

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 07/30/2008

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

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 03/24/2008

ACTION REQUESTED: Extension without change of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 200803-0648-003  
AGENCY ICR TRACKING NUMBER:  
TITLE: Implantation and Recovery of Archival Tags  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 0648-0338

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

EXPIRATION DATE: 07/31/2011

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	29	17	0
New	35	21	50
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	6	4	50
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland  
Deputy Administrator,  
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Implantation of Archival Tags - Notification and Report			50 CFR 635
Tag Recovery			50 CFR 635

# PAPERWORK REDUCTION ACT SUBMISSION

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

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

## 19. Certification for Paperwork Reduction Act Submissions

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

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

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

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

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

Signature of Senior Official or designee

Date

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

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT  
IMPLANTATION AND RECOVERY OF ARCHIVAL TAGS  
OMB CONTROL NO.: 0648-0338**

**A. JUSTIFICATION**

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

The purpose of the collection of this information is to assist in compliance with the **Atlantic Tunas Convention Act** of 1975 (ATCA, 16 U.S.C. 971), the **Magnuson-Stevens Fisheries Conservation and Management Act** (Magnuson-Stevens Act, 16 U.S.C. 1812), and Federal regulations at **50 CFR 635**. ATCA authorizes the promulgation of regulations to implement recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and collect information to support these recommendations. Atlantic highly migratory species (HMS) such as tuna, shark, swordfish, and billfish are also managed under the authority of the Magnuson-Stevens Act, which gives NOAA Fisheries the authority to conduct and promote fisheries research, and requires that the United States cooperate with those international organizations involved in the conservation of HMS.

As a member of ICCAT, the United States takes part in the collection of HMS biological statistics for research purposes. The collection of information through the U.S. HMS archival tagging program provides essential stock assessment information for international and domestic fishery management. The tagging program has provided and continues to provide vital information regarding the movement and life history of bluefin tuna and billfish.

Archival tags are miniature data loggers that record the movements, geolocation, and behavior of individually tagged highly migratory species. The tags are returned to the agency by fishermen after a tagged fish is captured in a commercial or recreational fishery. Data from recovered tags is used to ascertain HMS life history information such as migratory patterns and spawning site fidelity. This information is vital for international and U.S. management of HMS fisheries. For example, data from this tagging program was recently presented at an ICCAT intersessional meeting reviewing bluefin tuna stock composition. Bluefin management has been based on a two stock hypothesis (with spawning occurring in two discrete locations in the Mediterranean and Gulf of Mexico); however, additional information collected through tags may help provide a better understanding of the migratory nature and potential spawning areas for bluefin tuna. Data from the archival tagging program will continue to be an integral part of this debate.

This Paperwork Reduction Act package renewal covers two reporting requirements associated with the archival tag program. Current National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) regulations (50 CFR §635.33) allow fishermen to retain any HMS with an archival tag implanted or attached without regard to season or size limits, under the condition that the fisherman report the landing to NOAA Fisheries along with certain information about the catch, and make the fish available to NOAA Fisheries for recovery of the tag.

NOAA Fisheries regulations also require that researchers using archival tags for HMS notify NOAA Fisheries in writing before and after project completion, including information such as the type and number of tags used, the species and approximate size of the tagged fish, and the location and method of capture of the tagged fish.

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

As described above, there are two sets of reporting requirements. The information provided by HMS fishermen will include the archival tag, location of capture, and captured fish. This information will be used to analyze facets of the life history of tagged fish.

The information provided by researchers will include notification of project initiation, and a summary of project results. This information is needed to assist the agency in assessing the effectiveness of archival tag research and the impact of regulatory allowances for tag recovery, and to ensure that archival tag research does not lead to undue mortality, in addition to the information generated by the tagging program itself, as discussed above.

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response # 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

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

Archival tags have been specifically designed for use on fish, sea turtles, and marine mammals. The archival tag stores environmental and behavioral data. Software provides graphical representation of all the data. Tags currently on the market weigh 25g in air, have up to one megabyte of memory, can retain data for 20 years, and have a lifetime of four to five years.

Archival tag information can be reported at the toll-free number (800) 437-3936, or by contacting: National Marine Fisheries Service, Highly Migratory Species, 1315 East West Highway, Silver Spring, MD 20910.

**4. Describe efforts to identify duplication.**

Reports submitted to NOAA Fisheries from researchers planning an archival tagging program for HMS will provide for coordination of tagging programs in order to ensure that duplication of tagging programs will not take place. Given the expense of this research, relatively few parties will be involved and a high level of coordination with the researchers will be maintained, which will provide an avenue to avoid any duplication of reporting requirements within NOAA. Other reporting within NOAA that could be required of researchers includes grant reports (if a NOAA grant is issued) or interim and final exempted fishing permit reports. If these other reports contain the necessary information and are available in the timeframe required under 50 CFR §635.33, they may be submitted to satisfy the reporting requirements approved under this collection.

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

There will be no significant impact on small businesses or entities.

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

The tagging program could not be conducted without the reporting requirements, since collecting tag returns is an integral part of a tagging program. If the tagging program were not conducted, domestic and international management of HMS would be compromised, and could be rendered ineffective because of the lack of necessary life history information.

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

The collection is consistent with the guidelines.

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

A Federal Register notice published on October 31, 2007 solicited public comment on this renewal. No comments were received.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

A \$1,000 reward is offered for the recovery of an archival tag. Given the high cost of each tag and tag deployment, a reward to encourage recovery of the tags is warranted. Rewards in



conventional tagging programs are common and have been found to enhance recovery numbers. The high value of an individual giant tuna on the export market (thousands of dollars) also calls for a reward as an incentive for reporting and providing the fish for sampling. Finally, tags may be recovered by fishermen outside the waters of the United States in the eastern Atlantic or the Mediterranean Sea, and a reward increases the likelihood that they will report.

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

Information submitted will be treated as confidential under the provisions of the Magnuson-Stevens Fishery Management and Conservation Act and NOAA Administrative Order 216-100.

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

No sensitive questions are asked.

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

Approximately 25 tags are recovered and reported on per year. The estimated time for reporting on the fish is 30 minutes, which includes the time for making a toll-free call, making arrangements for the fish to be examined by a fishery biologist or to remove the tag, and processing fish samples as instructed. The burden for tag recovery is therefore:

$$25 \text{ respondents} \times 1 \text{ response} \times 30 \text{ minutes} = 12.5 \text{ (13) hours}$$

The total number of persons implanting archival tags is estimated at 5 researchers, each providing a written notification and a written report.

$$5 \text{ respondents} \times 1 \text{ notification} \times 30 \text{ minutes/notification} = 2.5 \text{ (3) hours}$$
$$5 \text{ respondents} \times 1 \text{ report} \times 1 \text{ hr/report} = 5 \text{ hours}$$

Collection totals are 30 respondents, 35 responses, and 21 hours.

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

There are no costs for those recovering tags, since the phone call is toll-free and a reward is given. Other than paper and postage costs, which are estimated to be \$20-\$50 per year (\$4-\$10 per respondent or \$2-\$5 per response), no incremental costs to researchers are anticipated for implantation reports.

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

The cost of the Archival Tagging Program is approximately \$1 million in research grants over a 3-year period. About 75 tags (25 per year) will be returned over the 3 years, with a reward of \$1,000 a tag, for a cost of \$75,000. The total Federal cost for 3 years is therefore approximately \$1,075,000, or \$358,333 a year.

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

The changes in total annual burden hours are adjustments reflecting a re-estimation of the numbers of respondents and responses. Based on activities over the past three years, an additional 6 respondents are expected to report landing information: 6 x 30 minutes = 3 hours. With all hours subtotals being rounded up, total additional hours are actually 4.

The increase of \$50 (not shown on the 83i) is an artifact: when the ICR was migrated to ROCIS, the cost was rounded to zero.

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

Results will not be published. The data obtained may be used in reports and articles, which may be published.

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

Not applicable.

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

No exceptions are requested.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection will not employ statistical methods.

## 16 USCS § 971d

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\*\*\* CURRENT THROUGH P.L. 110-111, APPROVED 11/5/2007 \*\*\*

TITLE 16. CONSERVATION  
 CHAPTER 16A. ATLANTIC TUNAS CONVENTION

**Go to the United States Code Service Archive Directory**

*16 USCS § 971d*

§ 971d. Administration

(a) Regulations; cooperation with other parties to Convention; utilization of personnel, services, and facilities for enforcement. The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this Act [16 USCS §§ 971 et seq.], and regulations issued pursuant thereto, except to the extent otherwise provided for in this Act [16 USCS §§ 971 et seq.]. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act [16 USCS §§ 971 et seq.], and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the Secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the exclusive economic zone, or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State. When so utilized, such personnel of the States of the United States are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Civil Service Commission.

(b) Primary enforcement responsibility. Enforcement activities at sea under the provisions of this Act [16 USCS §§ 971 et seq.] for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.

(c) Regulations and other measures to carry out Commission recommendations.

(1) (A) Upon favorable action by the Secretary of State under section 5(a) of this Act [16 USCS § 971c(a)] on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.

(B) Not later than June 30, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party to the Convention.

(C) Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.

(3) The regulations required to be promulgated under paragraph (1) of this subsection may--

- (A) select for regulation one or more of the species covered by the Convention;
- (B) divide the Convention waters into areas;
- (C) establish one or more open or closed seasons as to each such area;
- (D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;
- (E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;
- (F) require records of operations to be kept by any master or other person in charge of any fishing vessel;
- (G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this Act [16 USCS §§ 971 et seq.];

(H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section;

(I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;

(J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and

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(K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention; except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level to the United States agreed to pursuant to a recommendation of the Commission.

(4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit--

(A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.

(5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

(6) Identification and notification.

(A) Not later than July 1, 1996, and annually thereafter, the Secretary, in consultation with the Secretary of State, the Commissioners, and the advisory committee, shall--

(i) identify those nations whose fishing vessels are fishing, or have fished during the preceding calendar year, within the convention area in a manner or under circumstances that diminish the effectiveness of a conservation recommendation;

(ii) notify the President and the nation so identified, including an explanation of the reasons therefor; and

(iii) publish a list of those Nations identified under clause (i).

(B) In identifying those Nations, the Secretary shall consider, based on the best available information, whether those Nations have measures in place for reporting, monitoring, and enforcement, and whether those measures diminish the effectiveness of any conservation recommendation.

(7) Consultation. Not later than 30 days after a Nation is notified under paragraph (6), the President may enter into consultations with the Government of that Nation for the purpose of obtaining an agreement that will--

(A) effect the immediate termination and prevent the resumption of any fishing operation by vessels of that Nation within the Convention area which is conducted in a manner or under circumstances that diminish the effectiveness of the conservation recommendation;

(B) when practicable, require actions by that Nation, or vessels of that Nation, to mitigate the negative impacts of fishing operations on the effectiveness of the conservation recommendation involved, including but not limited to, the imposition of subsequent-year deductions for quota overages; and

(C) result in the establishment, if necessary, by such Nation of reporting, monitoring, and enforcement measures that are adequate to ensure the effectiveness of conservation recommendations.

(d) Commission recommendations concerning large-scale driftnet fishing and conservation of Atlantic swordfish.

(1) It is the sense of the Congress that the Secretary, in consultation with the Secretary of State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section 3(16) of the Magnuson-Stevens Fishery Conservation and Management Act) in the Convention area.

(2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest levels to the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary, within 3 months after each annual meeting of the Commission, shall notify Congress as to the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock.

#### **HISTORY:**

(Aug. 5, 1975, P.L. 94-70, § 6, 89 Stat. 387; Nov. 28, 1990, P.L. 101-627, Title II, § 206, 207, 104 Stat. 4461; Nov. 3, 1995, P.L. 104-43, Title III, §§ 303(3), 305, 109 Stat. 384, 385; Nov. 13, 1998, P.L. 105-384, Title II, § 202(b)(1)(C), (F). 112 Stat. 3452, 3453.)

#### **HISTORY; ANCILLARY LAWS AND DIRECTIVES**

#### References in text:

"Section 3(16) of the Magnuson-Stevens Fishery Conservation and Management Act" referred to in this section, is section 3(16) of Act April 13, 1976, P.L. 94-265, which formerly appeared as *16 USCS § 1802(16)*, and was redesignated *16 USCS § 1802(17)*.

#### Explanatory notes:

The Coast Guard, referred to in this section, is currently operating in the Department of Transportation, pursuant to Act Oct. 15, 1966, P.L. 89-670, 80 Stat. 931.

#### Amendments:

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1990. Act Nov. 28, 1990, in subsec. (c), in para. (1), designated the existing provisions as subpara. (A) and added paras. (B) and (C) and, in para. (3), in subpara. (H), substituted a semicolon for "; and", substituted subpara. (I) for one which read: "impose such other requirements and provide for such other measures as the Secretary may deem necessary to implement any recommendation of the Commission.", added new subparas. (J) and (K), and added "except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish to the United States agreed to pursuant to a recommendation of the Commission."; and substituted subsec. (d) for one which read:

"(1) Notwithstanding section 5(a) and subsection (c) of this section, the recommendations of the Commission concerning bluefin tuna (*Thunnus thynnus thynnus*) which were proposed at the third regular meeting of the Council during the period beginning November 20 and ending November 26, 1974, shall apply with respect to persons and vessels subject to the jurisdiction of the United States immediately upon the taking effect of the regulations required to be promulgated under paragraph (2) of this subsection.

"(2) Not later than the thirtieth day after the date of enactment of this Act, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out the purposes of paragraph (1) of this subsection, including, after consultation with the Secretary of the department in which the Coast Guard is operating, regulations providing procedures and methods of enforcement. Notwithstanding provisions of *section 553 of title 5 of the United States Code*, such regulations may be promulgated without general notice of proposed rulemaking, and such regulations may take effect on the date they are published in the Federal Register. Such regulations shall remain in force and effect with respect to persons and vessels subject to the jurisdiction of the United States until the last date on which recommendations referred to in paragraph (1) can take effect under paragraph (3) of article VIII of the Convention, and if such recommendations do take effect under the Convention with respect to the United States on or before such last date, such regulations shall remain in force and effect, subject to the provisions of the Convention and this Act, for so long as such recommendations are so in effect."

1995. Act Nov. 3, 1995, in subsec. (a), substituted "exclusive economic zone" for "fisheries zone"; and, in subsec. (c), in the heading, inserted "and other measures", in para. (3), in the concluding matter, inserted "or fishing mortality level", and added paras. (6) and (7).

1998. Act Nov. 13, 1998, in subsec. (c), in para. (1)(C), substituted "Magnuson-Stevens Fishery" for "Magnuson Fishery", in para. (6), in subpara. (A)(iii), substituted "clause (i)" for "subparagraph (A)", and designated the concluding matter of such paragraph as subpara. (B); and, in subsec. (d)(1), substituted "Magnuson-Stevens Fishery" for "Magnuson Fishery".

#### Transfer of functions:

All functions vested by statute in the Civil Service Commission, except as otherwise specified, were transferred to the Director of the Office of Personnel Management, by Reorg. Plan No. 2 of 1978, *43 Fed. Reg. 36037*, 92 Stat. 3784, which appears at *5 USCS § 1101* note. This transfer is effective Jan. 1, 1979, as provided by Ex. Or. No. 12107 of Dec. 28, 1978, § 1-102, *44 Fed. Reg. 1055*, which appears at *5 USCS § 1101* note.

#### Other provisions:

**Use of aircraft for purposes of Atlantic bluefin tuna fishing.** Act Dec. 21, 2000, P.L. 106-553, § 1(a)(2), 114 Stat. 2762 (enacting into law § 634 of Title VI of H.R. 5548 (114 Stat. 2762A-114), as introduced on Oct. 25, 2000), provides:

"None of the funds provided in this or any previous Act, or hereinafter made available to the Department of Commerce shall be available to issue or renew, for any fishing vessel, any general or harpoon category fishing permit for Atlantic bluefin tuna that would allow the vessel--

"(1) to use an aircraft to locate, or otherwise assist in fishing for, catching, or possessing Atlantic bluefin tuna; or

"(2) to fish for, catch, or possessing Atlantic bluefin tuna located by the use of an aircraft."

#### NOTES:

#### Related Statutes & Rules:

This section is referred to in *16 USCS §§ 971e, 971j*.

#### Interpretive Notes and Decisions:

Prohibition in appropriations bill against use of federal funds to issue or renew bluefin tuna fishing permits to vessels using spotter aircraft to locate tuna, set out in Act of Dec. 21, 2000, Pub. L. No. 106-553, app. B § 634, 2000 U.S.C.C.A.N. (114 Stat.) 2762, 2762A-114 (§ 634), was limited to fiscal year to which appropriations bill applied in absence of any clear expression of congressional intent to impose permanent ban on use of spotter aircraft. *Atl. Fish Spotters Ass'n v Evans* (2003, CA1 Mass) 321 F3d 220.

Where appropriations bill designated as Act of Dec. 21, 2000, Pub. L. No. 106-553, app. B § 634, 2000 U.S.C.C.A.N. (114 Stat.) 2762, 2762A-114 (§ 634), prohibited use of federal funds to issue or renew bluefin tuna fishing permits to vessels using spotter aircraft to locate tuna, language in bill also prohibiting use of federal funds "hereinafter" made available referred only to funds appropriated by bill, or funds previously made available, and such language could not be construed to mean funds "hereafter" made available; thus, use of word, "hereinafter," did not express congressional intent to impose permanent prohibition. *Atl. Fish Spotters Ass'n v Evans* (2003, CA1 Mass) 321 F3d 220.

*16 USCS § 971d(c)(3)* did not entitle fishermen under given state's flag to fish to quota, rather it ensured that states did not unilaterally adjust their allotments under International Convention for Conservation of Atlantic Tunas at expense or to benefit of other states. *Blue Water Fishermen's Ass'n v Nat'l Marine Fisheries Serv.* (2002, DC Mass) 226 F Supp 2d 330.

## 16 USCS § 1812

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\*\*\* CURRENT THROUGH P.L. 110-111, APPROVED 11/5/2007 \*\*\*

TITLE 16. CONSERVATION  
CHAPTER 38. FISHERY CONSERVATION AND MANAGEMENT  
UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES

**Go to the United States Code Service Archive Directory**

*16 USCS § 1812*

§ 1812. Highly migratory species

(a) In general. The United States shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and shall promote the achievement of optimum yield of such species throughout their range, both within and beyond the exclusive economic zone.

(b) Traditional participation. In managing any fisheries under an international fisheries agreement to which the United States is a party, the appropriate Council or Secretary shall take into account the traditional participation in the fishery, relative to other nations, by fishermen of the United States on fishing vessels of the United States.

(c) Promotion of stock management. If a relevant international fisheries organization does not have a process for developing a formal plan to rebuild a depleted stock, an overfished stock, or a stock that is approaching a condition of being overfished, the provisions of this Act in this regard shall be communicated to and promoted by the United States in the international or regional fisheries organization.

**HISTORY:**

(April 13, 1976, P.L. 94-265, Title I, § 102, 90 Stat. 336; Nov. 14, 1986, P.L. 99-659, Title I, § 101(b), 100 Stat. 3709; Nov. 28, 1990, P.L. 101-627, Title I, § 103(a), 104 Stat. 4439; Oct. 11, 1996, P.L. 104-297, Title I, § 104, 110 Stat. 3563.)  
(As amended Jan. 12, 2007, P.L. 109-479, § 4, 120 Stat. 3578.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

References in text:

"This Act", referred to in this section, is Act April 13, 1976, P.L. 94-265, 90 Stat. 331, which appears generally as *16 USCS §§ 1801 et seq.* For full classification of this Act, consult USCS Tables volumes.

Effective date of section:

This section is effective Mar. 1, 1977, as provided by Act April 13, 1976, P.L. 94-265, Title I, § 104, 90 Stat. 336, which appears as *16 USCS § 1811* note.

Amendments:

1986. Act Nov. 14, 1986, substituted this section for one which read:

"Exclusive fishery management authority

"The United States shall exercise exclusive fishery management authority, in the manner provided for in this Act, over the following:

"(1) All fish within the fishery conservation zone.

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"(2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign nation's territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.

"(3) All Continental Shelf fishery resources beyond the fishery conservation zone.".

1990. Act Nov. 28, 1990 (effective Jan. 1, 1992, as provided by § 103(c) of such Act) substituted this section for one which read:

"Exclusion for highly migratory species

"The sovereign rights and exclusive fishery management authority asserted by the United States under section 101 over fish do not include, and may not be construed to extend to, highly migratory species of fish.".

1996. Act Oct. 11, 1996 substituted "shall promote the achievement of optimum yield" for "promoting the objective of optimum utilization".

2007. Act Jan. 12, 2007, designated the existing provisions as subsec. (a) and inserted the subsection heading; and added subsecs. (b) and (c).

Other provisions:

**Effective date of Nov. 28, 1990 amendment.** Act Nov. 28, 1990, P.L. 101-627, Title I, § 103(c), 104 Stat. 4439, provides "The amendments made by this section [amending this section] shall take effect on January 1, 1992.".

**NOTES:**

Related Statutes & Rules:

This section is referred to in *16 USCS § 1811*.

Interpretive Notes and Decisions:

United States is not indispensable party to suit brought in United States Supreme Court by Idaho against Oregon and Washington to secure equitable apportionment of various runs of anadromous fish migrating between spawning grounds in Idaho and Pacific Ocean; failure to join United States does not prevent Supreme Court from entering adequate judgment, even though United States controls ocean fishing of runs at issue, manages various dams that separate spawning grounds in Idaho from Pacific Ocean, and is trustee for various Indian tribes with treaty rights in fish at issue. *Idaho ex rel. Evans v Oregon & Washington (1980) 444 US 380, 62 L Ed 2d 564, 100 S Ct 616, 28 FR Serv 2d 889*.

Congress did not intend *16 USCS § 1812* to extend jurisdiction of Pacific Fisheries Management Council to inland fisheries used by Indians. *Pacific Coast Federation of Fishermen's Assn. v Secretary of Commerce (1980, ND Cal) 494 F Supp 626, 10 ELR 20930*.

National Marine Fisheries Service had authority pursuant to *16 USCS § 1812* to close access to highly migratory species due to potential impacts on listed turtle species within given area where Atlantic Tunas Convention Act, *16 USCS § 971* et seq., provided basis for fishery management plan's expanded territorial scope. *Blue Water Fishermen's Ass'n v Nat'l Marine Fisheries Serv. (2002, DC Mass) 226 F Supp 2d 330*.



## 16 USCS § 1881a

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\*\*\* CURRENT THROUGH P.L. 110-111, APPROVED 11/5/2007 \*\*\*

TITLE 16. CONSERVATION  
 CHAPTER 38. FISHERY CONSERVATION AND MANAGEMENT  
 FISHERY MONITORING AND RESEARCH

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*16 USCS § 1881a*

§ 1881a. Information collection

(a) Collection programs.

(1) Council requests. If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) Secretarial initiation. If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

(b) Confidentiality of information.

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except--

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

(E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);

(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;

(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (*6 U.S.C. 468(a)(2)*).

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or--

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order--

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

(c) Restriction on use of certain information.

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (*16 U.S.C. 1361 et seq.*), and the Endangered Species Act (*16 U.S.C. 1531 et seq.*), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the

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information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

(d) Contracting authority. Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if--

- (1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or
- (2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

(e) Resource assessments.

(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) The Secretary, in consultation with the appropriate Council and the fishing industry--

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

(C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

**HISTORY:**

(April 13, 1976, P.L. 94-265, Title IV, § 402, 90 Stat. 360; Oct. 11, 1996, P.L. 104-297, Title II, § 203, 110 Stat. 3607.)

(As amended Jan. 12, 2007, P.L. 109-479, § 3(d)(1)(A), Title II, §§ 202, 203(a), 120 Stat. 3578, 3612.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

References in text:

"This Act", referred to in this section, is Act April 13, 1976, P.L. 94-265, 90 Stat. 331, which appears generally as *16 USCS §§ 1801 et seq.* For full classification of such Act, consult USCS Tables volumes.

Explanatory notes:

Prior to the general amendment of § 402 of Act April 13, 1976, P.L. 94-265, by § 203 of Act Oct. 11, 1996, P.L. 104-297, such § 402 repealed *16 USCS §§ 1081-1086 and 1091-1094.*

Amendments:

2007. Act Jan. 12, 2007, in subsec. (b)(1)(D), substituted "a limited access privilege" for "an individual fishing quota".

Such Act further, in subsec. (a), substituted the subsection heading for one which read: "Council requests.", designated the existing text as para. (1), inserted the paragraph heading, deleted "(other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations)" following "additional information" and following "types of information", substituted "paragraph" for "subsection", and added para. (2); in subsec. (b), redesignated para. (2) as para. (3), substituted paras. (1) and (2) for former para. (1), which read:

"(1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act shall be confidential and shall not be disclosed, except--

"(A) to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;

"(B) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

"(C) when required by court order;

"(D) when such information is used to verify catch under a limited access privilege program;

"(E) that observer information collected in fisheries under the authority of the North Pacific Council may be released to the public as specified in a fishery management plan or regulation for weekly summary bycatch information identified by vessel, and for haul-specific bycatch information without vessel identification; or

"(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act.",

and, in para. (3) as redesignated, substituted "(2)(A)" for "(1)(E)".

**NOTES:**

Related Statutes & Rules:

This section is referred to in *16 USCS §§ 1852, 1855, 1881.*

**Title 50: Wildlife and Fisheries**

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

[Browse Next](#)

**Subpart A—General**

**§ 635.1 Purpose and scope.**

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

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

**§ 635.2 Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Charleston Bump closed area* means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 34°00' N. lat. near Wilmington Beach, NC, and proceeding due east to connect by straight lines the following coordinates in the order stated: 34°00' N. lat., 76°00' W. long.; 31°00' N. lat., 76°00' W. long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 31°00' N. lat. near Jekyll Island, GA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Fishing year means —*

- (1) For Atlantic tunas and swordfish, before January 1, 2008 — June 1 through May 31. On or after January 1, 2008 — January 1 through December 31.
- (2) For Atlantic billfish, On or after January 1, 2007 — January 1 through December 31.
- (3) For sharks — January 1 through December 31. *Floatation device* means any positively buoyant object rigged to be attached to a fishing gear.

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

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

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

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

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

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

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

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

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

*Import*, for purposes of this subpart, generally means the act of bringing or causing any goods to be brought into the customs territory of a country with the intent to unlade them. For purposes of this subpart, goods brought into the United States from a U.S. insular possession, or vice-versa, are not considered imports.

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

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

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

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

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

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

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

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

*Management unit* means in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### § 635.3 Relation to other laws.

- (a) The relation of this part to other laws is set forth in §600.705 of this chapter and in paragraphs (b) and (c) of this section.
- (b) In accordance with regulations issued under the Marine Mammal Protection Act of 1972, as amended, it is unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in fisheries for HMS in the Atlantic Ocean, unless the vessel owner or authorized representative has complied with specified requirements including, but not limited to, registration, exemption certificates, decals, and reports, as contained in part 229 of this title.
- (c) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§600.730, 600.735, and §600.740 of this chapter, respectively.
- (d) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing or exempted educational activity, or for public display, as specified in §635.32.

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

### § 635.4 Permits and fees.

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

- (a) *General*—(1) *Authorized activities*. Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities without the appropriate permit, unless otherwise authorized by NMFS in accordance with this part. In certain cases, additional permits may be required to authorize these same or related activities under federal, state or local jurisdictions.
- (2) *Vessel permit inspection*. The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess Atlantic HMS when engaged in recreational fishing and to fish for, take, retain or possess Atlantic tunas, swordfish, or sharks when engaged in commercial fishing. The vessel operator must make such permit available for inspection upon request by NMFS or by a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection all required vessel permits.
- (3) *Property rights*. Limited access vessel permits or any other permit issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the takings provision of the Fifth Amendment of the U.S. Constitution. Rather, limited access vessel permits represent only a harvesting privilege that may be revoked, suspended, or amended subject to the requirements of the Magnuson-Stevens Act or other applicable law.
- (4) *Dealer permit inspection*. A dealer permit issued under this section, or a copy thereof, must be available at each of the dealer's places of business. A dealer must present the permit or a copy for inspection upon the request of a NMFS-authorized officer.
- (5) *Display upon offloading*. Upon transfer of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit and/or Atlantic tunas, shark, or swordfish permit to the receiving dealer. The permit must be presented prior to completing any applicable landing report specified at §635.5(a)(1), (a)(2) and (b)(2)(i).
- (6) *Sanctions and denials*. A permit issued under this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.
- (7) *Alteration*. A vessel or dealer permit that is altered, erased, mutilated, or otherwise modified is invalid.
- (8) *Replacement*. NMFS may issue a replacement permit upon the request of the permittee. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (b) of this section, may be charged for issuance of the replacement permit.
- (9) *Fees*. NMFS may charge a fee for each application for a permit or for each transfer or replacement of a permit. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified in the instructions provided with each application form. Each applicant must include the appropriate fee with each application or request for transfer or replacement. A permit will not be issued to anyone who fails to pay the fee.
- (10) *Permit condition*. An owner of a vessel with a valid swordfish, shark, HMS Angling, or HMS Charter/Headboat permit issued pursuant to this part must agree, as a condition of such permit, that the vessel's HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the U.S. EEZ, or outside the U.S. EEZ, and without regard to where such HMS, or gear, are possessed, taken, or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations pertaining to HMS, persons aboard the vessel must abide by the state's more restrictive regulations.
- (b) *HMS Charter/Headboat permits*. (1) The owner of a charter boat or headboat used to fish for, take, retain, or possess any Atlantic HMS must obtain an HMS Charter/Headboat permit. A vessel issued an HMS Charter/Headboat permit for a fishing year shall not be issued an HMS Angling permit or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

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

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

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

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

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

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

Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, Purse Seine, or Trap category of the Atlantic Tunas permit or a valid HMS Charter/Headboat permit.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) *Transfer* — (1) *General*. A permit issued under this section is not transferable or assignable to another vessel or owner or dealer; it is valid only for the vessel or owner or dealer to whom it is issued. If a person acquires a vessel or dealership and wants to conduct activities for which a permit is required, that person must apply for a permit in accordance with the provisions of paragraph (h) of this section or, if the acquired vessel is permitted in either the shark, swordfish, or tuna longline fishery, in accordance with paragraph (1)(2) of this section. If the acquired vessel or dealership is currently permitted, an application must be accompanied by the original permit, by a copy of a signed bill of sale or equivalent acquisition papers, and the appropriate workshop certificates as specified in §635.8.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) *Renewal*—(1) *General*. Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, or swordfish vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to §635.8, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit are met, including those described in paragraph (l)(2) of this section, all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in §635.5 and §300.185 of this title, the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section, and the workshop requirements specified in §635.8 are met.

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

## § 635.5 Recordkeeping and reporting.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) *Requirements for bluefin tuna —(i) Dealer reports —(A) Landing reports.* Each dealer with a valid Atlantic tunas permit issued under §635.4 must submit a completed landing report on a form available from NMFS for each BFT received from a U.S. fishing vessel. Such report must be submitted by electronic facsimile (fax) or, once

available, via the Internet, to a number or a web address designated by NMFS not later than 24 hours after receipt of the BFT. A landing report must indicate the name and permit number of the vessel that landed the BFT and must be signed by the permitted vessel's owner or operator immediately upon transfer of the BFT. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number as listed on the permit are correctly recorded on the landing report and to verify that the vessel permit has not expired.

(B) *Bi-weekly reports.* Each dealer with a valid Atlantic tunas permit issued under §635.4 must submit a bi-weekly report on forms available from NMFS for BFT received from U.S. vessels. For BFT received from U.S. vessels on the 1st through the 15th of each month, the dealer must submit the bi-weekly report form to NMFS postmarked or, once available, electronically submitted via the Internet not later than the 25th of that month. Reports of BFT received on the 16th through the last day of each month must be postmarked or, once available, electronically submitted via the Internet not later than the 10th of the following month.

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

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

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

outside of any package containing the tuna. Such tag number also must be recorded on any document accompanying the shipment of bluefin tuna for commercial use or export.

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

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

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

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

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

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

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

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

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

### § 635.6 Vessel and gear identification.

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

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

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

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

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

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

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

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

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

### § 635.7 At-sea observer coverage.

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

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

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

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

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

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

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

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

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

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

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

### § 635.8 Workshops.

(a) *Protected species release, disentanglement, and identification workshops.* (1) Both the owner and operator of a vessel that fishes with longline or gillnet gear must be certified by NMFS, or its designee, as having completed a workshop on the safe handling, release, and identification of protected species before a shark or swordfish limited access vessel permit, pursuant to §635.4(e) and (f), is renewed in 2007. For the purposes of this section, it is a rebuttable presumption that a vessel fishes with longline or gillnet gear if: longline or gillnet gear is onboard the vessel; logbook reports indicate that longline or gillnet gear was used on at least one trip in the preceding year; or, in the case of a permit transfer to new owners that occurred less than a year ago, logbook reports indicate that longline or gillnet gear was used on at least one trip since the permit transfer.

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

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

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

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

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

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

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

(4) Dealers may send a proxy to the Atlantic shark identification workshops. If a dealer opts to send a proxy, the dealer must designate a proxy from each place of business covered by the dealer's permit issued pursuant to §635.4(g)(2). The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports as required under §635.5. Only one certificate will be issued to each proxy. If a proxy is no longer employed by a place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business covered by the shark dealer permit must possess a valid Atlantic shark identification workshop certificate.

(5) A Federal Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to §635.4(g)(2) must possess and make available for inspection a valid Atlantic shark identification workshop certificate at each place of business. A copy of this certificate issued to the dealer or proxy must be included in the dealer's application package to obtain or renew a shark dealer permit. If multiple businesses are authorized to receive sharks under the dealer's permit, a copy of the workshop certificate for each business must be included in the shark dealer permit renewal application package.

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

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

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

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

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

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

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

## **Title 50: Wildlife and Fisheries**

### **PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

#### **Subpart C—Management Measures**

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#### **§ 635.33 Archival tags.**

(a) *Implantation report.* Any person affixing or implanting an archival tag into a regulated species must obtain written authorization from NMFS pursuant to §635.32. Persons so authorized to conduct archival tag implantation must provide a written report to NMFS at an address designated by 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.

## Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554)

Sec. 515. (a) In General.--The Director of the Office of Management and Budget shall, by not later than September 30, 2001, and with public and Federal agency involvement, issue guidelines under sections 3504(d)(1) and 3516 of title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act.

- (b) Content of Guidelines.--The guidelines under subsection (a) shall--
- (1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and
  - (2) require that each Federal agency to which the guidelines apply--

(A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a);

(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and

- (C) report periodically to the Director--

(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and

(ii) how such complaints were handled by the agency.

The [full text of Public Law 106-554](#) is available through the Government Printing Office website.



# Administrative Management and Executive Secretariat

NAO 216-100

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

## SECTION 1. PURPOSE.

. 01 This Order:

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

## SECTION 2. SCOPE.

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

## SECTION 3. DEFINITIONS.

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

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

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

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

. 05 **Authorized Use/User.**

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

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

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

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

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

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

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

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

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

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

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

voluntarily or as required by statute or regulation.

#### **SECTION 4. POLICY.**

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

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

#### **SECTION 5. OPERATIONAL RESPONSIBILITIES.**

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

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

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

#### **SECTION 6. PROCEDURES.**

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

##### **a. General Requirements.**

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

##### **b. Specific Requirements.**

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

##### **.02 Maintenance.**

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

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

**.03 Access to Data Subject to This Order.**

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

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

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

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

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

d. **States.**

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

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

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

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

**e. Contractors.**

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

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

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

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

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

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

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

**a. Magnuson Act and MMPA.**

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

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

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

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

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

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

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

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

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

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

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

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

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

**d. Special Procedures.**

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

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

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

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

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

**SECTION 7. PENALTIES.**

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

- a. Trade Secrets Act (18 U.S.C. 1905);
- b. Privacy Act (5 U.S.C. 552a(i)(1));
- c. Magnuson Act (16 U.S.C. 1858); and
- d. MMPA (16 U.S.C. 1375).

.02 **Conflict of Interest.** Employees are prohibited by Department of Commerce employee conduct regulations [15 CFR part 0] and by ethics regulations applicable to the Executive Branch [5 CFR 2635.703] from using nonpublic information subject to this Order for personal gain, whether or not there is a disclosure to a third party.

.03 **Disciplinary Action.** Persons may be subject to disciplinary action, including removal, for failure to comply with this Order. Prohibited activities include, but are not limited to, unlawful disclosure or use of the data, and failure to comply with implementing regulations or statutory prohibitions relating to the collection, maintenance, use and disclosure of data covered by this Order.

**SECTION 8. EFFECT ON OTHER ISSUANCES.** None.

receives or possesses the billfish. A standard form is not currently required to document the necessary information. An equivalent form may be used provided it contains all of the information required. The continuation of this collection is necessary to implement the Consolidated Highly Migratory Species Fishery Management Plan, whose objective is to reserve Atlantic billfish for the recreational fishery.

## II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants, and methods of submittal include Internet and facsimile transmission of paper forms.

## III. Data

*OMB Control Number:* 0648–0216.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 200.

*Estimated Time per Response:* 20 minutes for initial completion of certificate and 2 minutes for subsequent billfish purchase record keeping.

*Estimated Total Annual Burden Hours:* 43.

*Estimated Total Annual Cost to Public:* \$0.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 25, 2007.

### Gwellnar Banks,

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7–21373 Filed 10–30–07; 8:45 am]

BILLING CODE 3510–22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Implantation and Recovery of Archival Tags

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before December 31, 2007.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Heather Halter, (301) 713–2347, or [heather.halter@noaa.gov](mailto:heather.halter@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The National Oceanic and Atmospheric Administration (NOAA) operates a program to implant archival tags in, or affix archival tags to, selected Atlantic Highly Migratory Species (tunas, sharks, swordfish, and billfish). The archival tags are miniature data loggers that acquire information about the movements and behavior of the fish. Persons catching tagged fish are exempted from other normally applicable regulations, such as immediate release of the fish, but must notify NOAA, return the archival tag or make it available to NOAA personnel, and provide information about the location and method of capture. The information obtained is used by NOAA in the formation of international and domestic fisheries policy and regulations.

The persons outside of NOAA who affix or implant archival tags must obtain prior authorization from NOAA and submit subsequent reports about the tagging of fish. NOAA needs the information to evaluate the effectiveness

of archival tag programs, to assess the likely impact of regulatory allowances for tag recovery, and to ensure that the research does not produce undue mortality.

## II. Method of Collection

Tags and associated information are mailed to NOAA.

## III. Data

*OMB Control Number:* 0648–0338.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected public:* Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* 25.

*Estimated Time per Response:* 30 minutes for reporting on an archival tag recovery; 30 minutes for notification of planned archival tagging activity; and 1 hour for reports of archival tagging activity.

*Estimated Total Annual Burden Hours:* 17.

*Estimated Total Annual Cost to Public:* \$0.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 25, 2007.

### Gwellnar Banks,

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7–21375 Filed 10–30–07; 8:45 am]

BILLING CODE 3510–22-P