Table 1(d) of appendix A to this part may be retained. The recreational retention limit for sharks applies to a person who fishes in any manner, except to a person aboard a vessel issued an Atlantic Sharks LAP under § 635.4. When a commercial Atlantic shark fishery is closed under § 635.28, the recreational retention limit for sharks may be applied to persons aboard a vessel issued an Atlantic Sharks LAP under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit under § 635.4 and is engaged in a for-hire trip.(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 possessed on board a vessel. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard a vessel issued an Atlantic Tunas vessel permit under § 635.4. The recreational retention limit for yellowfin tuna applies to persons aboard a vessel that has been issued an HMS Charter/Headboat permit only when the vessel is engaged in a for-hire trip.

7. In § 635.23, paragraphs (b) introductory text, (b)(2), (b)(3), (c) introductory text, and (c)(3) are revised to read as follows:

**§ 635.23 Retention limits for BFT.**

\* \* \* \* \*

(b) Angling category. BFT may be retained and landed under the daily limits and quotas applicable to the Angling category by persons aboard vessels issued an HMS Angling permit as follows:

\* \* \* \* \*

(2) School, large school, or small medium BFT. (i) No school, large school, or small medium BFT may be retained, possessed, landed, or sold in the Gulf of Mexico.

(ii) One school, large school, or small medium BFT per vessel per day may be retained, possessed, or landed outside the Gulf of Mexico. 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.

(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 in retention limit will be based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. Such adjustments to the retention limits may be applied separately for persons aboard a specific vessel type, such as private vessels, headboats or charter boats. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing with the Office of the **Federal Register** for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the **Federal Register** for publication.

(c) HMS Charter/Headboat. Persons aboard a vessel issued an HMS Charter/Headboat permit may retain and land BFT under the daily limits and quotas applicable to the Angling category or the General category as follows:

\* \* \* \* \*

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

\* \* \* \* \*

8. In § 635.27, the first three sentences of paragraph (a) introductory text, the first two sentences of paragraph (a)(1)(i) introductory text, and the first sentence of paragraph (a)(2) introductory text are revised to read as follows:

**§ 635.27 Quotas.**

(a) BFT. Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits,

HMS Angling permits, or HMS Charter/Headboat permits. \* \* \*

(1) \* \* \*

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category landings quota. See § 635.23 (c)(3) regarding landings by vessels with an HMS Charter/Headboat permit that are counted against the General category landings quota. \* \* \*

\* \* \* \* \*

(2) Angling category landings quota. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent of the overall annual U.S. BFT landings quota. \* \* \*

\* \* \* \* \*

9. In § 635.28, paragraph (b)(3) is revised to read as follows:

**§ 635.28 Closures.**

\* \* \* \* \*

(b) \* \* \*

(3) When the fishery for a shark species group is closed, a fishing vessel issued an Atlantic Sharks LAP pursuant to § 635.4 may not possess or sell a shark of that species group, except under the conditions specified in § 635.22 (a) and (c), and a permitted shark dealer may not purchase or receive a shark of that species group from a vessel issued an Atlantic Sharks LAP, 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.

\* \* \* \* \*

10. In § 635.31, paragraph (a)(1) is revised to read as follows:

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

(a) Atlantic tunas. (1) Persons that own or operate a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit, or a General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic Tunas issued under this part. However, no person shall sell a BFT smaller than the large medium size class. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been

closed, shall be sold (see § 635.23(c)). Persons shall sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part.

\* \* \* \* \*

11. In § 635.71, paragraphs (b)(1), (b)(3), (b)(14), and (b)(15), are revised to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(b) \* \* \*

(1) Engage in fishing with a vessel that has been issued an Atlantic Tunas or Atlantic HMS permit 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 and/or brought 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.

\* \* \* \* \*

(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a person aboard a vessel other than one that has on board a valid HMS Angling or Charter/Headboat permit, or an Atlantic tunas Purse Seine category permit as authorized under § 635.23 (b), (c), and (e)(2).

\* \* \* \* \*

(14) As a person aboard a vessel issued an HMS Angling or 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 person aboard a vessel issued an HMS Angling or HMS Charter/Headboat permit, sell, offer for sale, or attempt to sell a large medium or giant BFT retained when fishing under the circumstances specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[I.D. 112902A]

**Fisheries of the Exclusive Economic Zone off Alaska; Bycatch Rate Standards for the First Half of 2003**

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

**ACTION:** Pacific halibut and red king crab bycatch rate standards; request for comments.

**SUMMARY:** NMFS announces Pacific halibut and red king crab bycatch rate standards for the first half of 2003. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program (VIP). This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to avoid excessive prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), January 20, 2003, through 2400 hours, A.l.t., June 30, 2003. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., January 2, 2003.

**ADDRESSES:** Comments may be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907-586-7557. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228, fax 907-586-7465, e-mail [mary.furuness@noaa.gov](mailto:mary.furuness@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea

and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement the VIP to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators also must not exceed red king crab bycatch rate standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Because the Alaskan groundfish fisheries are closed to trawling from January 1 to January 20 of each year (§ 679.23(c)), the Administrator, Alaska Region, NMFS (Regional Administrator) is promulgating bycatch rate standards for the first half of 2003 effective from January 20, 2003, through June 30, 2003.

As required by § 679.21(f)(4), bycatch rate standards are based on the following information:

- (A) Previous years' average observed bycatch rates;
- (B) Immediately preceding season's average observed bycatch rates;
- (C) The bycatch allowances and associated fishery closures specified under §§ 679.21(d) and (e);
- (D) Anticipated groundfish harvests for that fishery;
- (E) Anticipated seasonal distribution of fishing effort for groundfish; and
- (F) Other information and criteria deemed relevant by the Regional Administrator.

At its October 2002 meeting, the Council reviewed Pacific halibut and red king crab bycatch rates experienced by vessels participating in the fisheries under the incentive program during