

Fishery Conservation and Management

§ 635.1

the midpoint attachment. Two 8-inch (20.3-cm) pieces of number 60 twine must be attached to the top and bottom of the 11-inch (27.9-cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the 24-inch (61-cm) cable hoop; the points of attachment for the two pieces of twine must be measured 4 inches (10.2 cm) from the points where they are tied to the 11-inch (27.9-cm) cone hoop.

[62 FR 18539, Apr. 16, 1997, as amended at 64 FR 37694, July 13, 1999]

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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APPENDIX A TO PART 635—SPECIES TABLES

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

SOURCE: 64 FR 29135, May 28, 1999, unless otherwise noted.

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.

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.

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.

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.

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.

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.

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.

EFP 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 means a shipment to a destination outside the customs territory of the United States for which a Shipper's Export Declaration (Customs Form 7525) is required. Atlantic HMS destined from one foreign country to another, which transits the United States and for which a Shipper's Export Declaration is not required to be filed, is not an export under this definition.

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

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, billfish, and swordfish—June 1 through May 31 of the following year; and

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

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

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

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

High-flyer means a flag, radar reflector, or radio beacon transmitter attached to a longline.

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.

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

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

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

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

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

Large coastal shark (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.

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 these species 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.

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.

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.

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 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.

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 tables 1 and 2 in 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.

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

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.

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.

§ 635.3 Relation to other laws.

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

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

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

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

§ 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.

(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 tunas, when engaged in commercial or rec-

reational fishing, and to fish for, take, retain or possess Atlantic swordfish or sharks when engaged in commercial fishing. The vessel operator and must make such permit available for inspection upon request by NMFS or 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 valid 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 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.

(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.

(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) [Reserved]

(d) *Atlantic Tunas vessel permits.* (1) The owner of each vessel used to fish for or take Atlantic tunas or on which Atlantic tunas are retained or possessed must obtain, in addition to any other required permits, a permit in one and only one of the following categories: Angling, Charter/Headboat, General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas vessel permit or a valid 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's valid permit is in the General, Harpoon, Charter/Headboat, Longline, Purse Seine, or Trap category of the Atlantic Tunas permit or is a valid

HMS Charter/Headboat permit. Persons may not sell Atlantic tunas caught on board a vessel issued a permit in the Angling category.

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

(4) A person can obtain an 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 for swordfish. NMFS will issue Atlantic Tunas Longline category permits to qualifying vessels in calendar year 1999. Thereafter, such permits may be obtained through transfer from current owners consistent with the provisions under paragraph (1)(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) As of July 1, 1999, the only valid Federal commercial vessel permits for shark are those that have been issued under the limited access criteria specified in § 635.16.

(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. See § 635.16 regarding the initial issuance of these two types of permits. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational 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.

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

(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. See §635.16 regarding the initial issuance of these three types of permits.

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

(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 barter for Atlantic tunas from a fishing vessel of the United States or who imports or exports

bluefin tuna, regardless of ocean area of origin, must possess a valid dealer permit.

(2) *Shark.* A person that receives, purchases, trades for, or barter for Atlantic sharks from a fishing vessel of the United States 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 or who imports swordfish, regardless of origin, must possess a valid dealer permit. Importation of swordfish by nonresident corporations is restricted to those entities authorized under 19 CFR 141.18.

(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 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 §635.16 for the issuance of ILAPs for shark and swordfish. See paragraph (l) of this section for transfers of ILAPs and LAPs for shark and swordfish. See paragraph (m) of this

section for renewals of LAPs for shark and swordfish.

(3) *Dealer permits.* (i) An applicant for a dealer permit must provide all the information requested on the application form 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 (1)(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 31st 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) For issuance of ILAPs for shark and swordfish, see §635.16.

(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 and by a copy of a signed bill of sale or equivalent acquisition papers.

(2) *Shark, swordfish, and tuna longline LAPs.* (i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (1)(2)(ii) of this section and to the limitations on ownership of permitted vessels in paragraph (1)(2)(iii) of this section, an owner may transfer a shark or swordfish ILAP or LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear ILAPs and LAPs for swordfish may be transferred to another vessel but only for use with handgear and subject to the upgrading restrictions in paragraph (1)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (1)(2)(iii) of this section. Incidental catch ILAPs and LAPs are not subject to the requirements specified in paragraphs (1)(2)(ii) and (1)(2)(iii) of this section.

(ii) 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) The vessel's horsepower may be increased only once subsequent to the issuance of a limited access permit, whether through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

(C) The vessel's length overall, gross registered tonnage, and net tonnage may be increased only once subsequent to the issuance of a limited access permit, whether through refitting, replacement, or transfer. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. 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 paragraph (l)(2)(ii) 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 requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) 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 requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) 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 ILAP or LAP for swordfish, a directed or an incidental catch ILAP or LAP for shark, and an Atlantic Tunas commercial category permit are required to retain swordfish. Accordingly, a LAP for swordfish obtained by transfer without either a directed or incidental catch shark LAP or an Atlantic tunas commercial 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 ILAP or LAP for swordfish, a directed or an incidental catch ILAP or 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.

(m) *Renewal*—(1) *General*. Persons must apply annually for a vessel or dealer permit for Atlantic tunas, sharks, and swordfish, and HMS Charter/Headboats. Persons must apply annually for an Atlantic tunas or HMS Charter/headboat vessel permit. A renewal application must be submitted to NMFS, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit provided that the specific requirements for the requested permit are met, including those described in §635.4 (l)(2), all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in §635.5, and the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section.

(2) *Shark, swordfish, and tuna longline LAPs*. As of June 1, 2000, the owner of a vessel of the United States that fishes for, possesses, lands or sells shark or swordfish from the management unit, or takes or possesses such shark or swordfish as incidental catch or that fishes for Atlantic tunas with longline gear must have the applicable limited

access permit(s) issued pursuant to the requirements in §635.4, paragraphs (e) and (f). However, any ILAP that expires on June 30, 2000, is valid through that date. Only valid limited access permit holders in the preceding year are eligible for renewal of a limited access permit(s). Limited access permits that have been transferred according to the procedures of paragraph (l) of this section are not eligible for renewal by the transferor.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37703, July 13, 1999]

EFFECTIVE DATE NOTE: At 64 FR 29137, May 28, 1999, §635.4 was added. Paragraph (b) has information collection requirements and will not become effective until Office of Management and Budget approval.

§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, or a commercial shark or swordfish vessel, for which a permit has been issued under §635.4(c), (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 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 form within 48 hours of completing that day's activities and, for a 1-day trip, before offloading. The owner or operator of the vessel must submit the logbook form(s) post-marked within 7 days of offloading all Atlantic HMS.

(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, at the time of 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 reports the BFT as being landed but not sold on the reports required under paragraph (b)(2)(i) of this section. 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.

(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 receive Atlantic swordfish and Atlantic sharks from U.S. vessels must report all Atlantic tunas (including BFT), Atlantic swordfish and Atlantic sharks received from U.S. vessels on a form available from NMFS.

(ii) Dealers must report all imports of BFT and swordfish on forms available from NMFS.

(iii) Reports of Atlantic swordfish and shark dealers, including reports of imported swordfish and bluefin tuna, received on the first through the 15th of each month must be postmarked no later than the 25th of that month. Re-

ports 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. For swordfish imports, a dealer must attach a copy of each certificate of eligibility to the report required under paragraph (b)(1)(i) of this section. If a dealer has not received Atlantic swordfish or Atlantic sharks from U.S. vessels, during a reporting period, he or she must submit a report to NMFS, to an address designated by NMFS so stating, and the report must be postmarked as specified for the reporting period. A negative report is not necessary for Atlantic swordfish imports.

(iv) 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.

(v) 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 BFT—(i) Reports of BFT.* Each dealer must submit a completed landing report on each BFT received, to NMFS, at an address designated by NMFS, by electronic facsimile (fax) not later than 24 hours from receipt of the fish. The landing report must be signed by the permitted vessel's owner or operator immediately upon transfer of the fish and must indicate the name and permit number of the vessel that landed the fish. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number as listed on the permit are correctly recorded on the landing report. The dealer must also submit a bi-weekly report on forms supplied by NMFS for transfers from U.S. vessels and for imports of BFT. For BFT received on the first through the 15th of each month, the

dealer must submit the bi-weekly report forms to NMFS postmarked no later than the 25th of that month. Reports of receipt of such BFT received on the 16th through the last day of each month must be postmarked not later than the 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 immediately upon its offloading from a vessel. The dealer or dealer's agent must affix the tag to the tuna between the fifth dorsal finlet and the 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 BFT must remain on the tuna until the tuna is cut into portions. If the BFT or BFT parts subsequently are packaged for transport for domestic commercial use or for export, the dealer or the BSD tag number must be written legibly and indelibly on the outside of any package or container. Such tag number must be recorded on any document accompanying shipment of BFT for commercial use or export.

(3) *Recordkeeping.* Dealers must retain at their place of business a copy of each written report required under paragraphs (b)(1)(i) through (b)(1)(iii) and paragraph (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.* The owner of a vessel permitted in the Atlantic tunas Angling or Atlantic tunas or HMS Charter/Headboat category must report all BFT landed under the Angling category quota to NMFS through the automated catch reporting system by calling 1-888-USA-TUNA within 24 hours of the landing. Alternative BFT reporting procedures may be established by NMFS in cooperation with states and may in-

clude such methodologies as telephone, dockside or mail surveys, mail in or phone-in reports, tagging programs, or mandatory check-in stations. A census or a statistical sample of persons fishing under the Angling category may be used for these alternative reporting programs, and owners of selected vessels will be notified by NMFS or by the cooperating state agency of the requirements and procedures for reporting BFT. Each person so notified must comply with those requirements and procedures. Additionally, NMFS may determine that BFT landings reporting systems implemented by the states, if mandatory, at least as restrictive, and effectively enforced, are sufficient for Angling category quota monitoring. 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 requirement of this paragraph (c).

(d) *Tournament operators.* A tournament operator must notify NMFS of the purpose, dates, and location of the tournament conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, at least 4 weeks prior to commencement of the tournament. NMFS will notify a tournament operator in writing, when his or her tournament has been selected for reporting. The tournament operator that is selected must maintain and submit to NMFS a record of catch and effort on forms available from NMFS. Tournament operators must submit 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 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 vessel or dealer permit under this part, or anyone responsible for off-loading, 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]

§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 must display the vessel's number—

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

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

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

(2) The owner or operator of a vessel for which a permit has been issued under §635.4 must keep the vessel's number clearly legible and in good repair and ensure that no part of the vessel, its rigging, its fishing gear, or any

other material on board obstructs the view of the vessel's number from an enforcement vessel or aircraft.

(c) *Gear identification.* (1) The owner or operator of a vessel for which a permit has been issued under §635.4 and that uses a handline, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas permit number on each float attached to a handline or harpoon and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. 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, harpoon, longline, or gillnet, is illegal and may be disposed of in an appropriate manner by NMFS or an authorized officer.

(3) In addition to gear marking requirements in this paragraph (c)(1), provisions on gear marking for the southeast U.S. shark gillnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in §229.32(b) of this title.

§635.7 At-sea observer coverage.

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

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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. 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. Notwithstanding the above procedures for assignment or waiver, at no time shall a person aboard a vessel issued a directed shark ILAP or LAP under §635.4 fish for Atlantic sharks with a gillnet or possess sharks on board a vessel issued a directed shark ILAP or LAP with a gillnet on board unless a NMFS-approved observer is aboard the vessel.

(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]

Subpart B—Limited Access

§635.16 Limited access permits.

As of July 1, 1999, the only valid commercial vessel permits for shark and swordfish are those that have been issued under the limited access criteria specified in this section. If the Federal commercial shark permit issued to the vessel owner prior to July 1, 1999, was based on the qualifications of the operator, then a shark limited access permit will be issued to the qualifying vessel owner, subject to the provisions in this part, with the requirement that the operator must be on board the vessel to fish for, take, retain, or possess Atlantic sharks in state or Federal waters. This requirement expires May 30, 2000.

(a) *Eligibility requirements for ILAPs—*

(1) *Directed permits.* To be eligible for a directed ILAP in the shark or swordfish fishery, a vessel owner must demonstrate past participation in the respective fishery by having—

(i) Been the owner of a vessel that was issued a valid permit for the respective fishery at any time from July 1, 1994, through December 31, 1997.

(ii) Documented shark or swordfish landings from the respective federally permitted vessel that he or she owned, of at least \$5,000 per year in value or in number per year as follows—

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

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

(iii) Been the owner of a vessel in the respective fishery that—

(A) Had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or

(B) Had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998.

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

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

(ii) Documented landings from the respective federally permitted vessel that he or she owned of at least—

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

(B) Eleven swordfish from January 1, 1987, through December 31, 1997, provided the landings occurred when the permit was valid; and

(iii) Been the owner of a vessel in the respective fishery that—

(A) Had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or

(B) Had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998; and

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

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

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

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

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

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

(iii) The owner must provide documentation of having been issued a

swordfish permit for use with harpoon gear, or

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

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

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

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

(3) Vessel landings histories may not be consolidated among vessels. Owners may not pool landings histories to meet the eligibility requirements.

(c) *Alternative eligibility requirements for initial permits.* (1) Persons who acquired ownership of a vessel and its landings history after December 31, 1997, are exempt from the requirement to have owned a federally permitted shark or swordfish vessel at any time during the period July 1, 1994, through December 31, 1997. The acquired landings history must meet the criteria for a directed or incidental catch permit specified in paragraph (a)(1)(ii)(A), (a)(1)(ii)(B), (a)(2)(ii)(A) or paragraph (a)(2)(ii)(B) of this section, and such persons must have had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998.

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

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

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

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

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

(d) *Procedures for initial issuance of LAPs*—(1) *Notification of status*. NMFS will send all written correspondence regarding limited access permits by certified mail.

(i) Shortly after the final rule is published, the Division Chief will notify each owner of a vessel who had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, each owner of a vessel who had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998, and each owner of a vessel that had a valid Atlantic tuna Incidental category permit at any time from January 1, 1998, through December 31, 1998, of the initial determination of the owner's eligibility for a directed or incidental catch ILAP. The Division Chief will make the initial determination based on the criteria in paragraphs (a)(1), (a)(2), and (c)(2) of this section and on records available to NMFS and mail the appropriate permit. The Division Chief will not make initial determinations of eligibility for a vessel permit under the alternative eligibility requirements specified in paragraph (a)(3) or (c)(1) of this section; persons that believe they qualify for a LAP under these criteria must apply to the Division Chief.

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

through the expiration date indicated on the permit.

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

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

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

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

(2) *Applications for ILAPs*. (i) Applicants may obtain application forms and instructions from the Division Chief. The vessel owner must submit a completed signed application form and all required supporting documents.

(ii) An application for a directed or incidental catch ILAP must be submitted to the Division Chief post-marked no later than September 1, 1999. An application for an initial swordfish handgear permit must be submitted to the Division Chief post-marked no later than *December 1, 1999*. Any application received by the Division Chief after these dates will not be considered.

(iii) Each application must be accompanied by documentation showing that the criteria for the requested permit have been met. Vessel landings of sharks in numbers of fish or value through June 30, 1993, may be documented by verifiable sales slips or receipts from registered dealers or by state landings records. Vessel landings of sharks in numbers of fish after July 1, 1993, and all vessel landings of swordfish in numbers of fish may be documented only by fishing vessel logbook records that NMFS received before March 2, 1998. Vessel landings of sharks or swordfish in value may be documented by verifiable sales slips or receipts from registered dealers or by state landings records. NMFS will not apply any landing of fish by number of fish or value that occurred when the vessel did not have a valid Federal permit.

(iv) Information submitted on an application and documentation in support of an application is subject to

verification by comparison with Federal, state, and other records and information. Submission of false information or documentation may result in disqualification from initial participation in the shark, swordfish, or tunas fisheries and may result in Federal prosecution.

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

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

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

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

(4) *Appeals.* (i) If an application for an ILAP is denied or if an incidental catch ILAP is issued instead of the requested directed ILAP, the applicant may appeal the denial to the Director. The sole grounds for appeal will be that the original denial by the Division Chief was based on incorrect or incomplete information. No other grounds will be considered. An appeal must be in writing, must be submitted to the Director postmarked no later than 90 days after receipt of the notice of denial, must specify the grounds for the appeal, and must include documentation supporting the grounds for the appeal. Documentation of vessel landings that the Director may consider in support of

an appeal is described in paragraph (d)(2)(iii) of this section. Photocopies of documentation (e.g., permits, logbook reports) will be acceptable for initial submission. The Director may request originals at a later date, which would be returned to the appellant.

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

(iii) The Director will appoint an appeals officer who will review the appeal documentation and other available records. If the information and documentation presented in the appeal are insufficient, inconsistent with vessel ownership, landings history, and other information available from NMFS' records, or cannot be verified, the appeals officer may notify the appellant that the information supplied is not adequate to warrant issuance of the requested permit. The appellant will have 30 days from the date of receipt of the notification to submit to the appeals officer corroborating documents in support of the appeal or to submit a revised appeal. After the written appeal documentation is complete, the appeals officer will make findings and a recommendation, which shall be advisory only, to the Director within 60 days of receipt of the appeal.

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

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

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

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

Subpart C—Management Measures

§ 635.20 Size limits.

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

(b) *BFT size classes.* The size class of a BFT found with the head removed shall be determined using pectoral fin curved fork length (PFCFL) multiplied by a conversion factor of 1.35. The CFL, as determined by conversion of the PFCFL, will be the sole criterion for determining the size class of a beheaded BFT. The conversion factor may be adjusted after consideration of additional scientific information and fish measurement data, and will be made effective by filing with the Office of the Federal Register for publication notification of the adjustment.

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

(2) Applying the conversion factor from PFCFL to CFL for a beheaded BFT in § 635.20(b) means that no person shall retain or possess a BFT, with the head removed, that is less than 20 inches (51 cm) PFCFL.

(3) No person shall remove the head of a bigeye tuna or yellowfin tuna if the remaining portion would be less than 27 inches (69 cm) from the fork of the tail to the forward edge of the cut.

(d) *Billfish.* (1) No person shall take, retain or possess a blue marlin taken from its management unit that is less than 99 inches (251 cm), LJFL.

(2) No person shall take, retain or possess a white marlin taken from its management unit that is less than 66 inches (168 cm), LJFL.

(3) No person shall take, retain or possess shoreward of the outer boundary of the EEZ a sailfish taken from its management unit that is less than 63 inches (160 cm), LJFL.

(e) *Sharks.* (1) No person shall take, retain, or possess in the Atlantic EEZ any species classified as a ridgeback LCS shark, taken from its management unit that is less than 54 inches (137 cm), fork length, or, if the head and fins have been removed, 30 inches

(76 cm) as a straight line from the first dorsal fin ray to the precaudal pit. If the precaudal pit has been removed, such measurement will be to the posterior edge of the carcass. For the purposes of enforcing the minimum size, it is a rebuttable presumption that any ridgeback shark from which the head and fins have been removed is a ridgeback LCS shark.

(2) All sharks landed under the recreational retention limits specified at § 635.22(c) must have the head, tail, and fins attached and be at least 54 inches (137 cm), FL, except that the minimum size limit does not apply for Atlantic sharpnose sharks.

(f) *Swordfish.* (1) No person shall take, retain, or possess a north or south Atlantic swordfish taken from its management unit that is less than 29 inches (73 cm), CK, or 33 lb (15 kg) dressed weight. A swordfish that is damaged by shark bites may be retained only if the remainder of the carcass is at least 29 inches (73 cm) CK, or 33 lb (15 kg) dw. No person shall import into the United States an Atlantic swordfish weighing less than 33 lb (15 kg) dressed weight, or a part derived from a swordfish that weighs less than 33 lb (15 kg) dressed weight.

(2) Except for a swordfish landed in a Pacific state and remaining in the state of landing, a swordfish, or part thereof, weighing less than 33 lb (15 kg) dressed weight will be deemed to be an Atlantic swordfish harvested by a vessel of the United States and to be in violation of the minimum size requirement of this section unless such swordfish, or part thereof, is accompanied by a certificate of eligibility attesting that the swordfish was lawfully imported. Refer to § 635.46(b) for the requirements related to the certificate of eligibility.

(3) A swordfish, or part thereof, will be monitored for compliance with the minimum size requirement of this section from the time it is landed in, or imported into, the United States up to, and including, the point of first transaction in the United States.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999]

§635.21 Gear operation and deployment restrictions.

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

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

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

(c) *Pelagic longlines.* Pelagic longlines include any longline placed or occurring in water depths greater than 50 fathoms (91 m).

(1) From August 1, 1999, through November 30, 2000, no person may deploy a pelagic longline that is more than 24 nautical miles (44.5 km) in length in the Mid-Atlantic Bight.

(2) In the Northeastern United States closed area from June 1 through June 30 each year, no person may deploy a pelagic longline. In this area, during this time, no person shall retain an Atlantic tuna or swordfish on board a vessel that has a pelagic longline on board, unless the mainline, hooks, and floats are secured.

(3) When a marine mammal or sea turtle is hooked or entangled by pelagic longline gear, the operator of the vessel must immediately release the animal, retrieve the pelagic longline gear, and move at least 1 nm (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in §229.6 of this title.

(d) *Authorized gear—(1) Atlantic tunas.* A person that retains or possesses an Atlantic bluefin tuna may not have on board a vessel or use on board the vessel any gear other than that authorized for the category for which the Atlantic tunas or HMS permit has been issued for such vessel. When fishing for Atlantic tunas other than BFT, fishing gear

authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit as well as ILAPs or LAPs for both swordfish and sharks. When fishing for BFT, a person must use only the gear types authorized for the Atlantic tunas or HMS permit category of the fishing vessel:

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

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

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

(iv) *Harpoon.* Harpoon.

(v) *Longline.* Longline.

(vi) *Purse Seine.* Purse seine.

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

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

(vii) *Trap.* Pound net and fish weir.

(2) *Billfish.* (i) Persons may possess a blue marlin or white marlin in or take a blue marlin or a white marlin from

its management unit only if it is harvested by rod and reel. Regardless of how taken, persons may not possess a blue marlin or a white marlin in or take a blue marlin or a white marlin from its management unit on board a vessel using or having on board a pelagic longline.

(ii) Persons may possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ only if it is harvested by rod and reel. Regardless of how taken, persons may not possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ on board a vessel using or having on board a pelagic longline.

(3) *Sharks.* (i) No person may possess a shark in the EEZ if the shark was taken from its management unit by any gear other than handgear, longline or gillnet.

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

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

(iv) While fishing for Atlantic sharks with a gillnet, the gillnet must remain attached to the vessel at one end.

(4) *Swordfish.* (i) No person may possess north Atlantic swordfish taken from its management unit by any gear other than handgear or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained, subject to restrictions specified in §635.24(b)(2). No person may possess south Atlantic swordfish taken from its management unit by any gear other than longline.

(ii) An Atlantic swordfish may not be retained or possessed on board a vessel with a gillnet. A swordfish will be deemed to have been harvested by gillnet when it is onboard, or offloaded from a vessel using or having on board a gillnet.

(iii) A person aboard a vessel issued a directed handgear ILAP or LAP for Atlantic swordfish may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline

when it is on board, or offloaded from a vessel using or having on board longline gear.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999]

§635.22 Recreational retention limits.

(a) *General.* Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic EEZ, and to a yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters. The recreational retention limit for sharks applies to a person who fishes in any manner, except to a person aboard a vessel who has been issued a vessel permit under §635.4 for Atlantic sharks. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard a vessel who has been issued a vessel permit under §635.4 for Atlantic tunas in any category other than Angling or Charter/Headboat.

(b) *Billfish.* No longbill spearfish from the management unit may be possessed shoreward of the outer boundary of the EEZ.

(c) *Sharks.* One shark from either the large coastal, small coastal or pelagic group may be retained per vessel per trip, subject to the size limits described in §635.20(d), and, in addition, one Atlantic sharpnose shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark per person may be possessed on board a vessel. No prohibited sharks listed in table 1(d) of appendix A to this part may be retained.

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

per person may be possessed on board a vessel.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999]

§ 635.23 Retention limits for BFT.

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

(a) *General category.* (1) No person aboard a vessel that has a General category Atlantic Tunas permit may possess, retain, land, or sell a BFT in the school, large school, or small medium size class.

(2) On an RFD, no person aboard a vessel that has a General category Atlantic Tunas permit may possess, retain, land, or sell a BFT in the large medium or giant size class. On days other than RFDs, when the General category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the FEDERAL REGISTER. An RFD applies only when the General category fishery is open.

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

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing with the Office of the Federal Register for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Of-

fice of the Federal Register for publication.

(b) *Angling category.* BFT may be retained and landed under the daily limits and quotas applicable to the Angling category by persons aboard vessels permitted in Atlantic tunas Angling category as follows:

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

(ii) One per vessel per year may be retained, possessed, and landed outside the Gulf of Mexico.

(iii) When a large medium or giant BFT has been caught and retained under this paragraph (b)(1), no person aboard the vessel may continue to fish, the vessel must immediately proceed to port, and no such BFT may be sold or transferred to any person for a commercial purpose.

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

(3) *Changes to retention limits.* To provide for maximum utilization of the quota for BFT spread over the longest period of time, NMFS may increase or decrease the retention limit for any size class BFT or change a vessel trip limit to an angler limit and vice versa. Such increase or decrease will be based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing with the Office of the Federal Register for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the Federal Register for publication.

(c) *HMS or Tunas Charter/Headboat.* Persons aboard a vessels permitted in Atlantic HMS or Tunas Charter/Headboat category may retain and land BFT under the daily limits and quotas

applicable to the Angling category or the General category as follows:

(1) When fishing in the Gulf of Mexico, the restrictions applicable to the Angling category specified in paragraph (b)(1) of this section apply.

(2) When fishing other than in the Gulf of Mexico when the fishery for the General category is closed, the restrictions applicable to the Angling category specified in paragraphs (b)(1) through (b)(3) of this section apply.

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

(d) *Harpoon category.* Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land multiple giant BFTs per day. An incidental catch of only one large medium BFT per vessel per day may be retained, possessed, or landed.

(e) *Purse Seine category.* Persons aboard a vessel permitted in the Atlantic Tunas Purse Seine category,

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

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

Seine category BFT quota allocated to that vessel.

(f) *Longline category.* Persons aboard a vessel permitted in the Atlantic Tunas Longline category may retain, possess, land, and sell large medium and giant BFT taken incidentally in fishing for other species. Limits on such retention/possession/landing/sale are as follows:

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

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

(g) *Trap category.* Persons aboard a vessel permitted in the Atlantic Tunas Trap category may retain, possess, land, and sell each fishing year only one large medium or giant BFT that is taken incidentally while fishing for other species with a pound net or fish weir. No other Atlantic tunas caught in a pound net or fish weir may be retained.

§ 635.24 Commercial retention limits for sharks and swordfish.

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

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

(2) Persons who own or operate a vessel that has been issued an incidental catch ILAP or LAP for sharks may retain, possess or land no more than 5 LCS and 16 SCS and pelagic sharks, combined, per trip.

(b) *Swordfish*. (1) Persons aboard a vessel that has been issued an incidental ILAP or LAP for swordfish may retain, possess, or land no more than two swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an incidental ILAP or LAP for swordfish may retain, possess, or land no more than five swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel.

§ 635.25 [Reserved]

§ 635.26 Catch and release.

(a) *BFT*. (1) Notwithstanding the other provisions of this part, an angler may fish for BFT under a tag-and-release program, provided the angler tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging and, if the BFT was previously tagged, the information on the previous tag. If NMFS-issued or NMFS-approved conventional tags are not on board a vessel, all anglers aboard that vessel are ineligible to fish under the tag-and-release program.

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

(3) An angler registering for the HMS tagging program is required to provide his or her name, address, phone number

and, if applicable, the identity of the alternate source of tags.

(b) *Billfish*. NMFS is encouraging further catch and release of Atlantic billfish by establishing a recreational catch-and-release fishery management program, consistent with the guidance of § 600.350(c).

(c) *Sharks*. Notwithstanding the other provisions of this part, a person may fish for white sharks (*Carcharodon carcharias*) with rod and reel, provided the person releases such fish to the sea immediately with a minimum of injury, and that such fish may not be removed from the water.

§ 635.27 Quotas.

(a) *BFT*. Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits or HMS Charter/Headboat permits. Allocations of the BFT landings quota will be made according to the following percentages: General - 47.1 percent; Angling - 19.7 percent, which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent; Purse Seine - 18.6 percent or 250 mt, whichever is less; Longline - 8.1 percent; and Trap - 0.1 percent. The remaining 2.5 percent of the BFT landings quota will be held in reserve for inseason adjustments, to compensate for overharvest in any category other than the Angling category school BFT subquota or for fishery independent research. In such case that the total annual landings quota when applied to the percentage allocation for the purse seine category exceeds 250 mt, the amount over 250 mt shall be allocated to the reserve. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to

geographic areas. BFT landings quotas are specified in whole weight.

(1) *General category landings quota.* Prior to each fishing year, NMFS will set the General category effort control schedule, including time-period subquotas and restricted-fishing days, through proposed and final specifications published in the FEDERAL REGISTER.

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS or Atlantic tunas Charter/Headboat permit has been issued are counted against the General category landings quota. See §635.23(c)(3) regarding landings by vessels with an HMS or Atlantic tunas Charter/Headboat permit that are counted against the General category landings quota. The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category landings quota is 47.1 percent of the overall U.S. BFT landings quota, less 10 mt which is set aside for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72° 27' W. long (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat. as specified in §635.27(a)(1)(iii). This 47.1 percent, less the 10 mt set aside as specified in §635.27(a)(1)(iii), is apportioned as follows:

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

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

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

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

(iii) When the coastwide General category fishery has been closed in any quota period under §637.28(a)(1), NMFS may publish notification in the FEDERAL REGISTER to make available all or part of the 10 mt landings quota set aside for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat. The

daily catch limit for the set-aside area will be one large medium or giant BFT per vessel per day. Upon the effective date of the set-aside fishery, fishing for, retaining, or landing large medium or giant BFT is authorized only within the set-aside area. Any portion of the set-aside amount not harvested prior to the reopening of the coastwide General category fishery in the subsequent quota period established under paragraph (a)(1)(i) of this section may be carried over for the purpose of renewing the set-aside fishery at a later date.

(2) *Angling category landings quota.* The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an Angling category Atlantic Tunas permit or an HMS or Atlantic Tunas Charter/Headboat permit has been issued is 19.7 percent of the overall annual U.S. BFT landings quota. No more than 2.3 percent of the annual Angling category landings quota may be large medium or giant BFT and, over each 4-consecutive-year period, no more than 8 percent of the overall U.S. BFT landings quota may be school BFT. The Angling category landings quota includes the amount of school BFT held in reserve as specified under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

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

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

(iii) an amount equal to 66.7 percent of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 38° 47' N. lat.

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

Longline category quota may be caught, retained, possessed, or landed in the area south of 34°00' N. lat.

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

(ii) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued must apply in writing to NMFS at an address designated by NMFS, for an allocation of BFT from the Purse Seine category quota. The application must be post-marked no later than April 15 for an allocation of the quota that becomes available on August 15.

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

(iv) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued may apply to NMFS to permanently consolidate Purse Seine category vessel permits issued under §635.4. Upon written approval of consolidation by NMFS, the Purse Seine Category Atlantic Tunas Permit of a transferring vessel will be canceled, and the receiving owner may apply for allocations of BFT commensurate with the number of consolidated permits. An owner of a purse seine vessel whose permit is canceled through

consolidation may not use his or her vessel in any purse seine fishery in which BFT might be caught.

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

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

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

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

(iii) NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustment. Before making any such adjustment, NMFS will consider the following factors:

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

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

(C) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year.

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

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

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

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

(9) *Annual adjustments.* (i) If NMFS determines, based on landings statistics and other available information, that a BFT quota in any category or, as appropriate, subcategory has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year, provided that the total of the adjusted category quotas and the reserve is consistent with a recommendation of ICCAT regarding country quotas, the take of school BFT, and the allowance for dead discards.

(ii) NMFS may allocate any quota remaining in the reserve at the end of a fishing year to account for overharvest in any fishing category, provided such allocation is consistent with the criteria specified in paragraph (a)(7)(iii) of this section.

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school BFT quota to ensure that the average take of school

BFT over each 4-consecutive-year period beginning in the 1999 fishing year does not exceed 8 percent by weight of the total U.S. BFT quota for that period.

(iv) If NMFS determines that the annual dead discard allowance has been exceeded in one fishing year, NMFS shall subtract the amount in excess of the allowance from the amount of BFT that can be landed in the subsequent fishing year by those categories accounting for the dead discards. If NMFS determines that the annual dead discard allowance has not been reached, NMFS may add one-half of the remainder to the amount of BFT that can be landed in the subsequent fishing year. Such amount may be allocated to individual fishing categories or to the Reserve.

(v) NMFS will file with the Office of the Federal Register for publication notification of the amount subtracted or added and the basis for the quota reductions or increases made pursuant to paragraphs (a)(9)(i) through (a)(9)(iv) of this section.

(b) *Sharks—(1) Commercial quotas.* The commercial quotas for shark specified in paragraphs (b)(1)(i) through (b)(1)(iv) of this section apply to sharks harvested from the management unit, regardless of where harvested. Commercial quotas are specified for each of the management groups of large coastal sharks, small coastal sharks, and pelagic sharks.

(i) *Large coastal sharks.* The annual commercial quota for large coastal sharks is 816 mt dw, apportioned between ridgeback and non-ridgeback shark and divided between two equal semiannual fishing seasons, January 1 through June 30, and July 1 through December 31. The length of each season will be determined based on the projected catch rates, available quota, and other relevant factors. NMFS will file with the Office of the Federal Register for publication notification of each season's length at least 30 days prior to the beginning of the season. The quotas for each fishing season (unless otherwise specified in the FEDERAL REGISTER as provided in paragraph (b)(1)(iv) of this section are as follows:

(A) Ridgeback shark—310 mt dw.

(B) Non-ridgeback shark—98 mt dw.

(ii) *Small coastal sharks.* The annual commercial quota for small coastal shark is 359 mt dw, (unless otherwise specified in the FEDERAL REGISTER as provided in paragraph (b)(1)(iv) of this section) divided between two equal semiannual seasons, January 1 through June 30, and July 1 through December 31. The quota for each semiannual season is 179.5 mt, dw.

(iii) *Pelagic sharks.* The annual commercial quotas for pelagic sharks are 92 mt dw for porbeagle sharks and 488 mt dw for all other pelagic sharks (unless otherwise specified in the FEDERAL REGISTER as provided in paragraph (b)(1)(iv) of this section). These quotas are divided between two equal semiannual periods, January 1 through June 30, and July 1 through December 31. The quotas for each semiannual period are as follows:

(A) Porbeagle sharks—46 mt dw.

(B) Pelagic sharks, other than porbeagle sharks—244 mt dw.

(C) Blue sharks—136.5 mt dw.

(iv) *Annual adjustments.* (A) NMFS will adjust the next year's semiannual quotas for large coastal, small coastal, and pelagic sharks to reflect actual landings during any semiannual period. For example, a commercial quota underage or overage in the season that begins January 1 will result in an equivalent increase or decrease in the following year's quota for the season that begins January 1, provided that the annual quotas are not exceeded. NMFS will file with the Office of the Federal Register for publication notification of any adjustment at least 30 days prior to the start of the next fishing season.

(B) NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded at least 30 days prior to the start of the next fishing season.

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

(2) *Public display quota.* The annual quota for persons who collect sharks from any of the management groups under an EFP is 60 mt whole weight (43 mt dw). All sharks collected under the authority of an EFP, subject to restric-

tions at §635.32, will be counted against this quota.

(c) *Swordfish.* (1) Consistent with ICCAT recommendations, the fishing year's total amount of swordfish that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction is divided into quotas for the North Atlantic swordfish stock and the South Atlantic swordfish stock. The quota for the North Atlantic swordfish stock is further divided into semi-annual directed fishery quotas and an incidental catch quota for fishermen targeting other species. A swordfish from the North Atlantic swordfish stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the directed fishery quota. A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish has been issued, landed consequent to recreational fishing, or caught after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the incidental catch quota. The entire quota for the South Atlantic swordfish stock is reserved for longline vessels for which a directed fishery permit for swordfish has been issued; retention of swordfish caught incidental to other fishing activities is prohibited in the Atlantic Ocean south of 5° N. lat.

(i) *North Atlantic swordfish stock.* (A) The annual directed fishery quota for the North Atlantic swordfish stock is 2033.2 mt dw, divided into two equal semiannual quotas of 1016.6 mt dw, one for June 1 through November 30, and the other for December 1 through May 31 of the following year.

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

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

(2) *Inseason adjustments.* (i) NMFS may adjust the December 1 through

May 31 semiannual directed fishery quota to reflect actual catches during the June 1 through November 30 semi-annual period, provided that the fishing year's directed fishery quota is not exceeded.

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

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

(iv) NMFS will file with the Office of the Federal Register for publication notification of any inseason swordfish quota adjustment and its apportionment made under this paragraph (c)(2) of this section.

(3) *Annual adjustments.* (i) Except for the carryover provisions of paragraph (c)(3)(ii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tuna, Swordfish and Sharks. NMFS will provide at least 30 days opportunity for public comment.

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

§ 635.28 Closures.

(a) *BFT.* (1) When a BFT quota, other than the Purse Seine category quota specified in § 635.27(a)(4), is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of clo-

sure. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing BFT under that quota is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

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

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

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

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

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

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

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

(2) When a semiannual quota for small coastal sharks or pelagic sharks specified in § 635.27(b)(1)(ii) and (b)(1)(iii) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication a notice of closure at least 14 days before the effective date. From the effective date and time of the closure until additional quota becomes available, the fishery for the appropriate shark species group is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4.

(3) When the fishery for a shark species group is closed, a fishing vessel issued a shark ILAP or LAP pursuant to § 635.4 may not possess or sell a shark of that species group, and a permitted shark dealer may not purchase or receive a shark of that species group from a vessel issued a shark ILAP or LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage.

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

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

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

(B) No more than 2 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel that has been issued a handgear permit under § 635.4(f)(1) provided that such swordfish were not taken with a harpoon.

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

(2) *Incidental catch closure.* When the annual incidental catch quota specified in § 635.27(c)(1)(i) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure. From the effective date and time of such notification until an additional incidental catch quota becomes available, no swordfish may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state, and a swordfish in or from the Atlantic Ocean north of 5° N. lat. may not be sold. However, legally taken swordfish from the South Atlantic swordfish stock may be possessed in the Atlantic Ocean north of 5° N. lat.

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or landed in an Atlantic coastal state on a vessel with a longline, provided the harvesting vessel does not fish on that trip in the Atlantic Ocean north of 5° N. lat. and reports positions with a vessel monitoring system, as specified in § 635.69.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37705, July 13, 1999]

§ 635.29 Transfer at sea.

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

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

§ 635.30 Possession at sea and landing.

(a) *Atlantic tunas.* Persons that own or operate a fishing vessel that possesses an Atlantic tuna in the Atlantic Ocean or that lands an Atlantic tuna in an Atlantic coastal port must maintain such Atlantic tuna through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached.

(b) *Billfish.* Any person that possesses a blue marlin or a white marlin taken from its management unit or a sailfish taken shoreward of the outer boundary of the EEZ or lands a blue marlin or a white marlin in an Atlantic coastal port must maintain such billfish with its head, fins, and bill intact through offloading. Persons may eviscerate such billfish, but it must otherwise be maintained whole.

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(c) *Shark.* (1) No person shall fin any shark, i.e., remove only the fins and return the remainder of the shark to the sea, shoreward of the outer boundary of the EEZ and on board a vessel for which a commercial vessel permit for shark has been issued. No person shall possess a shark fin on board a fishing vessel after the vessel's first point of landing. No person shall possess or offload wet shark fins in a quantity that exceeds 5 percent of the weight of the shark carcasses. The prohibition on finning applies to all species of sharks in the management unit. For a list of species in the management unit, refer to tables 1 and 2 of appendix A to this part.

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

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

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

(d) *Swordfish.* Persons that own or operate a fishing vessel that possesses a swordfish in the Atlantic Ocean or lands a swordfish in an Atlantic coastal port must maintain such swordfish in round or dressed form through offloading.

§ 635.31 Restrictions on sale and purchase.

(a) *Atlantic tunas.* (1) Persons that own or operate a vessel that possesses

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an Atlantic tuna may sell such Atlantic tuna only if that vessel has a valid HMS or Atlantic Tunas Charter/Headboat permit, or a General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas issued under this part. Persons may not sell a BFT smaller than the large medium size class. However, a large medium or giant BFT taken by a person on a vessel with an HMS or Atlantic Tunas Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may not be sold (see § 635.23(c)). Persons may sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part.

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

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

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

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

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

(b) *Billfish*. (1) Persons may not sell or purchase a billfish taken from its management unit.

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

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

(ii) It is accompanied by a Billfish Certificate of Eligibility that documents that it was harvested from other than the Atlantic Ocean management unit.

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

(2) Persons that own or operate a vessel for which a valid commercial shark permit has been issued and on which a shark from the management unit is possessed, may sell such shark only to a dealer that has a valid permit for shark issued under this part.

(3) Persons that own or operate a vessel for which a valid commercial shark permit has been issued may not sell fins from a shark harvested from the management unit, or harvested in the Atlantic Ocean by a vessel for which a commercial permit for shark has been issued, that are disproportionate to the weight of shark carcasses landed (the wet fins may not exceed 5 percent of the weight of the carcasses).

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

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

(d) *Swordfish*. (1) Persons that own or operate a vessel on which a swordfish

in or from the Atlantic Ocean is possessed may sell such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may sell such swordfish only to a dealer who has a valid permit for swordfish issued under this part.

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

§ 635.32 Specifically authorized activities.

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

(b) *Scientific research activities.* For the purposes of all species covered under this part regulated under the authority of ATCA, the provisions for re-

search plans under § 600.745(a) and reports under § 600.745(c)(1) of this chapter are mandatory. In such cases of authorized scientific research activities, NMFS shall issue scientific research permits. For scientific research activities involving the capture of Atlantic sharks, research plans and reports are requested; letters of acknowledgment shall be issued by NMFS as indicated under § 600.745(a) of this chapter.

(c) *Exempted fishing permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, other than scientific research conducted from a scientific research vessel, NMFS may issue exempted fishing permits. Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purposes of obtaining public comment. In such cases, NMFS may file with the Office of the Federal Register for publication notification on an annual or, as necessary, more frequent basis to report on previously authorized exempted fishing activities and to solicit public comment on anticipated exempted fishing requests.

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

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

(4) Written reports on fishing activities and disposition of catch must be submitted to NMFS at an address designated by NMFS, for each fish collected within 5 days of the collection. An annual written summary report of all fishing activities and disposition of all fish collected under the permit must also be submitted to NMFS at an address designated by NMFS. NMFS will provide specific conditions and requirements, consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks in the EFP.

§ 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 re-

serve quota established for that species.

§ 635.34 Adjustment of management measures.

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

(b) In accordance with the framework procedures in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfishes, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield levels based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; species in the management unit and the specification of the species groups to which they belong; permitting and reporting requirements; Atlantic tunas Purse Seine category cap on bluefin tuna quota; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restrictions; effort restrictions; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

Subpart D—Restrictions on Imports

§ 635.40 Restrictions to enhance conservation.

(a) *Determinations.* Upon a determination by NMFS that species of fish subject to regulation or under investigation by ICCAT are ineligible for entry into the United States under 16 U.S.C. 971d (c)(4) or (c)(5), NMFS, with the concurrence of the Secretary of State, will file with the Office of the Federal Register for publication a finding to that effect. Effective upon the date of filing of such finding, all shipments of fish in any form of the species found to be ineligible will be denied entry unless, with respect to a particular shipment, it is established by satisfactory proof pursuant to paragraph (b) of this section that the particular shipment of fish is eligible for entry. Entry will not

be denied and no such proof will be required for any such shipment that, on the date of filing was in transit to the United States on board a vessel operating as a common carrier.

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

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

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

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

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

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

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

§ 635.41 Species subject to documentation requirements.

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

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

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

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

(b) In addition, BFT products in other forms (e.g., chunks, fillets, canned) listed under any other item numbers from the Harmonized Tariff Schedule are subject to the documentation requirements of this subpart, except that fish parts other than meat (e.g., heads, eyes, roe, guts, tails) may be allowed entry without said statistical documentation.

(c) Southern bluefin tuna (*Thunnus maccoyii*) may be allowed entry without the statistical documentation required under this section.

§ 635.42 Documentation requirements.

(a) *BFT imports.* (1) Imports of all BFT products into the United States must be accompanied at the time of

entry (filing of Customs Form 7501 or electronic equivalent) by an original completed approved BSD with the information and exporter's certification specified in §635.43(a). Customs Form 7501 can be obtained by contacting U.S. Customs at <http://www.customs.treas.gov/order.htm>.

Such information must be validated as specified in §635.44(a) by a responsible government official of the country whose flag vessel caught the tuna (regardless of where the fish are first landed).

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

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

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

validated as specified in §635.44(b). A list of such officials may be obtained by contacting NMFS. A dealer requesting U.S. Government validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export shipment.

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

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

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

§635.43 Contents of documentation.

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

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

(2) The name of the country issuing the document, which must be the country whose flag vessel harvested the

BFT, regardless of where the tuna is first landed.

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

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

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

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

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

(8) The ocean area from which the fish was harvested (i.e., western Atlantic, eastern Atlantic, Mediterranean, or Pacific).

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

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

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

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

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

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

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

§ 635.44 Validation requirements.

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

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

(1) Exemptions from government validation for fish with individual BSD

tags affixed pursuant to §300.26 of this title or §635.5(b)(2)(ii); or

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

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

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

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

§635.46 Import restrictions on swordfish.

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

(b) *Swordfish COE.* (1) A shipment of swordfish in any form offered for import into the United States, directly or

indirectly, from any country is admissible only if accompanied by a swordfish COE. A swordfish COE is required for swordfish identified by any item number from the Harmonized Tariff Schedule including but not limited to the following:

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

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

(iii) Frozen swordfish steaks, No. 0302.79.20.41.

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

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

(2) The swordfish COE required under this section must indicate, in English, the flag state of the harvesting vessel, the ocean area of harvest and, if the shipment contains swordfish or parts thereof less than the minimum size specified at §635.20(e), the reason such swordfish is eligible for entry, as specified in paragraph (a) of this section. The swordfish COE shall be attached to the invoice accompanying the swordfish shipment from the point of original export up to and including the point of first transaction in the United States.

(3) The swordfish COE required under this section must include, in English, the date, the name, the title of the governmental official or other authorized person, and the name of the authorizing government agency of the country exporting the swordfish to the United States. The swordfish COE must be signed and dated by that governmental official or authorized person with an official government seal affixed, thus validating the information on the COE. (4) A swordfish COE may refer to swordfish taken from only one ocean area of harvest (i.e., Atlantic, Pacific, Indian) and by vessels under the jurisdiction of only one nation. If a shipment contains swordfish taken from more than one ocean area, or swordfish harvested by several vessels from different flag states, a separate swordfish COE must accompany the shipment for each ocean area of harvest and for each flag nation of the harvesting vessels.

(5) A model swordfish COE can be obtained by contacting the Division Chief. An equivalent form may be used provided it contains all the information required under this section.

(6) The importer must write the Customs Form 7501 entry number on each swordfish COE and attach to the dealer report form all swordfish COEs from shipments that are recorded on the bi-weekly dealer report form.

§ 635.47 Ports of entry.

NMFS shall monitor the importation of BFT and swordfish into the United States. If NMFS determines that the diversity of handling practices at certain ports at which BFT or swordfish is being imported into the United States allows for circumvention of the BSD or swordfish COE requirement, NMFS may designate, after consultation with the U.S. Customs Service, those ports at which Pacific or Atlantic bluefin tuna or swordfish from any source may be imported into the United States. NMFS shall announce through filing with the Office of the Federal Register for publication the names of ports so designated and the effective dates of entry restrictions.

Subpart E—International Port Inspection

§ 635.50 Basis and purpose.

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

§ 635.51 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by an ICCAT contracting party to serve as an authorized inspector for ICCAT, and who possesses identification issued by the authorized officer's national government.

§ 635.52 Vessels subject to inspection.

(a) All U.S. fishing vessels or vessels carrying fish species subject to regulation pursuant to a recommendation of ICCAT, and their catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are sub-

ject to inspection under this subpart to verify compliance with ICCAT measures by an authorized officer when landing or transshipping tuna or when making a port call at a port of any ICCAT contracting party.

(b) A vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, that is registered by any of the ICCAT contracting parties, and the vessel's catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures when landing or transshipping regulated species or when making a port call in the United States.

(c) The master of a vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, must cooperate with an authorized officer during the conduct of an inspection in national and foreign ports. Inspections will be carried out so that the vessel suffers minimum interference and inconvenience, and so that degradation of the quality of catch is avoided.

§ 635.53 Reports.

(a) Apparent violations shall be reported by the authorized officer on a standardized ICCAT form or form produced by the national government which collects the same quality of information. The authorized officer must sign the form in the presence of the master of the vessel, who is entitled to add or have added to the report any observations, and to add his own signature. The authorized officer should note in the vessel's log that the inspection has been made.

(b) Copies of the report form must be sent to the flag state of the vessel and to the ICCAT Secretariat within 10 days. Flag states will consider and act on reports of apparent violations by foreign inspectors on a similar basis as the reports of their national inspectors in accordance with their national legislation. The vessel's flag state will notify ICCAT of actions taken to address the violation.

Subpart F—Enforcement

§ 635.69 Vessel monitoring systems.

(a) *Applicability.* To facilitate enforcement of time-area and fishery closures, an owner or operator of a commercial vessel permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic longline is required to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit whenever the vessel leaves port with pelagic longline gear on board.

(b) *Hardware specifications.* The VMS hardware must be approved by NMFS and must be able to perform all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS units. As necessary, NMFS will make additions and/or amendments to the VMS hardware type approval list to account for changes in specifications or new products offered by manufacturers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(c) *Communications specifications.* The communications service provider must be approved by NMFS and must be able to provide all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS communications service providers. As necessary, NMFS will make additions and/or amendments to the VMS communications service providers type approval list to account for changes in specifications or new services offered by communications providers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(d) *Installation and service activation.* When installing and activating the NMFS-approved VMS unit, a vessel owner or operator must follow procedures indicated on an installation and activation checklist obtained from NMFS. Re-installation shall require the same checklist. Upon completion of installation, the vessel owner must sign a statement certifying compliance with the installation procedures of the

checklist and submit such certification to NMFS as indicated on the checklist. Vessels fishing prior to submission of the certification will be in violation of the VMS requirement.

(e) *Operation.* Owners or operators of vessels permitted, or required to be permitted, to fish for HMS that have pelagic longline gear on board, must activate the VMS to submit automatic position reports beginning 2 hours prior to leaving port and not ending until the vessel returns to port. While at sea, the unit must operate without interruption and no person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement.

(f) *Interruption.* When the vessel operator is aware that transmission of automatic position reports has been interrupted, or when notified by NMFS that automatic position reports are not being received, the vessel operator must contact NMFS and follow the instructions given. Such instructions may include but are not limited to manually communicating to a location designated by NMFS the vessel's position or returning to port until the VMS is operable.

(g) *Repair and replacement.* After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must replace or repair the VMS unit prior to the vessel's next trip. Repair or reinstallation of a VMS unit or installation of a replacement, including change of communications service provider shall be in accordance with the checklist provided by NMFS and require the same certification.

(h) *Access.* As a condition to obtaining a limited access permit for Atlantic swordfish, sharks or tunas, all vessel owners or operators using pelagic longline gear subject to the VMS provisions of this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS at the time of or after its transmission to

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the vendor or receiver, as the case may be.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37705, July 13, 1999]

EFFECTIVE DATE NOTE: At 64 FR 29135, May 28, 1999, § 635.69 was added, effective Sept. 1, 1999. At 64 FR 43101, Aug. 9, 1999, the effective date was delayed until Jan. 1, 2000.

§ 635.70 Penalties.

(a) *General.* See § 600.735 of this chapter.

(b) *Civil procedures for Atlantic tuna.* Because of the perishable nature of Atlantic tuna when it is not chilled or frozen, an authorized officer may cause to be sold, for not less than its reasonable market value, unchilled or unfrozen Atlantic tuna that may be seized and forfeited under ATCA and this part.

§ 635.71 Prohibitions.

In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person subject to the jurisdiction of the United States to violate any provision of this part, ATCA, the Magnuson-Stevens Act, or any other rules promulgated under ATCA or the Magnuson-Stevens Act.

(a) *General.* It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Falsify information required on an application for a permit submitted under § 635.4 or § 635.16.

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without the appropriate valid vessel permit, LAP, or EFP on board the vessel, as specified in §§ 635.4 and 635.32.

(3) Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, any Atlantic HMS landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer, for commercial purposes, any Atlantic HMS without the appropriate valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(4) Sell or transfer or attempt to sell or transfer an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(5) Fail to possess and make available for inspection a vessel permit on board the permitted vessel or upon transfer of HMS to a dealer or a dealer permit at the dealer's place of business, or to alter any such permit as specified in § 635.4(a).

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in § 635.5.

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(f).

(8) Fail to make available for inspection an Atlantic HMS or its area of custody, as specified in § 635.5(g).

(9) Fail to report the catching of any Atlantic HMS to which a conventional tag has been affixed under a tag and release program.

(10) Falsify or fail to display and maintain vessel and gear identification, as specified in § 635.6.

(11) Fail to comply with the requirements for at-sea observer coverage, as specified in § 635.7 and § 600.746.

(12) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, any authorized officer in the conduct of any search, inspection, seizure or lawful investigation made in connection with enforcement of this part.

(13) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part.

(14) Fail to install, activate, repair or replace a vessel monitoring system prior to leaving port with pelagic longline gear on board the vessel as specified in § 635.69.

(15) Tamper with, or fail to operate and maintain a vessel monitoring system as specified in § 635.69.

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(16) Fail to contact NMFS or follow NMFS instructions when automatic position reporting has been interrupted as specified in §635.69.

(17) Fish for Atlantic tunas or swordfish with a gillnet for or possess Atlantic tunas or swordfish on board a vessel with a gillnet on board, as specified in §635.21 (b), (d)(1), and (d)(4)(ii).

(18) Fail to retrieve fishing gear and move after an interaction with a marine mammal or sea turtle, as specified in §635.21(c)(3).

(19) Fail to release an Atlantic HMS in the manner specified in §635.21(a).

(20) Fail to report the retention of an Atlantic HMS that has an archival tag, as specified in §635.33.

(21) Fail to maintain an Atlantic HMS in the form specified in §635.30.

(22) Fish for, catch, retain, or possess an Atlantic HMS that is less than its minimum size limit specified in §635.20.

(23) Fail to comply with the restrictions on use of a pelagic longline or shark gillnet as specified in §635.21 (c) and (d)(3)(ii) and (iii).

(24) Import any BFT or swordfish in a manner inconsistent with any ports of entry designated by NMFS as authorized by §635.47.

(25) Dispose of fish or parts thereof or other matter in any manner after any communication or signal from an authorized officer, or after the approach of an authorized officer.

(26) Violate the terms and conditions or any provision of an exempted fishing permit or scientific research permit issued under the authority of §635.32.

(27) Operate a charterboat or headboat without a valid U.S. Coast Guard merchant marine or uninspected passenger vessel license on board the vessel when fishing for or possessing Atlantic HMS as specified at §635.4(c)(2).

(28) Violate any provision of this part, the Magnuson-Stevens Act, ATCA, or any regulations or permits issued under the Magnuson-Stevens Act or ATCA.

(29) Fail to comply with the restrictions on importing HMS as specified at §§ 635.40, 635.41 and 635.46.

(b) *Atlantic tunas*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Engage in fishing with a vessel that has a permit for Atlantic tuna under §635.4, unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings any BFT under control (secured to the catching vessel or on board) with no assistance from another vessel, except as shown by the operator that the safety of the vessel or its crew was jeopardized or other circumstances existed that were beyond the control of the operator.

(2) Import or export bluefin tuna without a dealer permit, as specified in §635.4(a)(4) and (g)(1).

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

(4) Fail to inspect a vessel's permit, fail to affix a dealer tag to a large medium or giant BFT, or fail to use such tag as specified in §635.5(b)(2).

(5) Fail to report a large medium or giant BFT that is not sold, as specified in §635.5(a)(3) and §635.5(c).

(6) As an angler, fail to report a BFT, as specified in §635.5(a)(3).

(7) Fish for, catch, retain, or possess a BFT with gear not authorized for the category permit issued to the vessel or to have on board such gear when in possession of a BFT, as specified in §635.21(d)(1).

(8) Fail to request an inspection of a purse seine vessel, as specified in §635.21(d)(1)(vi)(B).

(9) Fish for or catch BFT in a directed fishery with purse seine nets without an allocation made under §635.27(a)(4).

(10) Fish for or catch any Atlantic tunas in a directed fishery with purse seine nets from August 15 through December 31 if there is no remaining BFT allocation made under §635.27 (a)(4).

(11) Exceed the recreational catch limit for yellowfin tuna, as specified in §635.22(d).

(12) Exceed a catch limit for BFT specified for the appropriate permit category, as specified in §635.23.

(13) As a vessel with a General category Atlantic tuna permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT on a commercial fishing day, as specified in § 635.23(a)(3).

(14) As a vessel with an Angling category Atlantic tunas permit or an HMS or Atlantic Tunas Charter/Headboat permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT or fail to report such catch, as specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

(15) As a vessel with an Angling category Atlantic tunas permit or an HMS or Atlantic Tunas Charter/Headboat permit, sell, offer for sale, or attempt to sell a large medium or giant BFT after fishing under the circumstances specified in § 635.23(b)(1)(iii) and (c)(1) through (3).

(16) Retain a BFT caught under the catch and release program specified in § 635.26.

(17) As a vessel with a Purse Seine category Atlantic tuna permit, catch, possess, retain, or land BFT in excess of its allocation of the Purse Seine category quota, or fish for BFT under that allocation prior to August 15, as specified in § 635.27(a)(4).

(18) As a vessel with a Purse Seine category Atlantic tunas permit, land BFT smaller than the large medium size class except as specified under § 635.23(e)(2).

(19) Fish for, retain, possess, or land a BFT when the fishery is closed, as specified in § 635.28(a), except as may be authorized for catch and release under § 635.26.

(20) Approach to within 100 yd (91.5 m) of the cork line of a purse seine net used by a vessel fishing for Atlantic tuna, or for a purse seine vessel to approach to within 100 yd (91.5 m) of a vessel actively fishing for Atlantic tuna, except that two vessels that have Purse Seine category Atlantic tuna permits may approach closer to each other.

(21) Transfer at sea an Atlantic tuna, except as may be authorized for the transfer of BFT between purse seine vessels, as specified in § 635.29(a).

(22) As the owner or operator of a purse seine vessel, fail to comply with the requirements for weighing, measuring, and information collection specified in § 635.30(a)(2).

(23) Fish for, catch, possess, or retain a BFT from the Gulf of Mexico except as specified under § 635.23(f)(1), or if taken incidental to recreational fishing for other species and retained in accordance with § 635.23(b) and (c).

(24) Fail to comply with the restrictions on sale and purchase of an Atlantic tuna, as specified in §§ 635.5(b), 635.23, and 635.31(a).

(25) Fail to comply with the documentation requirements for imported or exported BFT or BFT products, as specified in § 635.42.

(26) Import a BFT or BFT product into the United States from Belize, Panama, or Honduras other than as authorized in § 635.45.

(27) For any person to refuse to provide information requested by NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of Atlantic tunas.

(c) *Billfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Retain a billfish on board a vessel with a pelagic longline on board or harvested by gear other than rod and reel, as specified in § 635.21(d)(2).

(2) Transfer a billfish at sea, as specified in § 635.29(a).

(3) Fail to maintain a billfish in the form specified in § 635.30(b).

(4) Sell or purchase a billfish, as specified in § 635.31(b).

(5) Retain on board a vessel a longbill spearfish, or a blue marlin, white marlin or sailfish that is less than the minimum size specified in § 635.20(d).

(d) *Shark*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Exceed a recreational retention limit for shark, as specified in § 635.22(c).

(2) Exceed a commercial retention limit for shark, as specified in § 635.24(a).

(3) Retain, possess, or land a shark of a species group when the fishery for

that species group is closed, as specified in § 635.28(b)(1) and (b)(2).

(4) Sell or purchase a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b)(3).

(5) Transfer a shark at sea, as specified in § 635.29(b).

(6) Remove the fins from a shark listed in tables 1 and 2 in appendix A to this part, and discard the remainder, or otherwise fail to maintain a shark in its proper form, as specified in § 635.30(c)(1) through (c)(4).

(7) Have on board a fishing vessel, sell, or purchase shark fins that are disproportionate to the weight of shark carcasses, as specified in § 635.30(c)(2) and (c)(3).

(8) Fail to have shark fins and carcasses weighed and recorded, as specified in § 635.30(c)(3).

(9) Fail to comply with the restrictions on sale and purchase of a shark, as specified in § 635.31(c).

(10) Retain, possess, sell, or purchase a prohibited shark.

(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support of an application for an ILAP or an appeal of NMFS's denial of an ILAP for shark.

(12) Fish for Atlantic sharks with unauthorized gear or possess Atlantic sharks on board a vessel with unauthorized gear on board as specified in § 635.21(d)(3).

(13) Fish for Atlantic sharks with a gillnet or possess Atlantic sharks on board a vessel with a gillnet on board, except as specified in § 635.21(d)(3).

(e) *Swordfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Purchase, barter for, or trade for a swordfish from the north or south Atlantic swordfish stock or import a swordfish harvested from any ocean area without a dealer permit, as specified in § 635.4(g)(3).

(2) Fail to comply with the restrictions on use of a pelagic longline specified in § 635.21(b) and (c).

(3) When the directed fishery for swordfish is closed, exceed the limits specified in § 635.28(c)(1)(i) and (c)(1)(ii).

(4) When the incidental catch fishery for swordfish is closed, possess, land,

sell, or purchase a swordfish, as specified in § 635.28(c)(2).

(5) Transfer at sea a swordfish, as specified in § 635.29(a).

(6) Fail to maintain a swordfish in the form specified in § 635.30(d).

(7) Fail to comply with the restrictions on sale and purchase of a swordfish, as specified in § 635.31(d).

(8) Fish for North Atlantic swordfish from, or possess or land North Atlantic swordfish on board a vessel, using or having on board gear other than pelagic longline, harpoon, rod and reel, or handline.

(9) Fish for swordfish from the South Atlantic swordfish stock using any gear other than pelagic longline.

(10) Fail to comply with the documentation requirements for the importation of a swordfish, or part thereof, that is less than the minimum size, as specified in § 635.46.

(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support of an application for an ILAP or an appeal of NMFS's denial of an initial limited access permit for swordfish.

(12) Falsify information submitted under § 635.46(b) in support of entry of imported swordfish.

(13) Exceed the incidental catch retention limits specified at § 635.24(b).

[64 FR 29135, May 28, 1999, as amended at 64 FR 37705, July 13, 1999]

APPENDIX A TO PART 635—SPECIES TABLES

TABLE 1 OF APPENDIX A TO PART 635—OCEANIC SHARKS

A. Large coastal sharks:

1. Ridgeback sharks:

Sandbar, *Carcharhinus plumbeus*
 Silky, *Carcharhinus falciformis*
 Tiger, *Galeocerdo cuvieri*

2. Non-ridgeback sharks:

Blacktip, *Carcharhinus limbatus*
 Bull, *Carcharhinus leucas*
 Great hammerhead, *Sphyrna mokarran*
 Lemon, *Negaprion brevirostris*
 Nurse, *Ginglymostoma cirratum*
 Scalloped hammerhead, *Sphyrna lewini*
 Smooth hammerhead, *Sphyrna zygaena*
 Spinner, *Carcharhinus brevipinna*

B. Small coastal sharks:

Atlantic sharpnose, *Rhizoprionodon terraenovae*

Blacknose, *Carcharhinus acronotus*
Bonnethead, *Sphyrna tiburo*
Finetooth, *Carcharhinus isodon*

C. Pelagic sharks:

Blue, *Prionace glauca*
Oceanic whitetip, *Carcharhinus longimanus*
Porbeagle, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Thresher, *Alopias vulpinus*.

D. Prohibited sharks:

Atlantic angel, *Squatina dumerili*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus vitulus*
Bigeye thresher, *Alopias superciliosus*
Bignose, *Carcharhinus altimus*
Caribbean reef, *Carcharhinus perezii*
Caribbean sharpnose, *Rhizoprionodon porosus*
Dusky, *Carcharhinus obscurus*
Galapagos, *Carcharhinus galapagensis*
Longfin mako, *Isurus paucus*
Narrowtooth, *Carcharhinus brachyurus*
Night, *Carcharhinus signatus*
Sand tiger, *Odontaspis taurus*
Sevengill, *Heptranchias perlo*
Sixgill, *Hexanchus griseus*
Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*
White, *Carcharodon carcharias*

TABLE 2 OF APPENDIX A TO PART 635—
DEEPWATER/OTHER SHARK SPECIES

Blotched catshark, *Scyliorhinus meadi*
Broadgill catshark, *Apristurus riveri*
Chain dogfish, *Scyliorhinus retifer*
Deepwater catshark, *Apristurus profundorum*
Dwarf catshark, *Scyliorhinus torrei*
Iceland catshark, *Apristurus laurussoni*
Marbled catshark, *Galeus arae*
Smallfin catshark, *Apristurus parvipinnis*
Bigtooth cookiecutter, *Isistius plutodus*
Blainville's dogfish, *Squalus blainvillei*
Bramble shark, *Echinorhinus brucus*
Broadband dogfish, *Etmopterus gracilispinnis*
Caribbean lanternshark, *Etmopterus hillianus*
Cookiecutter shark, *Isistius brasiliensis*
Cuban dogfish, *Squalus cubensis*
Flatnose gulper shark, *Deania profundorum*
Fringefin lanternshark, *Etmopterus schultzi*
Great lanternshark, *Etmopterus princeps*
Green lanternshark, *Etmopterus virens*
Greenland shark, *Somniosus microcephalus*
Gulper shark, *Centrophorus granulosus*
Japanese gulper shark, *Centrophorus acutus*
Kitefin shark, *Dalatias licha*
Lined lanternshark, *Etmopterus bullisi*
Little gulper shark, *Centrophorus uyato*
Portuguese shark, *Cetroscymnus coelolepis*
Pygmy shark, *Squaliolus laticaudus*
Roughskin spiny dogfish, *Squalus asper*
Smallmouth velvet dogfish, *Scymnodon obscurus*
Smooth lanternshark, *Etmopterus pusillus*
American sawshark, *Pristiophorus schroederi*

Florida smoothhound, *Mustelus norrisi*
Smooth dogfish, *Mustelus canis*

**PART 640—SPINY LOBSTER FISHERY
OF THE GULF OF MEXICO AND
SOUTH ATLANTIC**

Subpart A—General Provisions

- Sec.
- 640.1 Purpose and scope.
- 640.2 Definitions.
- 640.3 Relation to other laws.
- 640.4 Permits and fees.
- 640.5 Recordkeeping and reporting. [Reserved]
- 640.6 Vessel and gear identification.
- 640.7 Prohibitions.
- 640.8 Facilitation of enforcement.
- 640.9 Penalties.

Subpart B—Management Measures

- 640.20 Seasons.
- 640.21 Harvest limitations.
- 640.22 Gear and diving restrictions.
- 640.23 Bag/possession limits.
- 640.24 Authorized activities.

FIGURES—PART 640

FIGURE 1—CARAPACE LENGTH

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§640.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic prepared by the South Atlantic and Gulf of Mexico Fishery Management Councils under the Magnuson Act.

(b) This part governs conservation and management of spiny lobster and slipper (Spanish) lobster in the EEZ in the Atlantic Ocean and Gulf of Mexico off the Atlantic and Gulf of Mexico states from the Virginia/North Carolina border south and through the Gulf of Mexico.

(c) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobsters, or separated tails, in the EEZ incidental to such foreign harvesting is exempt from