may add any underharvest, or portion thereof, to the landings limit for the following fishing year. Such adjustments to the annual recreational marlin landings limit, as specified in paragraph (d)(1) of this section, if necessary, will be filed with the Office of the Federal Register for publication prior to the start of the next fishing year or as early as possible.

(3) When the annual marlin landings limit specified in paragraph (d)(1) or, if adjusted, as specified in paragraph (d)(2) of this section is reached or projected to be reached, based upon a review of landings, the period of time remaining in the current fishing year, current and historical landings trends, and any other relevant factors, NMFS will file for publication with the Office of the Federal Register and action restricting fishing for Atlantic blue marlin, white marlin, and roundscale spearfish to catch-and-release fishing only. In no case shall such adjustment be effective less than 14 calendar days after the date of publication. From the effective date and time of such action until additional landings become available, no blue marlin, white marlin, or roundscale spearfish from the management unit may be taken, retained, or possessed.

[64 FR 29135, May 28, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 635.27, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 635.28 Fishery closures.

(a) BFT. (1) When a BFT quota, other than the Purse Seine category quota specified in § 635.27(a)(4), is reached, or is projected to be reached, NMFS will file a closure notice with the Office of the Federal Register for publication. On and after the effective date and time of such action, 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 the commencement date of the directed BFT purse seine fishery, as provided under § 635.27(a)(4)(i), 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. 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 participants in another area from a reasonable opportunity to harvest any allocated domestic category quota, as stated in §635.27(a), NMFS may close all or part of the fishery under that category. NMFS may reopen the fishery at a later date if NMFS determines that reasonable fishing opportunities are available, e.g., BFT have migrated into the area or weather is conducive for fishing. In determining the need for any such interim closure or area closure, NMFS will also take into consideration the criteria specified in §635.27(a)(8).

(b) Sharks—(1) Non-linked quotas: The commercial fishery for a species or management group that is not linked to another species or management group will open as specified at §635.27(b). Except as noted in (b)(4) of this section, when NMFS calculates that the landings for the shark species management group, as specified in §635.27(b)(1), has reached or is projected to reach 80 percent of the available quota as specified in §635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species, shark management group, and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the FEDERAL REGISTER,
that additional quota is available and the season is reopened, the fisheries for the shark species or management group are closed, even across fishing years.

(2) Linked Quotas: As specified in paragraph (b)(3) of this section, the quotas of some shark species and/or management groups are linked to the quotas of other shark species and/or management groups. The commercial fishery for all linked species and management groups will open as specified at §635.27(b). When NMFS calculates that the landings for any species and/or management group of a linked group has reached or is projected to reach 80 percent of the available quota as specified in §635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for all of the species and/or management groups in a linked group that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the FEDERAL REGISTER, that additional quota is available and the season is reopened, the fishery for all linked species and/or management groups is closed, even across fishing years.

(3) The quotas of the following species and/or management groups are linked:

(i) Atlantic hammerhead sharks and Atlantic aggregated LCS;
(ii) Gulf of Mexico hammerhead sharks and Gulf of Mexico aggregated LCS;
(iii) Atlantic blacknose and Atlantic non-blacknose SCS;
(iv) Gulf of Mexico blacknose and Gulf of Mexico non-blacknose SCS.

(4) NMFS may close the Gulf of Mexico blacktip shark management group before landings reach, or are expected to reach, 80 percent of the quota. Before taking any inseason action, NMFS will consider the following criteria and other relevant factors:

(i) Estimated Gulf of Mexico blacktip shark season length based on available quota and average weekly catch rates during the current fishing year and from previous years;
(ii) Variations in seasonal distribution, abundance, or migratory patterns of blacktip sharks, hammerhead sharks, and aggregated LCS based on scientific and fishery information;
(iii) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments;
(iv) The amount of remaining shark quota in the relevant area or region, to date, based on dealer or other reports; and/or,
(v) The catch rates of the relevant shark species/management groups, to date, based on dealer or other reports.

(5) When the fishery for a shark species and/or management group is closed, a fishing vessel, issued a Federal Atlantic commercial shark permit pursuant to §635.4, may not possess or sell a shark of that species and/or management group, except under the conditions specified in §635.22(a) and (c) or if the vessel possesses a valid shark research permit under §635.32, a NMFS-approved observer is onboard, and the sandbar and/or Research LCS fishery is open. A shark dealer, issued a permit pursuant to §635.4, may not purchase or receive a shark of that species and/or management group from a vessel issued a Federal Atlantic commercial shark permit, 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. Under a closure for a shark management group, a shark dealer, issued a permit pursuant to §635.4 may, in accordance with State regulations, purchase or receive a shark of that species or management group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in State waters and that has not been issued a Federal Atlantic commercial shark permit, HMS Angling permit, or HMS Charter/Headboat permit pursuant to §635.4. Additionally, under a closure for a shark species and/or management group, a shark dealer, issued a permit pursuant to §635.4, may purchase or receive a shark of that species group if the sandbar and/or Research LCS fishery is open and the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per §635.32) that
had a NMFS-approved observer on
board during the trip sharks were col-
clected.

(c) **Swordfish**—(1) **Directed fishery clo-
sure.** 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 pe-
lagic longline, or issued an Incidental
HMS squid trawl permit. However,
North Atlantic swordfish legally taken
prior to the effective date of the clo-
sure may be possessed in the Atlantic
Ocean north of 5 N. lat. or landed in an
Atlantic coastal state on a vessel with a
pelagic longline on board, provided
the harvesting vessel does no fishing
after the closure in the Atlantic Ocean
north of 5 N. lat., and reports positions
with a vessel monitoring system, as
specified in §635.69. Additionally, le-
gally taken swordfish from the South
Atlantic swordfish stock may be pos-
sessed or landed north of 5 N. lat., pro-
vided the harvesting vessel does no fishing on that trip north of 5 N. lat.,
and reports positions with a vessel
monitoring system as specified in
§635.69. NMFS may adjust the inci-
dental catch retention limit by filing
with the Office of the Federal Register
for publication notification of the
change at least 14 days before the effec-
tive 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 ves-
sels fishing under the incidental catch
quota.

(B) No more than 2 swordfish per trip
may be possessed in or from the Atlan-
tic 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 har-
poon.

(C) No swordfish may be possessed,
landed, or sold by vessels issued a
Swordfish General Commercial open
access permit.

(D) No swordfish may be sold by ves-
sels issued an HMS Charter/Headboat
permit.

(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 pro-
jected 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 additional inci-
dental catch quota becomes available,
no swordfish may be landed in an At-
lantic coastal state, or be possessed or
sold in or from the Atlantic Ocean
north of 5° N. lat. unless the directed
fishery is open and the appropriate per-
mits have been issued to the vessel. In
the event of a directed and incidental
North Atlantic swordfish category clo-
sure, South Atlantic swordfish may be
possessed in the Atlantic Ocean north
of 5° N. lat. and/or landed in an Atlan-
tic coastal state on a vessel with
longline gear onboard, provided that
the harvesting vessel does not fish on
that trip in the Atlantic Ocean north
of 5° N. lat., the fish were taken legally
from waters of the Atlantic Ocean
south of 5° N. lat., and the harvesting
vessel reports positions with a vessel
monitoring system as specified in
§635.69.

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EDITORIAL NOTE: For Federal Register ci-
tations affecting §635.28, see the List of CFR
Sections Affected, which appears in the
Finding Aids section of the printed volume
and at www.fdsys.gov.

§635.29 Transfer at sea.

(a) Persons may not transfer an At-
lantic tuna, blue marlin, white marlin,
roundscale spearfish, or swordfish at
sea in the Atlantic Ocean, regardless of