

§ 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/or 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;

Fishery Conservation and Management

§ 635.28

(ii) Gulf of Mexico hammerhead sharks and Gulf of Mexico aggregated LCS;

(iii) Atlantic blacknose and Atlantic non-blacknose SCS; and,

(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 collected.

(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 pelagic longline, or issued an Incidental HMS squid trawl permit. However, North Atlantic swordfish legally taken prior to the effective date of the closure 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

§ 635.29

specified in § 635.69. Additionally, legally taken swordfish from the South Atlantic swordfish stock may be possessed or landed north of 5° N. lat. provided 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 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.

(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 vessels 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 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 additional incidental catch quota becomes available, no swordfish may be landed in an Atlantic 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 permits have been issued to the vessel. In the event of a directed and incidental North Atlantic swordfish category closure, South Atlantic swordfish may be possessed in the Atlantic Ocean north of 5° N. lat. and/or landed in an Atlan-

50 CFR Ch. VI (10–1–14 Edition)

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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§ 635.29 Transfer at sea.

(a) Persons may not transfer an Atlantic tuna, blue marlin, white marlin, roundscale spearfish, or swordfish at sea in the Atlantic Ocean, regardless of where the fish was harvested. Notwithstanding the definition of “harvest” at § 600.10, for the purposes of this part, transfer includes, but is not limited to, moving or attempting to move an Atlantic tuna that is on fishing or other gear in the water from one vessel to another vessel. However, an owner or operator of a vessel for which a Purse Seine category Atlantic Tunas category 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.

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