

§ 635.23

issued an HMS Charter/Headboat permit under § 635.4(b) and only when on a non for-hire trip, a directed, incidental or handgear limited access swordfish permit under § 635.4(e) and (f), a Swordfish General Commercial permit under § 635.4(f), an Incidental HMS Squid Trawl permit under § 635.4(n), or an HMS Commercial Caribbean Small boat permit under § 635.4(o).

(1) When on a for-hire trip as defined at § 635.2, vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are charter boats as defined under § 600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to six North Atlantic swordfish per vessel per trip. When such vessels are on a non for-hire trip, they must comply with the commercial retention limits for swordfish specified at § 635.24(b)(4).

(2) When on a for-hire trip as defined at § 635.2, vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are headboats as defined under § 600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to 15 North Atlantic swordfish per vessel per trip. When such vessels are on a non for-hire trip, they may land no more than the commercial retention limits for swordfish specified at § 635.24(b)(4).

(3) Vessels issued an HMS Angling category permit under § 635.4(c), may retain, possess, or land no more than one North Atlantic swordfish per person and up to four North Atlantic swordfish per vessel per trip.

[64 FR 29135, May 28, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 635.22, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EFFECTIVE DATE NOTE: At 82 FR 16507, Apr. 4, 2017, § 635.22 was amended by revising paragraph (c)(1), effective Jan. 1, 2018. For the convenience of the user, the revised text is set forth as follows:

§ 635.22 Recreational retention limits.

(c) * * *

(1) The recreational retention limit for sharks applies to any person who fishes in any manner, except to persons aboard a vessel that has been issued a Federal Atlantic

commercial shark vessel permit under § 635.4. The retention limit can change depending on the species being caught and the size limit under which they are being caught as specified under § 635.20(e). If a commercial Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks and no sale provision in paragraph (a) of this section may be applied to persons aboard a vessel issued a Federal Atlantic commercial shark vessel permit under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit with a shark endorsement under § 635.4 and is engaged in a for-hire fishing trip. A person on board a vessel that has been issued or is required to be issued a permit with a shark endorsement under § 635.4 may be required to use non-offset, corrodible circle hooks as specified in § 635.21(f) and (k) in order to retain sharks per the retention limits specified in this section.

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§ 635.23 Retention limits for bluefin tuna.

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 been issued a General category Atlantic Tunas permit may fish for, possess, retain, land, or sell a BFT of any size class, and catch-and-release or tag-and-release fishing for BFT under § 635.26 is not authorized from such vessel. On days other than RFDs, and 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.

(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 five per vessel. Such increase or decrease will be based on the criteria provided under § 635.27(a)(8). NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing an adjustment with the Office of the Federal Register for publication. In no case shall such adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26.

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

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

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

(3) *Changes to retention limits.* To provide for maximum utilization of the quota for BFT over the longest period of time, NMFS may increase or decrease the retention limit for any size class of BFT, or change a vessel trip limit to an angler trip limit and vice versa. Such increase or decrease in retention limit will be based on the criteria provided under § 635.27 (a)(8). The retention limits may be adjusted separately for persons aboard a specific vessel type, such as private vessels, headboats, or charter boats. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing an adjustment with the Office of the Federal Register for publication. In no case shall such adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register.

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

(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 been issued an HMS Charter/Headboat permit may fish under either the retention limits applicable to the General category specified in paragraphs (a)(2) and (a)(3) of this section or the retention limits applicable to the Angling category specified in paragraphs (b)(2) and (b)(3) of this section. The size category of the first BFT retained will determine the fishing category applicable to the vessel that day.

(d) *Harpoon category.* Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land an unlimited number

of giant bluefin tuna per day. An incidental catch of two large medium bluefin tuna per vessel per day may be retained, possessed, or landed, unless the retention limits is increased by NMFS through an inseason adjustment to three, or a maximum of four, large medium bluefin tuna per vessel per day, based upon the criteria under § 635.27(a)(8). NMFS will implement an adjustment via publication in the FEDERAL REGISTER. If adjusted upwards to three or four large medium bluefin tuna per vessel per day, NMFS may subsequently decrease the retention limit down to the default level of two, based on the criteria under § 635.27(a)(8).

(e) *Purse Seine category.* Persons aboard a vessel permitted in the Atlantic Tunas Purse Seine category may retain giant bluefin tuna (81 inches and larger), and smaller bluefin, as restricted by paragraphs (e)(1) and (2) of this section, up to the amount of individual quota allocated under § 635.27(a)(4)(ii). Purse seine vessel owners who, through landing and/or leasing, have no remaining bluefin tuna quota allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught, regardless of whether bluefin tuna are retained, unless such vessel owners lease additional allocation through the Individual Bluefin Quota Allocation Leasing Program, under § 635.15(c). Persons aboard a vessel permitted in the Atlantic Tunas Purse Seine category,

(1) May retain, possess, land, or sell large medium bluefin in amounts not exceeding 15 percent, by weight, of the total amount of giant bluefin landed during that fishing year.

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

(3) May fish for yellowfin, bigeye, albacore, or skipjack tuna at any time; however, landings of bluefin tuna

taken incidental to fisheries targeting other Atlantic tunas or in any fishery in which bluefin tuna might be caught will be deducted from the individual vessel's quota.

(f) *Longline category.* Persons aboard a vessel permitted in the Atlantic Tunas Longline category are subject to the bluefin tuna retention restrictions in paragraphs (f)(1) and (2) of this section.

(1) A vessel fishing with pelagic longline gear may retain, possess, land and sell large medium and giant bluefin tuna taken incidentally when fishing for other species if in compliance with all the IBQ requirements of § 635.15, including the requirement that a vessel may not declare into or depart on a fishing trip with pelagic longline onboard unless it has the required minimum bluefin tuna IBQ allocation required for the region where fishing activity will occur.

(2) A vessel with pelagic longline gear onboard must retain all dead bluefin tuna that are 73 inches or greater CFL.

(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.

[64 FR 29135, May 28, 1999, as amended at 65 FR 42887, July 12, 2000; 67 FR 77438, Dec. 18, 2002; 68 FR 32417, May 30, 2003; 68 FR 56788, Oct. 2, 2003; 68 FR 74511, Dec. 24, 2003; 69 FR 40758, July 6, 2004; 70 FR 10900, Mar. 7, 2005; 71 FR 58169, Oct. 2, 2006; 76 FR 39031, July 5, 2011; 76 FR 74009, Nov. 30, 2011; 79 FR 71601, Dec. 2, 2014]

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28, and the gear operation and deployment restrictions in § 635.21.

(a) *Sharks.* (1) A person who owns or operates a vessel that has been issued a valid shark research permit under § 635.32(f) and who has a NMFS-approved observer on board may retain,