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Title 50 —Wildlife and Fisheries

Chapter VI —Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce

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PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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.

Editorial Note: Nomenclature changes to part 635 appear at 90 FR 38004, Aug. 7, 2025.

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 2006 Consolidated Highly Migratory Species Fishery Management Plan and its amendments. 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, 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 Maine, 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.

[64 FR 29135, May 28, 1999, as amended at 75 FR 30524, June 1, 2010; 86 FR 42744, Aug. 5, 2021]

§ 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 Aggregated LCS means one of the following species, or parts thereof, as listed in Table 1 of appendix A to this part: Atlantic blacktip, bull, lemon, nurse, silky, spinner, and tiger.

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 America, and the Caribbean Sea.

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

Atlantic States, consistent with section 803 of Public law 103-206 (16 U.S.C. 5102), refers to Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, the District of Columbia, and the Potomac River Fisheries Commission, for purposes of applying the Shark Conservation Act exception at 50 CFR 635.30(c)(5).

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

BFT means Atlantic bluefin tuna as defined in § 600.10 of this chapter.

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

Bluefin statistical document (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.

Bottom longline means a longline that is deployed with enough weights and/or anchors to maintain contact with the ocean bottom. For the purposes of this part, a vessel is considered to have bottom longline gear on board when a power-operated longline hauler, a mainline, weights and/or anchors capable of maintaining contact between the mainline and the ocean bottom, and leaders (gangions) with hooks are on board. Removal of any of these elements constitutes removal of bottom longline gear. Bottom longline vessels may have a limited number of floats and/or high flyers onboard for the purposes of marking the location of the gear but removal of these floats does not constitute removal of bottom longline gear.

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

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

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

Charter/headboat commercial sale endorsement means an authorization added to an HMS Charter/Headboat permit that is required for vessels that sell or intend to sell Atlantic tunas, sharks, and swordfish, provided that all other requirements in this part are also met.

Charleston Bump Monitoring Area means the area within the Atlantic Ocean bounded by straight lines by the following coordinates: starting from 34°00'00" N lat., 76°58'52" W long.; then proceeding due east to 34°00'00" N lat., 76°00'00" W long.; then proceeding due south to 31°00'00" N lat., 76°00'00" W long.; then proceeding due west to 31°00'00" N lat., 80°26'42" W long.; and then proceeding northeast in a straight line to the first point at 34°00'00" N lat., 76°58'52" W long.

Charleston Bump Pelagic Longline Restricted Area means the area within the Atlantic Ocean that is bounded by the following coordinates: starting at a point intersecting the inner boundary of the U.S. EEZ at 34°00'00" N lat. (near Wilmington Beach, NC); then proceeding due east to 34°00'00" N lat., 76°58'52" W long.; then proceeding southwest in a straight line to 31°00'00" N lat., 80°26'42" W long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 31°00' N lat. (near Jekyll Island, GA); and then proceeding northward following the inner boundary of the U.S. EEZ to the first point at 34°00'00" N lat.

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

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

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

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

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

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

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

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

DeSoto Canyon Pelagic Longline Restricted Area means the area within the Gulf of America bounded by straight lines with the following coordinates: starting at 30°00'00" N lat., 88°00'00" W long.; then proceeding due east to 30°00'00" N lat., 86°00'00" W long.; then proceeding due south to 28°00'00" N lat., 86°00'00" W long.; then proceeding due east to 28°00'00" N lat., 84°00'00" W long.; then proceeding due south to

26°00'00" N lat., 84°00'00" W long.; then proceeding due west to 26°00'00" N lat., 86°00'00" W long.; then proceeding due north to 28°00'00" N lat., 86°00'00" W long.; then proceeding due west to 28°00'00" N lat., 88°00'00" W long.; and then proceeding due north to the first point at 30°00'00" N lat., 88°00'00" W long.

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

Division Chief means the Chief, Highly Migratory Species Management Division, NMFS (F/SF1), 1315 East-West Highway, Silver Spring, MD, 20910; (301) 427-8503.

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 , for swordfish, tunas, and billfish, 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. For sharks, dress means to process a fish by removal of head and viscera, but does not include removal of the fins, backbone, halving, quartering, or otherwise further reducing the carcass.

Dressed weight (dw) , for swordfish, tunas, and billfish, means the weight of a fish after it has been dressed. For sharks, dressed weight means the weight of a fish after it has been dressed and had its fins, including the tail, removed.

Drift gillnet means a gillnet that is floating unattached to the ocean bottom and not anchored, secured, or weighted to the ocean bottom.

East Florida Coast Monitoring Area means the area within the Atlantic Ocean bounded by the following coordinates: starting at 31°00'00" N lat., 80°26'42" W long.; then proceeding due east to 31°00'00" N lat., 78°00'00" W long.; then proceeding southwest in a straight line until the outer boundary of the EEZ is reached at 28°17'10" N lat., 79°11'24" W long.; then following the outer boundary of the EEZ southwest to 27°52'55" N lat., 79°28'34" W long.; and then proceeding northwest in a straight line to the first point at 31°00'00" N lat., 80°26'42" W long.

East Florida Coast Pelagic Longline Restricted Area means the area within the Atlantic Ocean bounded by the following coordinates: starting at a point that intersects the inner boundary of the U.S. EEZ at 31°00'00" N lat. (near Jekyll Island, GA); then proceeding due east to 31°00'00" N lat., 80°26'42" W long.; then proceeding southeast to 27°52'55" N lat., 79°28'34" W long.; then proceeding along the outer boundary of the EEZ to the intersection of the EEZ with 24°00'00" N lat.; then proceeding due west to 24°00'00" N lat., 81°47'00" W long.; then proceeding due north to intersect the inner boundary of the U.S. EEZ at 81°47'00" W long. near Key West, FL; and then proceeding northward following the inner boundary of the U.S. EEZ to the first point at 31°00'00" N lat.

EFP means an exempted fishing permit issued pursuant to § 600.745 of this chapter or to § 635.32(c).

Electronic monitoring (EM) system means a system of video cameras and recording and other related equipment installed on a vessel.

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

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

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

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

Federal Atlantic Commercial Shark Permit means any of the commercial shark permits issued pursuant to § 635.4.

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 receive means to take possession for commercial purposes of any fish or any part thereof by purchasing, trading or bartering for it from the fishing vessel owner or operator once it is offloaded, where the vessel has been issued, or should have been issued, a valid permit under this part. First receive does not mean to take possession solely for transport.

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 January 1 through December 31.

FL (fork length) means the straight-line measurement of a fish from the midpoint of the anterior edge of the fish to the fork of the caudal fin. The measurement is not made along the curve of the body.

Floatation device means any positively buoyant object rigged to be attached to a fishing gear.

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

Florida Swordfish Management Area means the Atlantic Ocean area shoreward of the outer boundary of the U.S. EEZ from a point where latitude 28°17'10" N. lat. intersects the U.S. mainland near Rockledge, Florida and proceeding due east across the barrier island near Cocoa Beach, Florida to connect by straight lines the following coordinates in the order stated: 28°17'10" N. lat., 79°11'24" W. long.; then proceeding along the outer boundary of the EEZ to the intersection of the EEZ with 24°00' N. lat.; then proceeding due west to 24°00' N. lat., 82°0' W. long, then proceeding due north to 25°48" N. lat., 82°0' W. long., then proceeding due east to the shore near Chokoloskee, Florida).

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

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

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

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

Green-stick gear means an actively trolled mainline attached to a vessel and elevated or suspended above the surface of the water with no more than 10 hooks or gangions attached to the mainline. The suspended line, attached gangions and/or hooks, and catch may be retrieved collectively by hand or mechanical means. Green-stick does not constitute a pelagic longline or a bottom longline as defined in this section.

Gulf of America Aggregated LCS means one of the following species, or parts thereof, as listed in Table 1 of appendix A to this part: Bull, lemon, nurse, silky, spinner, and tiger.

Hammerhead shark(s) means great, scalloped, and smooth hammerhead shark species, or parts thereof, as listed in Table 1 of appendix A to this part.

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

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

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

Highly migratory species (HMS) means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in Table 1 of appendix A to this part); white marlin; blue marlin; sailfish; longbill spearfish; and roundscale spearfish.

IBQ (individual bluefin quota) refers to limited access privileges under the IBQ Program (§ 635.15), implemented for the management of Atlantic BFT incidentally caught by Atlantic Tunas Longline category LAP holders.

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

In transit means non-stop progression through an area without any fishing activity occurring.

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 heading A, Large Coastal Sharks, of Table 1 of 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 anterior tip of the lower jaw to the fork of the caudal fin. The measurement is not made along the curve of the body.

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

Management group in regard to sharks means a group of shark species that are combined for quota management purposes. A management group may be split by region or sub-region, as defined at § 635.27(b)(1). A fishery for a management group can be opened or closed as a whole or at the regional or sub-regional levels. Sharks have the following management groups: Atlantic aggregated LCS, Gulf of America aggregated LCS, research LCS, hammerhead, Atlantic non-blacknose SCS, Gulf of America non-blacknose SCS, and pelagic sharks other than blue or porbeagle.

Management unit means in this part:

(1) For Atlantic tunas, longbill spearfish, roundscale spearfish, blue marlin, and white marlin, means all fish of these species in the Atlantic Ocean;

(2) For sailfish, means all fish of this species in the Atlantic Ocean west of 30° W. long.;

(3) For North Atlantic swordfish, means all fish of this species in the Atlantic Ocean north of 5° N. lat.;

(4) For South Atlantic swordfish, means all fish of this species in the Atlantic Ocean south of 5° N. lat.; and

(5) For sharks, means all fish of the species listed in Table 1 of Appendix A to this part, in the western north Atlantic Ocean, including the Gulf of America and the Caribbean Sea.

Mid-Atlantic Bottom Longline Restricted Area means the Atlantic Ocean area bounded by the following coordinates: starting at a point intersecting the inner boundary of the U.S. EEZ at 35°41'00" N lat. (just south of Oregon Inlet, North Carolina); then proceeding due east to 35°41'00" N lat., 74°51'00" W long.; then proceeding southeast in a straight line to 35°30'00" N lat., 74°46'00" W long.; then proceeding southwest in a straight line, roughly following the 55 fathom mark, to 33°51'00" N lat., 76°24'00" W long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 33°51'00" N lat., 77°53'00" W long. (near Cape Fear, North Carolina); and then proceeding northward following the inner boundary of the U.S. EEZ to the first point at 35°41'00" N lat.

Mobulid ray means any species of ray in the family Mobulidae.

Naturally attached, as it is used to describe shark fins, refers to shark fins that remain attached to the shark carcass via at least some portion of uncut skin. As used to describe the head of a swordfish, naturally attached refers to the whole head remaining fully attached to the carcass except for the bill, which may be removed provided it has been removed forward of the anterior tip of the lower jaw.

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

Non-blacknose SCS means one of the species, or part thereof, listed in heading B, Small Coastal Sharks, of Table 1 of appendix A to this part other than the blacknose shark.

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

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

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

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

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

Pelagic longline means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom. For the purposes of this part, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. Removal of any of these elements constitutes removal of pelagic longline gear.

Pelagic shark means one of the species, or a part thereof, listed in heading C, Pelagic Sharks, of Table 1 of 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 heading D, Prohibited Sharks, of Table 1 of appendix A to this part.

Reporting week means the period of time beginning at 0001 local time on Sunday and ending at 2400 hours local time the following Saturday.

Research LCS means one of the species, or part thereof, listed in heading A, Large Coastal Sharks, of Table 1 of appendix A to this part, other than sandbar sharks.

Restricted-fishing day (RFD) is a day, beginning at 0000 hours and ending at 2400 hours local time, during which a person aboard a vessel issued:

(1) An Atlantic Tunas General category permit may not fish for, possess, retain, land, or sell a BFT; and

(2) A Charter/Headboat permit with a commercial endorsement may not fish commercially for BFT under the General category rules, but may fish for, possess, retain, or land BFT under the Angling category restrictions and retention limits.

Round wire stock means round metal wire, typically used in the manufacturing of fishing hooks, that has not been forged, or otherwise modified or treated in any way to increase the original factory tensile strength set by the hook manufacturer.

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

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

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

Shark endorsement means an authorization added to an HMS Angling, HMS Charter/Headboat, Atlantic Tunas General, or Swordfish General Commercial permit that allows for the retention of authorized Atlantic sharks consistent with all other applicable regulations in this part.

Shark research permit means a permit issued to catch and land a limited number of sharks to maintain time series for stock assessments and for other scientific research purposes. These permits may be issued only to the owner of a vessel who has been issued either a directed or incidental shark LAP. The permit is specific to the commercial shark vessel and owner combination and is valid only per the terms and conditions listed on the permit.

Sink gillnet means a gillnet that is designed to be or is fished on or near the ocean bottom in the lower third of the water column by means of a weight line or enough weights and/or anchors that the bottom of the gillnet sinks to, on, or near the ocean bottom.

Small coastal shark (SCS) means one of the species, or a part thereof, listed in heading B, Small Coastal Sharks, of Table 1 of 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.

Smoothhound shark(s) means one of the species, or part thereof, listed in heading E, Smoothhound Sharks, of Table 1 of appendix A to this part.

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

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

Straight line means in this part:

(1) For regulated areas, a straight line means a geodesic line with the shortest length connecting two or more points. Straight lines will be displayed as a rhumb line on a map with a Mercator-based projection.

(2) For measuring fish, a straight-line measurement means a measurement between two points of the fish that is not made along the curve of the body.

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.

Transiting means progressing through an area without any fishing activity occurring.

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

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

Vessel monitoring Plan (VMP) means an on-board, EM system reference document required by §§ 635.9 and 635.35.

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

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

[64 FR 29135, May 28, 1999]

Editorial Note: For FEDERAL REGISTER citations affecting § 635.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 635.3 Relation to other laws.

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

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

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

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

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

§ 635.4 Permits and fees.

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

(a) ***General*** —

(1) ***Authorized activities.*** Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities without the appropriate permit, unless otherwise authorized by NMFS in accordance with this part. In certain cases, additional permits may be required to authorize these same or related activities under federal, state or local jurisdictions.

(2) ***Vessel permit inspection.*** The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess Atlantic HMS when engaged in recreational fishing and to fish for, take, retain or possess Atlantic tunas, swordfish, or sharks when engaged in commercial fishing. The vessel operator must make such permit available for inspection upon request by NMFS or by a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection all required vessel permits.

(3) ***Property rights.*** LAPs 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, LAPs 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 offloading of Atlantic HMS for sale, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit with a commercial sale endorsement; Atlantic tunas, shark, or swordfish permit; Incidental HMS squid trawl; HMS Commercial Caribbean Small Boat permit; and/or the shark research permit to the first receiver. The permit(s) 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 15 CFR part 904, subpart D.

(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 (a)(9) of this section, may be charged for issuance of the replacement permit.

(9) ***Fees.*** NMFS may charge a fee for each application for a permit or for each transfer or replacement of a permit. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified in the instructions provided with each application form. Each applicant must include the appropriate fee with each application or request for transfer or replacement. A permit will not be issued to anyone who fails to pay the fee.

(10) ***Permit condition.*** An owner of a vessel with a valid Atlantic tunas, swordfish, shark, HMS Angling, HMS Charter/Headboat, Incidental HMS squid trawl, or HMS Commercial Caribbean Small Boat permit issued pursuant to this part must agree, as a condition of such permit, that the vessel's HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the U.S. EEZ, or outside the U.S. EEZ, and without regard to where such HMS, or gear, are possessed, taken, or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations pertaining to HMS, persons aboard the vessel must abide by the state's more restrictive regulations.

(b) ***HMS Charter/Headboat permits.***

(1) The owner of a charter boat or headboat used to fish for, retain, possess, or land any Atlantic HMS must obtain an HMS Charter/Headboat permit. In order to fish for, retain, possess, or land Atlantic sharks, the owner must have a valid shark endorsement issued by NMFS. A vessel issued an HMS

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

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

(3) The owner of a charter boat or headboat that intends to sell Atlantic tunas or swordfish must obtain a commercial sale endorsement for the vessel's HMS Charter/Headboat permit. The owner of a charter boat or headboat that intends to sell Atlantic sharks must obtain a commercial sale endorsement for the vessel's HMS Charter/Headboat permit at the time of permit renewal or when the permit is obtained and must also obtain any applicable Atlantic commercial shark permits. A vessel owner that has obtained an HMS Charter/Headboat permit without a commercial sale endorsement is prohibited from selling any Atlantic HMS.

(c) ***HMS Angling permits.***

(1) The owner of any vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed recreationally, must obtain an HMS Angling permit, except as provided in paragraph (c)(2) of this section. In order to fish for, retain, possess, or land Atlantic sharks, the owner must have a valid shark endorsement issued by NMFS. Atlantic HMS caught, retained, possessed, or landed by persons on board vessels with an HMS Angling permit may not be sold or transferred to any person for a commercial purpose. A vessel issued an HMS Angling permit for a fishing year shall not be issued an HMS Charter/Headboat permit, a Swordfish General Commercial permit, or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(2) A vessel with a valid Atlantic Tunas General category permit issued under paragraph (d) of this section or with a valid Swordfish General Commercial permit issued under paragraph (f) of this section may fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has registered with NMFS' HMS Management Division as required under § 635.5(d). When a vessel with a valid Atlantic Tunas General category permit or a valid Swordfish General Commercial permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in paragraphs (c)(3) through (5) of this section.

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

(4) A vessel issued a Swordfish General Commercial permit fishing in a tournament, as authorized under § 635.4(c)(2), shall comply with Swordfish General Commercial permit regulations when fishing for, retaining, possessing, or landing Atlantic swordfish.

(5) In order to fish for, retain, possess, or land sharks, the owner of a vessel fishing in a registered recreational HMS fishing tournament and issued either an Atlantic Tunas General category or Swordfish General Commercial permit must have a shark endorsement.

(d) ***Atlantic Tunas vessel permits.***

(1) The owner of each vessel used to fish for or take Atlantic tunas commercially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas, HMS Angling, HMS Charter/Headboat, or an HMS Commercial Caribbean Small Boat 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 or permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, or Trap category of the Atlantic Tunas permit, a valid HMS Charter/Headboat permit with a commercial sale endorsement, or an HMS Commercial Caribbean Small Boat permit.

(3) A vessel issued an Atlantic Tunas permit in any category for a fishing year shall not be issued an HMS Angling permit, HMS Charter/Headboat permit, or an Atlantic Tunas permit in any other category for that same fishing year, regardless of a change in the vessel's ownership. A vessel issued an Atlantic Tunas permit may be issued an HMS Commercial Caribbean Small Boat permit, subject to restrictions set forth at § 635.4(o), within that same fishing year; however, a vessel may not hold any other HMS fishing permit simultaneously with the HMS Commercial Caribbean Small Boat permit.

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

(e) ***Shark vessel permits.***

(1) 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, at least one of the Federal Atlantic commercial shark permits described below or an HMS Commercial Caribbean Small Boat permit. A Federal Atlantic commercial shark permit or HMS Commercial Caribbean Small Boat permit is not required if the vessel is recreationally fishing and retains no more sharks than the recreational retention limit specified in § 635.22(c), is operating pursuant to the conditions of a shark display or EFP issued pursuant to § 635.32, or fishes exclusively within State waters. It is a rebuttable presumption that the owner or operator of a vessel without a permit issued pursuant to this part, on which sharks are possessed in excess of the recreational retention limits, intends to sell the sharks.

(2) The owner of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in headings A, B, or C of Table 1 of appendix A to this part with an intention to sell must obtain a Federal Atlantic commercial shark directed or incidental LAP or an HMS Commercial Caribbean Small Boat permit. The only valid Federal commercial shark directed and shark incidental LAPs are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

(3) A vessel owner issued or required to be issued a Federal Atlantic commercial shark directed or shark incidental LAP may harvest, consistent with the other regulations in this part, any shark species listed in headings A, B, or C of Table 1 of appendix A to this part.

(4) Owners of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in heading E, Smoothhound Sharks, of Table 1 of appendix A to this part with an intention to sell them must obtain a Federal commercial smoothhound permit. In addition to other permits issued pursuant to this section or other authorities, a Federal commercial smoothhound permit may be issued to a vessel alone or to a vessel that also holds either a Federal Atlantic commercial shark directed or incidental LAP.

(f) ***Swordfish vessel permits.***

(1) Except as specified in paragraphs (n) and (o) of this section, the owner of a vessel of the United States used to fish for or take swordfish commercially from the management unit, or on which swordfish from the management unit are retained or possessed with an intention to sell, or from which swordfish are sold, must obtain an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, or one of the following swordfish permits: A swordfish directed LAP, swordfish incidental LAP, swordfish handgear LAP, or a Swordfish General Commercial permit. These permits cannot be held in combination with each other on the same vessel, except that an HMS Charter/Headboat permit with a commercial sale endorsement may be held in combination with a swordfish handgear LAP on the same vessel. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are the HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section (and only when on a non for-hire trip), the Swordfish General Commercial permit issued under paragraph (f) of this section, a swordfish LAP issued consistent with paragraphs (l) and (m) of this section, or permits issued under paragraphs (n) and (o) of this section.

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

(4) A directed or incidental swordfish LAP is valid only when the vessel has on board a valid shark LAP and a valid Atlantic Tunas Longline category LAP issued for such vessel.

(5) A Swordfish General Commercial permit may not be held on a vessel in conjunction with an HMS Charter/Headboat permit issued under paragraph (b) of this section, an HMS Angling category permit issued under paragraph (c) of this section, a swordfish LAP issued consistent with paragraphs (l) and (m) of this section, an Incidental HMS Squid Trawl permit issued under paragraph (n) of this section, or an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section. A vessel issued a Swordfish General Commercial open access permit for a fishing year shall not be issued an HMS Angling permit or an HMS Charter/Headboat permit for that same fishing year, regardless of a change in the vessel's ownership.

(g) ***Dealer permits*** —

(1) ***Atlantic tunas.*** A dealer, as defined under § 600.10 of this chapter, must possess a valid federal Atlantic tunas dealer permit to purchase, trade, or barter any Atlantic tunas except as noted under paragraph (o) of this section.

(2) ***Shark.*** A dealer, as defined in § 600.10 of this chapter, must possess a valid federal Atlantic shark dealer permit to purchase, trade, or barter any Atlantic shark listed in Table 1 of appendix A to this part except as noted under paragraph (o) of this section.

(3) ***Swordfish.*** A dealer, as defined under § 600.10 of this chapter, must possess a valid federal Atlantic swordfish dealer permit to purchase, trade, or barter any Atlantic swordfish except as noted under paragraph (o) of this section.

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

(1) ***Atlantic Tunas, HMS Angling, HMS Charter/Headboat, Swordfish General Commercial, Incidental HMS Squid Trawl, and HMS Commercial Caribbean Small Boat 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)(6) of this section.

(iv) An applicant for an incidental HMS squid trawl permit must submit, in addition to all other information specified in paragraph (h)(1) of this section, a copy of a valid *Illex* squid moratorium permit, as described at § 648.4(a)(5)(ii) of this chapter.

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

(3) ***Dealer permits.***

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

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

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

(i) ***Change in application information.*** A vessel owner or dealer must report any change in the information contained in an application for a permit within 30 days after such change. The report must be submitted in a manner and/or to a location designated by NMFS. For certain information changes, a new permit may be issued to incorporate the new information, subject to limited access provisions specified in paragraph (l)(2) of this section. 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) A vessel owner issued an Atlantic Tunas permit in the General, Harpoon, or Trap category or an Atlantic HMS permit in the Angling or Charter/Headboat category under paragraph (b), (c), or (d) of this section may change the category of the vessel permit at any time during the fishing year, provided the vessel has not landed BFT during that fishing year as verified by NMFS via landings data.

(4) In order to obtain a shark endorsement to fish for, retain, possess, or land sharks, a vessel owner with a vessel fishing in a registered recreational HMS fishing tournament and issued or required to be issued either an Atlantic Tunas General category or Swordfish General Commercial permit or a vessel owner of a vessel issued or required to be issued an HMS Angling or HMS Charter/Headboat permit must take a shark endorsement online quiz. After completion of the quiz, NMFS will issue the vessel owner a new or revised permit with the shark endorsement for the vessel. The vessel owner can take the quiz at any time during the fishing year, but his or her vessel may not leave the dock on a trip during which sharks will be fished for, retained, possessed, or landed unless a new or revised permit with a shark endorsement has been issued by NMFS for the vessel. The addition of a shark endorsement to the permit does not constitute a permit category change and does not change the timing considerations for permit category changes specified in paragraph (j)(3) of this section. Vessel owners may request that NMFS remove the shark endorsement from the permit at any time. If NMFS removes the shark endorsement from the vessel permit, no person on board the vessel may fish for, retain, possess, or land sharks.

(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 (l)(2) of this section. If the acquired vessel or dealership is currently permitted, an application must be accompanied by the original permit, by a copy of a signed bill of sale or equivalent acquisition papers, and the appropriate workshop certificates as specified in § 635.8.

(2) ***Shark, swordfish, and tuna longline LAPs.***

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

(ii) An owner may upgrade a vessel with a swordfish handgear LAP, or transfer such permit to another vessel or to another person, and be eligible to retain or renew such 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 LAP or, if applicable, of that vessel's replacement owned as of May 28, 1999.

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

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

(iii) No person or entity may own or control more than 5 percent of the vessels for which swordfish directed, shark directed, or Atlantic Tunas Longline category LAPs have been issued.

(iv) In order to transfer a swordfish, shark, or an Atlantic Tunas Longline category LAP to a replacement vessel, the owner of the vessel issued the LAP must submit a request to NMFS, at an address designated by NMFS, to transfer the LAP to another vessel, subject to requirements specified in paragraph (l)(2)(ii) of this section, if applicable. The owner must return the current valid LAP to NMFS with a complete application for a LAP, 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 Atlantic Tunas Longline category LAP transfers to a different person, the transferee must submit a request to NMFS, at an address designated by NMFS, to transfer the original LAP(s), subject to the requirements specified in paragraphs (l)(2)(ii) and (iii) of this section, if applicable. The following must accompany the completed application: The original

LAP(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 LAP transfers involving vessels.

(vi) For LAP transfers in conjunction with the sale of the permitted vessel, the transferee of the vessel and LAP(s) issued to that vessel must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit(s) LAP(s), subject to the requirements specified in paragraphs (l)(2)(ii) and (iii) of this section, if applicable. The following must accompany the completed application: The original LAP(s) with signatures of both parties to the transaction on the back of the permit(s), the bill of sale for the LAP(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 LAP(s) who sells the permitted vessel but retains the LAP(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 LAP(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 swordfish LAP, a directed or incidental shark LAP, and an Atlantic Tunas Longline category LAP are required to retain swordfish for commercial purposes. Accordingly, a swordfish LAP obtained by transfer without either a directed or incidental shark LAP or an Atlantic Tunas Longline category LAP 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 swordfish LAP, a directed or incidental shark LAP, and an Atlantic Tunas Longline category LAP are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category LAP obtained by transfer without either a directed or incidental 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 dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, swordfish, Incidental HMS squid trawl, or HMS Commercial Caribbean Small Boat vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to § 635.8, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit are met, including those described in paragraphs (h)(1)(iv) and (l)(2) of this section; all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in §§ 635.5 and 300.185 of this title; the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section; and the workshop requirements specified in § 635.8 are met.

(2) ***Shark and swordfish permits.*** A vessel owner must obtain the applicable LAP(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section and/or a Federal commercial smoothhound permit issued under paragraph (e) of this section; or an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, if: The vessel is used to fish for or take sharks commercially from the management unit; sharks from the management unit are retained or

possessed on the vessel with an intention to sell; or sharks from the management unit are sold from the vessel. A vessel owner must obtain the applicable LAP(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, a Swordfish General Commercial permit issued under paragraph (f) of this section, an Incidental HMS Squid Trawl permit issued under paragraph (n) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, which authorizes a Charter/Headboat to fish commercially for swordfish on a non for-hire trip subject to the retention limits at § 635.24(b)(4) if: The vessel is used to fish for or take swordfish commercially from the management unit; swordfish from the management unit are retained or possessed on the vessel with an intention to sell; or swordfish from the management unit are sold from the vessel. The commercial retention and sale of swordfish from vessels issued an HMS Charter/Headboat permit with a commercial sale endorsement is permissible only when the vessel is on a non for-hire trip. Only persons holding non-expired shark and swordfish LAP(s) in the preceding year are eligible to renew those LAP(s). Transferors may not renew LAP(s) that have been transferred according to the procedures in paragraph (l) of this section.

(n) ***Incidental HMS Squid Trawl permits.***

(1) The owner of a vessel in the squid trawl fishery, as described at § 635.24(b)(2), on which Atlantic swordfish are retained, or possessed with an intention to sell, or from which Atlantic swordfish are sold must obtain, in addition to any other required permits, an Incidental HMS squid trawl permit.

(2) An Incidental HMS squid trawl permit is valid only when the vessel has on board a valid *Illex* squid moratorium permit, as described at § 648.4(a)(5)(ii) of this chapter, and no commercial fishing gear other than trawl gear.

(o) ***HMS Commercial Caribbean Small Boat permits.***

(1) The owner of a vessel who fishes in the U.S. Caribbean, as defined at § 622.2 of this chapter, possesses handgear or green-stick gear and retains, with the intention to sell, any BAYS tunas, Atlantic swordfish, or Atlantic sharks may obtain an HMS Commercial Caribbean Small Boat permit. An HMS Commercial Caribbean Small Boat permit is valid only within the U.S. Caribbean, as defined at § 622.2 of this chapter.

(2) To be eligible for an HMS Commercial Caribbean Small Boat permit, vessel owners must provide documentation that the vessel is less than or equal to 13.7 m (45 ft) in length overall.

(3) A vessel issued an HMS Commercial Caribbean Small Boat permit may not be issued any other HMS fishing permit, except those issued under § 635.32, as long as the HMS Commercial Caribbean Small Boat permit is valid.

(4) The owner of a vessel issued an HMS Commercial Caribbean Small Boat permit may fish for, take, retain, or possess only BAYS tunas, Atlantic swordfish, and Atlantic sharks, subject to the trip limits specified at § 635.24.

(5) HMS landed under an HMS Commercial Caribbean Small Boat permit may be sold by the owner or operator to individuals who do not possess a valid HMS dealer permit otherwise required under § 635.4(g). HMS Commercial Caribbean Small Boat permit holders may not sell HMS harvested or landed by another vessel or purchase, barter, or trade for HMS harvested by other vessels with the intent to sell.

[64 FR 29135, May 28, 1999]

Editorial Note: For FEDERAL REGISTER citations affecting § 635.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 635.5 Recordkeeping and reporting.

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

(a) ***Vessels*** —

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

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

(3) ***BFT landed by a commercial vessel and 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, as instructed by NMFS, immediately upon landing such BFT, provide the information needed for the reports required under paragraph (b)(2)(i) of this section, and, if requested, make the tuna available so that a NMFS enforcement agent or authorized officer may inspect the fish and attach a tag to it. Alternatively, such reporting requirement may be fulfilled if a dealer who has a dealer permit for Atlantic tunas affixes a dealer tag as required under paragraph (b)(2)(ii) of this section and reports the BFT as being landed but not sold on the reports

required under paragraph (b)(2)(i) of this section. If a vessel is placed on a trailer, the person must contact a NMFS enforcement agent, or the BFT must have a dealer tag affixed to it by a permitted Atlantic tunas dealer, immediately upon the vessel being removed from the water. All BFT landed but not sold will be accounted against the quota category according to the permit category of the vessel from which it was landed.

(4) ***Bluefin tuna discarded dead, or landed by a commercial vessel and sold.*** The owner of a vessel that has been permitted or that is required to be permitted under § 635.4 in the Atlantic Tunas General or Harpoon categories, or has been permitted or is required to be permitted under § 635.4 under the HMS Charter/Headboat category and fishing under the General category quotas and daily limits as specified at § 635.23(c), must report all dead discards and/or landings of bluefin tuna through the NMFS electronic catch reporting system within 24 hours of the landings or the end of trip. Such reports may be made by either calling a phone number designated by NMFS or by submitting the required information online to a website or application designated by NMFS. The owner of a vessel that has been permitted in a different bluefin tuna category must report as specified elsewhere in this section.

(5) ***Chartering arrangements.***

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

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

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

(6) ***Atlantic Tunas Longline category permitted vessels.*** The owner or operator of a vessel issued, or that should have been issued, an Atlantic Tunas Longline category permit is subject to the VMS reporting requirements under § 635.69(e)(4) and the applicable IBQ Program and/or leasing requirements under § 635.15.

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

(1) ***Atlantic HMS.***

(i) Dealers that have been issued or should have been issued a Federal Atlantic BAYS tunas, swordfish, and/or shark dealer permit under § 635.4 must submit to NMFS all reports required under this section within the timeframe specified under paragraph (b)(1)(ii) of this section. BAYS tunas, swordfish, and sharks commercially-harvested by a vessel can only be first received by dealers that have been issued or should have been issued an Atlantic tunas, swordfish, and/or shark dealer permit under § 635.4. All federal Atlantic HMS dealers must provide a detailed report of all fish first received to NMFS within the period specified under paragraph (b)(1)(ii) of this section. All reports must be species-specific and must include the required information about all swordfish and sharks received by the dealer, including the required vessel information, regardless of where the fish were harvested or whether the harvesting vessel is permitted under § 635.4. For sharks, each report must specify the total weight of the carcass(es) without the fins for each species, and the total fin weight by grade for all sharks combined. Dealers are also required to submit "negative" reports, indicating no receipt of any species, within the timeframe specified under paragraph (b)(1)(ii) of this section if they did not first receive any fish during the reporting period. As stated in § 635.4(a)(6), failure to comply with these recordkeeping and reporting requirements may result in existing dealer permit(s) being revoked, suspended, or modified, and in the denial of any permit applications.

(ii) Reports of any Atlantic BAYS tunas, sharks, and/or swordfish first received by dealers from a vessel must be submitted electronically on a weekly basis through a NMFS-approved electronic reporting system by the dealer and received by NMFS no later than midnight, local time, of the first Tuesday following the end of the reporting week unless the dealer is otherwise notified by NMFS. Reports of BAYS tunas, sharks, and/or swordfish may be modified for not more than 30 days from when the dealer report is submitted to NMFS. NMFS will require BAYS tunas, swordfish, and shark dealers to submit dealer reports to NMFS on a weekly basis. Atlantic BAYS tunas, sharks, and swordfish dealers must submit electronic negative reports stating that no BAYS tunas, sharks, and/or swordfish were first received when they received no fish of these species, and no parts thereof, during the reporting period. Reporting requirements for bluefin tuna are specified in paragraph (b)(2) of this section. The negative reporting requirement does not apply for bluefin tuna.

(iii) Atlantic HMS dealers are not authorized to first receive Atlantic swordfish, sharks, and/or BAYS tunas if the required reports have not been submitted and received by NMFS according to reporting requirements under this section. Delinquent reports automatically result in an Atlantic HMS dealer becoming ineligible to first receive Atlantic swordfish, sharks, and/or BAYS tunas. Atlantic HMS dealers who become ineligible to first receive Atlantic swordfish, sharks, and/or BAYS tunas due to delinquent reports are authorized to first receive Atlantic swordfish, sharks, and/or BAYS tunas only once all required and delinquent reports have been completed, submitted by the dealer, and received by NMFS.

(2) ***Requirements for bluefin tuna*** —

(i) ***Dealer reports*** —

(A) ***Landing reports.*** Each dealer with a valid Atlantic Tunas dealer permit issued under § 635.4 must submit the landing reports to NMFS for each BFT received from a U.S. fishing vessel. Such reports must be submitted as instructed by NMFS not later than 24 hours after receipt of the BFT. Landing reports must include the name and permit number of the vessel that landed the BFT and other information regarding the catch as instructed by

NMFS. When purchasing BFT from eligible IBQ Program participants, permitted Atlantic Tunas dealers must enter landing reports into the Catch Shares Online System established under § 635.15, not later than 24 hours after receipt of the BFT. The dealer must inspect the vessel's permit to verify that it is a commercial category, that the required vessel name and permit number as listed on the permit are correctly recorded in the landing report, and that the vessel permit has not expired.

(B) ***Bi-weekly reports.*** Each dealer with a valid Atlantic tunas permit under § 635.4 must submit a complete bi-weekly report on forms available from NMFS for BFT received from U.S. vessels. For BFT received from U.S. vessels on the 1st through the 15th of each month, the dealer must submit the bi-weekly report form to NMFS, to be received by NMFS, not later than the 25th of that month. Reports of BFT received on the 16th through the last day of each month must be received by NMFS 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 first received from a U.S. vessel immediately upon offloading the BFT. A dealer's agent is a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are received; and fills out dealer reports as required under § 635.5. If a vessel is placed on a trailer, the dealer or dealer's agent must affix the dealer tag to the BFT immediately upon the vessel being removed from the water. The dealer tag must be affixed to the BFT between the fifth dorsal finlet and the caudal keel. Regardless of when the BFT was landed, on an RFD (as specified at § 635.23(a)), no dealer or dealer's agent shall purchase, first receive, or affix a dealer tag to a BFT that is on or from a vessel that has an Atlantic Tunas General category permit or HMS Charter/Headboat permit with a commercial sale endorsement.

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

(iii) Dealers must comply with dealer requirements related to the Individual Bluefin Quota Program under § 635.15(a)(4)(iii).

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

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

(1) ***Bluefin tuna.*** The owner of a vessel permitted, or required to be permitted in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category under § 635.4 must report the catch of all bluefin tuna discarded dead and/or retained under the Angling category quota designated at § 635.27(a) through the NMFS electronic catch reporting system within 24 hours of the landing.

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

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

(d) ***Tournament operators.*** For all tournaments that are conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, a tournament operator must register with NMFS at least 4 weeks prior to commencement of the tournament. A tournament is not registered unless the tournament operator has received a confirmation number from NMFS. Tournament operators must maintain and submit to NMFS details of the tournament catch and fishing activities, completing all required fields, on the NMFS tournament summary report no later than 7 days after the tournament has ended.

(e) ***Inspection.*** Any person authorized to carry out enforcement activities under the regulations in this part has the authority, without warrant or other process, to inspect, at any reasonable time, catch on board a vessel or on the premises of a dealer, logbooks, catch reports, statistical records, sales receipts, or other records and reports required by this part to be made, kept, or furnished. An owner or operator of a fishing vessel that has been issued a permit under § 635.4 or § 635.32 must allow NMFS or an authorized person to

inspect and copy any required reports and the records, in any form, on which the completed reports are based, wherever they exist. An agent of a person issued a permit under this part, or anyone responsible for offloading, storing, packing, or selling regulated HMS for such permittee, shall be subject to the inspection provisions of this section.

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

[64 FR 29135, May 28, 1999]

Editorial Note: For FEDERAL REGISTER citations affecting § 635.5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 635.6 Vessel and gear identification.

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

(b) ***Vessel identification.***

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

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

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

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

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

(c) ***Gear identification.***

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

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

[64 FR 29135, May 28, 1999, as amended at 66 FR 42804, Aug. 15, 2001; 67 FR 77437, Dec. 18, 2002; 71 FR 58166, Oct. 2, 2006; 83 FR 33153, July 17, 2018]

§ 635.7 At-sea observer coverage.

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

(b) ***Selection of vessels.*** NMFS will notify a vessel owner, in writing, by email, by phone, or in person 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.*** If selected to carry an observer, it is the responsibility of the vessel owner to arrange for and facilitate observer placement. The owner or operator of a vessel that is selected under paragraph (b) of this section must notify NMFS, at an address or by phone at a number designated by NMFS, before commencing any fishing trip that may result in the incidental catch or harvest of Atlantic HMS. Notification procedures and information requirements will be specified in a selection letter sent by NMFS.

(d) ***Assignment of observers.*** Once a selected vessel notifies NMFS or its designee, 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, or their designated observer service provider, will issue a waiver for that trip to the owner or operator of the selected vessel, so long as the waiver is consistent with other applicable laws. If an observer is assigned for a trip, the operator of the selected vessel must arrange to embark the observer and shall not fish for or retain any Atlantic HMS unless the NMFS-assigned observer is aboard.

(e) ***Requirements.*** The owner or operator of a vessel on which a NMFS-approved observer is embarked, regardless of whether required to carry the observer, must comply with safety regulations in § 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.

(6) Notify the observer in a timely fashion of when fishing operations are to begin and end.

(f) Vessel responsibilities. An owner or operator of a vessel required to carry one or more observer(s) must provide reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(1) Measuring decks, codends, and holding bins.

(2) Providing the observer(s) with a safe work area.

(3) Collecting bycatch when requested by the observer(s).

(4) Collecting and carrying baskets of fish when requested by the observer(s).

(5) Allowing the observer(s) to collect biological data and samples.

(6) Providing adequate space for storage of biological samples.

[80 FR 73144, Nov. 24, 2015]

§ 635.8 Workshops.

(a) ***Safe handling, release, and identification workshops.***

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

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

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

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

(b) ***Atlantic shark identification workshops.***

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

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

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

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

(5) An Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for inspection a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy at each place of business listed on the dealer permit which first receives Atlantic sharks. For the purposes of this part, trucks or other conveyances of a dealer's place of business are considered to be extensions of a dealer's place of business and must possess a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to a place of business covered by the dealer permit. A copy of a valid Atlantic shark identification workshop certificate must be included in the dealer's application package to obtain or renew an Atlantic shark dealer permit. If multiple businesses are authorized to first receive Atlantic sharks under the Atlantic shark dealer's permit, a copy of the Atlantic shark identification workshop certificate for each place of business listed on the Atlantic shark dealer permit which first receives Atlantic sharks must be included in the Atlantic shark dealer permit renewal application package.

(6) Persons holding an expired Atlantic shark dealer permit and persons who intend to apply for a new Atlantic shark dealer permit will be issued a participant certificate in their name upon successful completion of the Atlantic shark identification workshop. A participant certificate issued to such persons may be used only to apply for an Atlantic shark dealer permit. Pursuant to § 635.8(c)(4), an Atlantic shark dealer may not first receive Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. After an Atlantic shark dealer permit is issued to a person using an Atlantic shark identification workshop participant certificate, such person may obtain an Atlantic shark identification workshop dealer certificate for each location which first receives Atlantic sharks by contacting NMFS at an address designated by NMFS.

(c) ***Terms and conditions.***

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

(2) If a vessel fishes with longline or gillnet gear as described in paragraph (a)(1) of this section, the vessel owner may not renew a shark or swordfish LAP, issued pursuant to § 635.4(e) or (f), without submitting a valid protected species workshop certificate with the permit renewal application.

(3) A vessel that fishes with longline or gillnet gear as described in paragraph (a)(1) of this section and that has been, or should be, issued a valid LAP pursuant to § 635.4(e) or (f), may not fish unless a valid protected species safe handling, release, and identification workshop certificate has been issued to both the owner and operator of that vessel.

(4) An Atlantic shark dealer may not first receive Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. A valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy must be maintained on the premises of each place of business listed on the dealer permit which first receives Atlantic sharks. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to § 635.4(g)(2) unless a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy has been submitted with the permit renewal application. If the dealer is not certified and opts to send a proxy or proxies to a workshop, the dealer must submit a copy of a valid proxy certificate for each place of business listed on the dealer permit which first receives Atlantic sharks.

(5) A vessel owner, operator, shark dealer, proxy for a shark dealer, or participant who is issued either a safe handling, release, and identification workshop certificate or an Atlantic shark identification workshop certificate may not transfer that certificate to another person.

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

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

[71 FR 58166, Oct. 2, 2006, as amended at 73 FR 38153, July 3, 2008; 74 FR 66586, Dec. 16, 2009; 77 FR 47316, Aug. 8, 2012; 82 FR 16506, Apr. 4, 2017; 83 FR 33153, July 17, 2018]

§ 635.9 Electronic monitoring.

Link to an amendment published at 91 FR 10730, Mar. 4, 2026.

(a) ***Applicability.*** An owner and/or operator of a commercial vessel permitted or required to be permitted in the Atlantic Tunas Longline category under § 635.4, and that has pelagic longline gear on board, is required to have installed and maintain at all times during fishing trips, a fully operational EM system on the vessel, as specified in this section. Vessel owners and/or operators can contact NMFS or a NMFS-approved contractor for more details on procuring an EM system. Owners and/or operators of vessels

fishing with pelagic longline gear within the Charleston Bump and East Florida Coast Monitoring Areas while they are effective (see §§ 635.2 and 635.35(d)(3)) must comply with the EM requirements in paragraph (h) of this section.

(b) ***EM Installation.***

(1) NMFS or a NMFS-approved contractor will assess individual Atlantic Tunas Longline permitted vessels that are currently eligible for IBQ shares; install and test all EM systems; provide training to vessel owners or operators or their designees; and develop in consultation with vessel owners or operators or their designees required operational plans (Vessel Monitoring Plan or VMP) for the EM systems, as described in paragraph (e) of this section.

(2) Vessel owners and/or operators, as instructed by NMFS, may be required to coordinate with NMFS or a NMFS approved contractor to schedule a date or range of dates, and/or may be required to steam to a designated port for EM work on specific NMFS-determined dates. Such EM work may include, but is not limited to EM system installation, repair, or modifications; modifications to vessel equipment to facilitate installation or operation of EM systems, such as installation of a fitting for the pressure-side of the line of the drum hydraulic system; installation, repair or modification to a power supply or power switches/connections for the EM system; installation of additional lighting; or installation of mounting structure(s) for the camera(s) to provide views of areas and fish consistent with paragraphs (c)(1)(i) through (ii) of this section.

(i) ***Certificate of Installation.*** After confirming that an EM system that meets the requirements of this section is properly installed, the system has been tested, and training and a required operational plan (VMP) are completed, NMFS or the NMFS-approved contractor will provide a Certificate of Installation to the vessel owner or operator.

(ii) Vessels described under paragraph (a) of this section may not depart on a fishing trip without having a valid Certificate of Installation and VMP on board.

(c) ***EM System Components.*** The EM system installed by the NMFS-approved contractor must be comprised of video camera(s), recording equipment, and other related equipment and must have the following components and capabilities:

(1) ***Video camera(s).***

(i) Video cameras must be mounted and placed so as to provide clear, unobstructed views of the area(s) where the pelagic longline gear is retrieved and of catch being removed from hooks prior to being placed in the hold or discarded. There must be lighting sufficient to illuminate clearly individual fish.

(ii) Video camera(s) must be in sufficient numbers (a minimum of two and up to four), with sufficient resolution (no less than 720p (1280 × 720)) for NMFS, the USCG, and their authorized officers and designees, or any individual authorized by NMFS to determine the number and species of fish harvested. To obtain the views required in paragraph (c)(1)(i) of this section, at least one camera must be mounted to record close-up images of fish being retained on the deck at the haulback station, and at least one camera must be mounted to provide views of the area from the rail to the water surface, where the gear and fish are hauled out of the water. NMFS or the NMFS-approved contractor will determine the number and placement of cameras needed to achieve the required views, based on the operation and physical layout of the vessel.

(iii) The EM system must be capable of initiating video recording at the time gear retrieval starts. It must record all periods of time when the gear is being retrieved and catch is removed from the hooks until it is placed in the hold or discarded.

(2) ***GPS receiver.*** A GPS receiver is required to produce output, which includes location coordinates, velocity, and heading data, and is directly logged continuously by the control box. The GPS receiver must be installed and remain in a location where it receives a strong signal continuously.

(3) ***Hydraulic and drum rotation sensors.*** Hydraulic sensors are required to continuously monitor the hydraulic pressure and a drum rotation sensor must continuously monitor drum rotations.

(4) ***EM control box.*** The system must include a control box that receives and stores the raw data provided by the sensors and cameras. The control box must contain removable hard drives and storage systems adequate for a trip lasting 30 days.

(5) ***EM systems monitor.*** A wheelhouse monitor must provide a graphical user interface for harvester to monitor the state and performance of the control box and provide information on the current date and time synchronized via GPS, GPS coordinates, current hydraulic pressure reading, presence of a data disk, percentage used of the data disk, and video recording status.

(6) ***EM software.*** The EM system must have software that enables the system to be tested for functionality and that records the outcome of the tests.

(7) ***Standardized reference grid.*** The vessel must have a standardized grid on deck in view of the haulback station camera(s) in such a way that the video recording includes an image of each fish on the grid in order to provide a size reference. The standardized grid may be on a removable mat or carpet that is placed on the deck before the fish are brought on board, or may be painted directly on the deck. The standardized reference grid must have accurate dimensions and grid line intervals as instructed and specified in the vessel's VMP by NMFS or the NMFS-approved contractor. The vessel owner and/or operator is responsible for ensuring compliance with the provided instructions and specifications and for ensuring accurate, straight, clear and complete grid lines with no missing, incomplete, blurry or smudged lines.

(d) ***Data maintenance, storage, and viewing.*** The EM system under paragraph (c) of this section must have the capacity to allow authorized officers of NMFS, the USCG, or Federal or State agencies with enforcement agreements with NMFS (see 16 U.S.C. 1861) to observe the live video on the EM systems monitor and any EM systems data. The EM system used for monitoring areas under paragraph (h) of this section must also have the capacity to allow authorized officers to observe any EM systems data and, if available, live video. Vessel owners or operators must also provide access to EM systems, including the data, upon request, to any NMFS-approved contractor. The certified EM vendor must provide access to data stored by that vendor as provided under paragraph (h)(3)(iii) of this section.

(e) ***Operation.*** Unless otherwise authorized by NMFS in writing, a vessel described in paragraph (a) of this section must collect video and sensor data in accordance with the requirements in this section, in order to fish with pelagic longline gear.

(1) ***Vessel monitoring plan.*** The vessel owner and/or operator must have available onboard a written VMP for its system. At a minimum, the VMP must include: information on the locations of EM system components (including any customized camera mounting structure); contact information for technical support; instructions on how to conduct a pre-trip system test; instructions on how to verify proper system functions; location(s) on deck where fish retrieval should occur to remain in view of the cameras; specifications and other relevant information regarding the dimensions and

grid line intervals for the standardized reference grid; procedures for how to manage EM system hard drives; catch handling procedures; periodic checks of the monitor during the retrieval of gear to verify proper functioning; and reporting procedures. The VMP will be updated, revised, and approved periodically by NMFS or the NMFS-approved contractor, and will include both signature and date indicating when the VMP was approved by NMFS or the NMFS-approved contractor. The VMP should minimize to the extent practicable any impact of the EM systems on the current operating procedures of the vessel, and should help ensure the safety of the crew. The vessel owner and/or operator must implement, and ensure that the vessel complies with, all of the requirements, specifications and protocols outlined in the VMP no later than 6 months after the date of approval of the VMP.

(2) ***Handling of fish and duties of care.*** The vessel owner and/or operator must ensure that all fish that are caught, even those that are released, are handled in a manner that enables the video system to record such fish, and must ensure that all handling and retention of BFT occurs in accordance with relevant regulations and the operational procedures outlined in the VMP. The vessel owner or operator must ensure that each retained fish is placed on the standardized reference grid in view of cameras in accordance with the operational procedures outlined in the VMP.

(3) ***Additional duties of care.*** The vessel owner and/or operator is responsible for ensuring the proper continuous functioning of all aspects of the EM system, including that the EM system must remain powered on for the duration of each fishing trip from the time of departure to time of return; cameras must be functioning and cleaned routinely; the hydraulic and gear sensors must be operational; the GPS signal must be functioning; and EM system components must not be tampered with.

(4) ***Completion of trip(s).*** Except when at capacity after one trip or otherwise stated by NMFS in writing, EM hard drives may be used to record up to two trips. Within 48 hours of completing a second fishing trip, or within 48 hours of completing one trip in the case where the hard drive does not have sufficient capacity for a second trip, the vessel owner and/or operator must mail the removable EM system hard drive(s) from the NMFS-provided EM system containing all data to NMFS or NMFS-approved contractor, and must mail hard drive(s), if any, from their certified EM vendor's system to the vendor (see paragraph (h) of this section), according to instructions provided by NMFS. The vessel owner and/or operator must comply with the 48-hour mailing requirement regardless of whether a vessel fished inside or outside of the monitoring areas as defined in § 635.2 and specified in § 635.35(d)(3). The vessel owner and/or operator is responsible for using shipping materials suitable to protect the hard drives (*e.g.,* bubble wrap), tracking the package, and including a self-addressed mailing label for the next port of call so replacement hard drives can be mailed back to the sender. Prior to departing on any trip, the vessel owner and/or operator must ensure that any EM system hard drive that is installed has the capacity needed to enable data collection and video recording for the entire trip. The vessel owner and/or operator is responsible for contacting NMFS or NMFS-approved contractor if they have requested but not received a replacement hard drive(s) for the NMFS-provided EM system and for informing NMFS or NMFS-approved contractor of any lapse in the hard drive management procedures described in the VMP. Further requirements for EM within monitoring areas are in paragraph (h) of this section.

(f) ***Failure to adequately monitor the gear and catch.*** The vessel owner or operator must monitor and maintain the EM system in working condition, which includes ensuring the proper continuous functioning of the EM system, cameras provide clear unobstructed views, and video picture quality is clear. Prior to departing on a trip with pelagic longline gear on board, the vessel owner or operator must test the functionality of the system and contact NMFS or the NMFS-approved contractor if the system is not functioning properly. In that case, or if NMFS independently determines that an EM system fails to meet the requirements of this

section, the vessel cannot leave port unless and until NMFS provides written authorization. NMFS may grant such authorization after confirming that an EM system is functioning properly or other circumstances as determined by NMFS warrant authorization.

(g) ***Repair and replacement.*** If the vessel owner or operator becomes aware that the EM system on the vessel is not functioning properly at sea, the vessel owner or operator must contact NMFS and follow the instructions given. Such instructions may include but are not limited to returning to port until the EM system is repaired. Once in port, an EM system must be functioning properly (*e.g.,* repaired, reinstalled, or replaced) consistent with the installation requirements in this section before the vessel can fish with pelagic longline gear.

(h) ***Within the Monitoring Areas.*** This paragraph applies to the Charleston Bump and East Florida Coast Monitoring Areas as defined under § 635.2 when these areas are effective as specified for each area in § 635.35(d)(3) of this section. In addition to the general EM requirements in this section, owners of vessels fishing with pelagic longline gear within the boundaries of the monitoring areas during the months specified for each area must utilize EM services from NMFS-certified EM vendors and pay for sampling costs. This section sets forth EM cost responsibilities; NMFS' application, approval, and removal process for EM vendors; requirements for NMFS-certified EM vendors providing services pursuant to contracts to vessels owners; and requirements for vessel owners and/or operators. Unless otherwise specified, owners and/or operators of vessels permitted or required to be permitted in the Atlantic Tunas Longline category under § 635.4 must comply with this paragraph and are jointly and severally responsible for their vessel's compliance with this section.

(1) ***EM Cost responsibilities.*** The owner of a vessel fishing with pelagic longline gear in a monitoring area is responsible for the sampling costs, described in paragraph (h)(1)(i) of this section, related to EM requirements for the monitoring areas. NMFS is responsible for the administrative costs described in paragraph (h)(1)(ii) of this section. For fishing outside of the monitoring areas, NMFS is responsible for sampling and administrative costs for EM requirements in paragraphs (a) through (g) of this section in support of the IBQ program under § 635.15.

(i) ***Sampling costs.*** Sampling costs may include, but are not limited to, equipment purchases, leases, and installation; equipment maintenance and upkeep; training for captain and crew; development and implementation of VMPs (see paragraph (h)(3)(i) of this section); data transmittal; video processing, review, and storage; and payment to a NMFS-certified vendor as appropriate for services rendered. The sampling costs for the equipment (*e.g.,* purchases, leases, maintenance) apply only to any equipment that is bought, leased, or installed by or under the direction of an certified EM vendor with whom a vessel owner has a contract (see paragraphs (h)(3) and (4) of this section).

(ii) ***Administrative costs.*** Administrative costs may include, but are not limited to, program administration support; certification of EM service providers; EM program sample design and performance monitoring; compliance monitoring; data analysis for management and enforcement purposes; and storage of Federal records.

(2) ***EM vendor approval and evaluation.*** An entity seeking to provide EM services for vessel owners or operators deploying pelagic longline gear in the monitoring areas must submit a complete application to NMFS, at an address designated by NMFS. Once received, NMFS will review the application for completeness and possible approval.

(i) ***Contents of application.*** Application forms and instructions for their completion are available from NMFS. An application is complete when all requested forms, information, and documentation have been received, including the information described in this paragraph. NMFS will notify the applicant of any deficiency in the application, including failure to provide information 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. An application to become a certified EM vendor shall include, but is not limited to, the following:

(A) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(B) A list of all physical and electronic mailing addresses and any relevant phone or fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location for each office.

(C) A description of the applicant's ability to carry out the responsibilities and duties of EM vendors under paragraph (h)(3) of this section.

(D) A statement signed under penalty of perjury by an authorized agent of the applicant EM vendor that each owner, board member, officer, and employee of the EM vendor has no conflict of interest as described in paragraph (h)(2)(iii) of this section.

(E) Procedures for hiring and training of competent program staff to carry out EM field services and data services, including procedures to train, and maintain the skills of, EM data processing staff in: use of data processing software; species identification; metadata reporting requirements; data processing procedures; data tracking; and reporting and data upload procedures.

(ii) ***Application evaluation and certification.*** NMFS shall review and evaluate each complete application submitted under paragraph (h)(2)(i) of this section. A decision to approve or deny an application shall be made by NMFS within 90 business days of receipt of the complete application by NMFS.

(A) Issuance of approval as an EM vendor shall be based on a determination by NMFS of the applicant's ability to perform the responsibilities and duties under paragraph (h)(3) of this section, as demonstrated in the application information, and the absence of conflict of interest (see paragraph (h)(2)(iii) of this section).

(B) If NMFS approves the application, NMFS will notify the vendor in writing that it has certified the vendor and will provide any information pertinent to its participation in the EM program. NMFS will also add the EM vendor's name to the list of certified EM vendors found on the NMFS website and in any outreach information to the industry.

(C) If NMFS determines that the applicant is unable to perform the responsibilities and duties under paragraph (h)(3) of this section or has conflicts of interest pursuant to paragraph (h)(2)(iii) of this section, NMFS shall deny the application. NMFS shall notify the applicant in writing of the reason for the denial. Within 30 days of the applicant's receipt of the

denial notification, an applicant may request reconsideration by submitting additional information to rectify any deficiencies specified in the written denial. If the applicant does not submit additional information within that 30-day period, they must resubmit a new application containing all of the information required under paragraph (h)(2)(i) of this section in order to be reconsidered for the list of certified EM vendors.

(iii) ***Limitations on conflict of interest for EM vendors.*** Other than providing EM services to vessel owners and/or operators in the fishery, a certified EM vendor and its employees must not:

(A) Have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, and/or fishery advocacy group; and

(B) Solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or non-performance of the responsibilities and duties of an EM vendor.

(iv) ***Removal from the list of certified vendors.*** An EM vendor that fails to meet the responsibilities and duties under paragraph (h)(3) of this section or that is shown to have a conflict of interest as described in paragraph (h)(2)(iii) of this section, shall be notified by NMFS, in writing, that it is subject to removal from the list of certified EM vendors. Such notification shall specify the reasons for the pending removal. Within 30 days of receiving such notification, an EM vendor may submit written evidence to rebut the reasons for removal from the list. Within 30 days of receiving any rebuttal, NMFS shall notify the EM vendor of its decision. If no rebuttal is received by NMFS within the first 30-day period, the EM vendor shall be automatically removed from the list of certified EM vendors. The decision to remove an EM vendor from the list, either after reviewing a rebuttal or if no rebuttal is submitted, shall be the final decision of NMFS and the Department of Commerce. Removal from the list of approved EM vendors does not necessarily prevent an EM vendor from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied.

(3) ***Responsibilities and duties of EM vendors.*** To maintain a certified EM vendor status, an EM vendor must demonstrate an ability to provide or support pelagic longline vessel owners and/or operators with the following services:

(i) ***VMP for the Monitoring Areas.*** A certified EM vendor must, in consultation with the vessel owner with whom the vendor has a contract for EM services in the monitoring areas, develop a required VMP for EM systems, as described in paragraph (e) of this section. The VMP is only valid when there is an existing, signed contract between a certified EM vendor and the vessel owner; the vendor and vessel owner have signed and dated the VMP; and NMFS or NMFS-approved contractor has signed and dated the VMP to indicate that the plan is approved. A VMP that is produced in compliance with the EM requirements outside of the monitoring areas may suffice in the monitoring areas if the vessel owner has a contract with the same NMFS-approved contractor that is providing EM services across the fleet for all trips.

(ii) ***EM installation and maintenance for the Monitoring Areas.*** A certified EM vendor is responsible for ensuring that an EM system, as specified in the VMP, is installed and tested and has the following capabilities: camera(s) with sufficient resolution to determine the number and species of fish caught; camera(s) placed in a location(s) that provides clear, unobstructed views of the area(s) where pelagic longline gear is retrieved and of catch being removed from hooks and placed on the vessel; lighting sufficient to clearly illuminate individual fish; ability to

initiate video recording at the time gear retrieval starts and to continue recording until catch is removed from the hooks and placed on the vessel; a GPS receiver that allows for collection of location coordinates, heading, and velocity data of the vessel; a monitor that allows for the monitoring of the state of the EM system; a method of protecting all electronic data, including video and metadata and sensor data if hydraulic and gear sensors are installed, from tampering; and a method of collecting and sending all electronic data, including video and metadata and, if applicable, sensor data, to the EM vendor for review. In addition, each EM system must comply with the requirements in paragraph (d) of this section including the capacity to allow authorized officers to observe any EM systems data and, if available, live video. The EM vendor may determine that the NMFS-provided EM system already on the vessel (see § 635.9(a) through (c)) is compatible for use in the monitoring areas (*e.g.,* compatible with the vendor's equipment, software, data transmission, data storage, *etc.*). Alternatively, the EM vendor may determine that only a part of, or none of, the NMFS-provided EM system is compatible for use and may, therefore, require the vessel owner to buy or lease EM system components. In both situations, the certified EM vendor is responsible for ensuring the EM system meets the capabilities described above and enables the vendor to meet its requirements under paragraph (h)(3) of this section. The certified EM vendor is also responsible for assisting the vessel owner and/or operator in meeting all the requirements listed in paragraph (h)(4) of this section and for providing training to vessel owners or operators or their designees on how to use the EM system. After confirming that the EM system meets the capabilities described above, is properly installed, has been tested, and training and a VMP are completed, the EM vendor will provide a Certificate of Installation to the vessel owner or operator. If the EM system stops working properly, the EM vendor will assist the vessel owner and/or operator in repairing or replacing malfunctioning equipment and returning the system to working order. If the malfunctioning parts are NMFS-provided, the EM vendor will work with NMFS to have the equipment repaired or replaced and to return the system to working order. If the EM vendor is notified by the vessel owner or operator that the EM system has stopped functioning properly while the vessel is at sea and in the monitoring areas, the EM vendor will notify NMFS and provide instructions to the vessel owner and/or operator consistent with NMFS' guidance.

(iii) ***Data integrity and storage requirements.*** A certified EM vendor must receive, access, and store video data consistent with the VMP and paragraphs (d) and (h)(3) of this section; store video and metadata for a minimum of 2 years after the date received; and provide access to stored data upon request by any authorized officers of NMFS.

(iv) ***Video review requirements.*** A certified EM vendor must:

(A) Ensure that all EM data processing staff has been trained in species identification consistent with the procedures submitted under paragraph (h)(2)(i)(E) of this section;

(B) At NMFS' request, conduct additional video review to verify catch reports, and provide information for regulatory, enforcement, or for other management purposes; and

(C) On a calendar year quarterly basis, receive all of the electronic data, including video and metadata and, if applicable, sensor data, collected by the EM systems on all vessels for which the certified EM vendor has a contract for EM services. Once all data are received, the certified EM vendor must review 50 percent of the sets submitted from the vessels that fished in the Charleston Bump Monitoring Area and 50 percent of the sets submitted from the vessels that fished in the East Florida Coast Monitoring Areas (see § 635.2 for

definitions of the areas), when these areas are effective as specified in § 635.35(d)(3). NMFS may evaluate video review rates on a regular basis and modify them as appropriate through a framework adjustment per § 635.34.

(v) ***Reporting requirements.*** Each calendar year, a certified EM vendor must submit quarterly reports to NMFS for vessels for which the EM vendor has existing, signed contracts. Quarter 1 (January through March) report is due on or before June 30. Quarter 2 (April through June) report is due on or before September 30. Quarter 3 report (July through September) is due on or before December 31. Quarter 4 report (October through December) is due on or before March 31. The reports must include a list of vessels that submitted EM data for review; a list of vessels that did not submit EM data for review; the location, date, and time of gear retrieval of all sets submitted for review; identification of the sets reviewed (vessel name, location, date, and time of gear retrieval of all sets) for the quarterly report; species caught and amounts (retained and discarded) from the sets reviewed and disposition (dead or alive) of catch that is discarded; information on any technical difficulties (including poor video, no video, unreviewable video, misaligned camera angles, and any other issues that prevent effective video review of catch); information on how technical difficulties were addressed on the vessel and during the video review process; and/or any questions video reviewers may have about whether the vessel's fishing practices are compliant with applicable regulations. The metadata from all submitted trips and sets must accompany these quarterly reports. As appropriate, NMFS may respond to questions about fishing practices or possible regulatory violations in order to assist video reviewers and EM vendors in understanding the regulations and the EM program.

(4) ***Vessel owner and operator requirements.*** The owner of a vessel with pelagic longline gear on board and fishing with pelagic longline gear in an effective monitoring area, as described at the beginning of paragraph (h) of this section, must obtain EM services (see paragraph (h)(3)) of this section from a NMFS-certified EM vendor (see paragraph (h)(2) of this section). The vessel owner is responsible for the sampling costs (see paragraph (h)(1) of this section). For any trip where fishing with pelagic longline gear may occur in an effective monitoring area, the vessel owner and/or operator must:

(i) Declare intent to fish with pelagic longline in a monitoring area through hail-out via VMS unit prior to departing on the trip as required in § 635.69(e)(2));

(ii) Have an EM system on board with the capabilities required under paragraph (h)(3)(ii) of this section. The vessel owner and/or operator must monitor and maintain the EM system in working condition, which includes ensuring the proper continuous functioning of the EM system to meet the required capabilities under paragraph (h)(3)(ii) of this section;

(iii) Collect video data during hauling activities via an installed and working EM system and, if hydraulic and gear sensors are installed, collect sensor data during the duration of the trip;

(iv) Have on board and available for inspection an approved VMP pursuant to paragraph (h)(3)(i) of this section and ensure that all of the requirements, specifications and protocols outlined in the VMP have been implemented by the date specified in the VMP;

(v) Have on board and available for inspection a Certificate of Installation in accordance with paragraph (h)(3)(ii) of this section;

(vi) Prior to departing on the trip, activate the EM system and ensure the installed EM system has the capacity needed to enable data collection and video recording for the entire trip. The vessel cannot enter a monitoring area if the EM system does not have the capacity needed;

(vii) Prior to departing on the trip, test the functionality of the system and contact their certified EM vendor if the system is not functioning properly. If the EM system is not functioning properly, the vessel is prohibited from deploying pelagic longline sets in any effective monitoring area, as described in the beginning of paragraph (h) of this section. The vessel may still fish outside the monitoring area(s) if the EM system installed by the NMFS-approved contractor for use outside the monitoring areas functions properly consistent with paragraph (f) of this section. The vessel owner or operator must work with the EM vendor pursuant to paragraph (h)(3)(ii) of this section to correct any malfunctions with the EM system before fishing in the monitoring areas can resume;

(viii) Provide access to the EM system, including the data, as provided under paragraph (d) of this section;

(ix) During the trip, ensure the proper continuous functioning of all aspects of the EM system as required under paragraphs (h)(3)(ii) and (h)(4)(i) through (viii) of this section, including that: the EM system must remain powered on for the duration of each fishing trip in an effective monitoring area, as described at the beginning of paragraph (h) of this section; cameras must be functioning and cleaned routinely; the hydraulic and gear sensors, if installed, must be operational; the GPS signal must be functioning; and the EM system components must not be tampered with. If the vessel owner or operator becomes aware that the EM system is not functioning properly while the vessel is fishing in a monitoring area, the vessel owner or operator must contact their EM vendor and NMFS and follow the instructions given. Such instructions may include but are not limited to returning to port until the EM system is repaired. Once in port, an EM system must be functioning properly (*e.g.,* repaired, reinstalled, or replaced) consistent with the installation requirements under paragraph (h)(3)(ii) of this section before the vessel may fish with pelagic longline within an effective monitoring area;

(x) Ensure that all fish that are caught, even those that are released, are handled in a manner that enables the video system to record such fish, and ensure that interactions occur in accordance with relevant regulations and the operational procedures outlined in the VMP;

(xi) Ensure that each retained fish is placed on the standardized reference grid (see paragraph (c)(7) of this section) in view of cameras in accordance with the operational procedures outlined in the VMP; and

(xii) At the completion of a trip or as agreed to with the certified vendor, submit all electronic data, including video and metadata and, if applicable, sensor data, to the certified EM vendor, consistent with the requirements in the VMP.

[79 FR 71588, Dec. 2, 2014, as amended at 83 FR 33154, July 17, 2018; 87 FR 59998, Oct. 3, 2022; 91 FR 10730, Mar. 4, 2026]

Subpart B—Individual Vessel Measures

§ 635.14 [Reserved]

§ 635.15 Individual bluefin tuna quotas (IBQs).

(a) ***General.*** This section describes the IBQ Program. As described below, under the IBQ Program, NMFS will assign eligible Atlantic Tunas Longline category LAP holders annual IBQ shares and resulting allocations. IBQ allocations are required for vessels with Atlantic Tunas Longline category permits to fish with pelagic longline or green-stick gear. IBQ allocations may be leased by IBQ shareholders and Atlantic Tunas Longline category LAP holders using the Catch Shares Online System.

(b) ***Eligibility*** —

(1) ***IBQ shareholder.*** An Atlantic Tunas Longline category LAP holder that fished using pelagic longline gear on at least one set (*i.e.,* deployment and retrieval) during a recent 36 month period is eligible to receive an annual IBQ share in accordance with paragraph (c) of this section and is considered an IBQ shareholder. In determining IBQ shareholders, NMFS will use data as described in paragraph (c) of this section. For an IBQ shareholder's vessel to be considered an "eligible vessel," the vessel must have been issued a valid Atlantic Tunas Longline category LAP when set(s) occurred during the relevant 36 month period. In circumstances where a LAP is transferred from one vessel to another during the relevant 36 month period, the eligible vessel(s) is that which deployed the pelagic longline sets.

(2) ***New entrants.*** New entrants to the fishery need to obtain an Atlantic Tunas Longline category LAP, as well as other required LAPs, as described under § 635.4(l), and would need to lease IBQ allocations per paragraph (e) of this section if the Atlantic Tunas Longline category LAP acquired was not eligible for an annual IBQ share.

(c) ***Annual IBQ share determination.*** During the last quarter of each year, NMFS will review the relevant 36 months of best available data to determine eligible IBQ shareholders and the number of pelagic longline sets legally made by each permitted, eligible vessel, and assign IBQ shares based on the criteria below. The 36 month time period is a rolling period that changes annually, and is selected by NMFS based on the availability of recent data and time required by NMFS to conduct determinations under paragraphs (b) and (c) of this section. NMFS intends to include data from the majority of the year prior to the year for which shares are applied and the IBQ allocation distributed. The best available data as determined by NMFS may be a single data source such as VMS data, for which there is a relatively short time period from the time it is submitted by the vessel operator, and the time it can be used by NMFS; or the best available data may include other available data such as logbook, EM, or permit data, in order to accurately determine a vessel's eligibility status and shares. An IBQ shareholder does not need a valid LAP when NMFS makes annual IBQ share determinations, but NMFS will only distribute IBQ allocations to permitted vessels.

(1) ***IBQ share calculations.*** Annually, NMFS will calculate IBQ shares for each IBQ shareholder based upon the total number of each eligible vessel's pelagic longline sets during the relevant 36 month period, and the relative amount (as a percentage) those pelagic longline sets represent compared to the total number of pelagic longline sets made by all IBQ shareholders' eligible vessels. NMFS will only count one set per calendar day toward a vessel's total number of pelagic longline sets, and will only count a set if a vessel was issued a valid Atlantic Tunas Longline category LAP when the set occurred. The annual IBQ share percentage is used to calculate the annual IBQ allocation (see paragraph (d) of this section).

(2) ***Proxy calculation for Deepwater Horizon Oceanic Fish Restoration Project participants.*** For valid participants in this Project, the annual IBQ shares will be calculated as described in paragraph (c)(1) of this section, but in addition, a proxy amount of sets will be added to a vessel's history during the

period of its participation in the Project. The proxy will be based upon the average number of sets made by IBQ shareholders' vessels that did not participate in the Project during the period that participants fished under the Project.

(3) ***Regional designations of IBQ shares.*** Annually, IBQ shares and resultant allocations will be designated as either "Gulf" (Gulf of America) or "ATL" (Atlantic), based upon the location (*i.e.,* in the Gulf of America or Atlantic region) of sets included in the calculation under paragraph (c)(1) of this section. Subject to the Gulf share cap described below, each region's total shares and resultant allocations for the year will be based on the percentage of sets designated for the region compared to total sets. Per § 635.28(a)(1), NMFS will file a closure action when a region's IBQ allocations have been reached or are projected to be reached. For the purposes of this section, the Gulf of America region includes all waters of the U.S. EEZ west and north of the boundary stipulated at § 600.105(c) of this chapter, and the Atlantic region includes all other waters of the Atlantic Ocean including fishing taking place in the NED defined at § 635.2. If an IBQ shareholder's vessel had fishing history in both the Gulf of America and Atlantic region, it could receive both Gulf and ATL shares.

(i) ***Gulf share cap.*** The maximum amount of designated Gulf IBQ shares among all IBQ shareholders is capped at 35 percent of the baseline Longline category quota. Based on the criteria and process under § 635.27(a)(7), NMFS may make an inseason or annual adjustment to reduce the default 35-percent cap for all or the remainder of a calendar year.

(ii) ***Adjustment of Gulf shares to match the Gulf share cap.*** If NMFS determines that the total amount of Gulf-designated IBQ shares would be greater than the Gulf share cap (default or adjusted), NMFS will reduce the total amount of Gulf shares in order to equal the Gulf share cap. The reduction in total Gulf shares will be achieved through equal proportional reductions among all Gulf shareholders. The ATL shares will be increased in an analogous manner, so that the total share percentages for the two regions add up to 100 percent. NMFS will notify affected shareholders of any reductions in their Gulf shares or increases in ATL shares resulting from this adjustment. This adjustment is not subject to appeal under paragraph (e)(1)(i) of this section.

(iii) ***Low Gulf-designated share threshold.*** If NMFS determines that the total amount of Gulf-designated IBQ shares is 5 percent or less of the total IBQ shares, NMFS will file an action with the Office of the Federal Register for publication that suspends for that year the requirement to account for BFT caught in the Gulf of America with Gulf-designated shares and resultant allocations (paragraph (f)(1) of this section) and the minimum Gulf IBQ allocation requirement (paragraph (f)(2) of this section). NMFS will also notify IBQ shareholders of such action per paragraph (e) of this section. In this situation, IBQ shareholders' vessels could fish in the Gulf of America during that year using ATL-designated IBQ allocations. Any vessels fishing in the Gulf of America would still need to account for BFT catch and have the minimum IBQ allocation of 0.25 mt ww (551 lb ww) before departing on the first fishing trip in a calendar year quarter. Those vessels that fish in the Gulf of America may be issued Gulf IBQ shares in the following year per the regional designation of shares process described in paragraph (c)(3) of this section. BFT catch (landings and dead discards) from the Gulf of America by pelagic longline vessels will be capped at the weight of BFT equivalent to the Gulf share cap (see paragraph (c)(3)(i) of this section) in the applicable year. If this level of catch is reached, or projected to be reached, NMFS will prohibit fishing with pelagic longline gear in the Gulf of America for the rest of the year pursuant to § 635.28(a)(1).

(d) ***Annual IBQ allocations*** —

(1) ***Annual IBQ allocation from the baseline Longline category quota.*** An annual IBQ allocation is the amount of BFT (whole weight) in metric tons corresponding to an IBQ shareholder's share percentage, distributed to their vessel to account for incidental landings and dead discards of BFT during a specified calendar year. NMFS will distribute IBQ allocations only when there is a valid Atlantic Tunas Longline category LAP associated with a vessel. Unless otherwise required under paragraph (f)(4) of this section, an IBQ allocation is derived by multiplying the IBQ share percentage (calculated under paragraph (c)(1) of this section) by the baseline Longline category quota for that year. If the baseline quota is adjusted during the fishing year, the annual IBQ allocation may also be adjusted as specified in paragraph (e)(2) or (e)(3) of this section, as appropriate.

(2) ***The IBQ Program and the pelagic longline bycatch set-aside quota.*** In addition to the annual IBQ allocation described in paragraph (d)(1) of this section, NMFS will annually allocate the pelagic longline bycatch set-aside quota under § 635.27(a)(3) to IBQ shareholders with ATL shares. The allocation of the pelagic longline bycatch set-aside quota will be derived by multiplying the IBQ share percentage (calculated under paragraph (c)(1) of this section) by the pelagic longline bycatch set-aside quota. The IBQ shares and resultant allocations of the pelagic longline bycatch set-aside quota will be designated as only ATL shares. If the pelagic longline bycatch set-aside quota is adjusted during the fishing year, the annual IBQ allocation may also be adjusted as specified under paragraph (e)(2) or (e)(3) of this section, as appropriate. The BFT accounting requirement of paragraph (f)(3) of this section is applicable.

(e) ***Notification of IBQ shares and allocations, appeals, and adjustments.*** During the last quarter of each year, NMFS will notify Atlantic Tunas Longline permit holders via electronic methods (such as an email) and/or letter to inform them of their IBQ shares, their IBQ allocations, and the regional designations of those shares and allocations for the subsequent fishing year; whether adjustments were made to Gulf-designated shares due to the Gulf shares cap; and whether the low Gulf-designated share threshold has been triggered. This notification represents the initial administrative determination (IAD) for the permit holder's IBQ share and allocation. NMFS will also notify permit holders of any existing quota debt, and provide instructions for appealing the IAD. As of December 31, if an IBQ shareholder does not have a valid Atlantic Tunas Longline category LAP associated with a vessel due to a permit renewal or transfer, NMFS will issue IBQ allocation for the relevant fishing year if/when the permit renewal or transfer is completed and a valid LAP is associated with a vessel. IBQ shares, allocations, and regional designations may change as a result of the following circumstances, in which case NMFS will notify eligible IBQ recipients.

(1) ***Appeals.*** Appeals will be governed by the regulations and policies of the National Appeals Office at 15 CFR part 906. Per those regulations, Atlantic Tunas Longline Permit holders may appeal the IAD by submitting a written request for an appeal to the National Appeals Office within 45 days after the date the IAD is issued. NMFS will provide further instructions on how to submit a request for an appeal when it issues the IAD.

(i) ***Items subject to appeal and adjustment.*** A permit holder may appeal their: eligibility for IBQ shares based on ownership of an active vessel with a valid Atlantic Tunas Longline category permit; IBQ share percentage; IBQ allocations; and regional designations of shares and allocations. A permit holder may also appeal NMFS' determination of the number of pelagic longline sets legally made by its permitted vessel. However, an adjustment of Gulf shares under paragraph (c)(3)(ii) of this section or inseason quota adjustment under paragraph (e)(3) of this section is not subject to appeal. Appeals based on hardship factors will not be considered. Consistent with most limited effort and catch share programs, hardship is not a valid basis for

appeal due to the multitude of potential definitions of hardship and the difficulty and complexity of administering such criteria in a fair manner. NMFS may utilize BFT quota from the Reserve category for any adjustment needed due to an appeal.

(ii) ***Supporting documentation for appeals.*** NMFS permit records would be the sole basis for determining permit transfers, permit renewals, and the validity of permits. NMFS will only use the relevant 36 months of data described under paragraph (c) of this section to determine the numbers of pelagic longline sets made. NMFS will count only pelagic longline sets legally made when the permit holder had a valid permit. No other proof of sets or permit history will be considered. Photocopies of written documents are acceptable; NMFS may request originals at a later date. NMFS may refer any submitted materials that are of questionable authenticity to the NMFS Office of Law Enforcement for investigation into potential violations of Federal law.

(2) ***Inseason quota transfers.*** NMFS may transfer additional quota to the Longline category inseason as authorized under § 635.27(a), and in accordance with § 635.27(a)(7) and (8). NMFS may distribute the quota that is transferred inseason to the Longline category either to all IBQ shareholders or to all permitted Atlantic Tunas Longline category LAP vessels that are determined by NMFS to have any recent fishing activity in the pelagic longline fishery. In making this decision, NMFS will consider factors for the subject and previous year such as the number of BFT landings and dead discards, the number of IBQ lease transactions, the average amount of IBQ leased, the average amount of quota debt, the annual amount of IBQ allocation, any previous inseason allocations of IBQ allocation, the amount of BFT quota in the Reserve category (at § 635.27(a)(6)(i)), the percentage of BFT quota harvested by the other quota categories, the remaining number of days in the year, the number of active vessels fishing not associated with IBQ share, and the number of vessels that have incurred quota debt or that have low levels of IBQ allocation. NMFS will determine if a vessel has any recent fishing activity based upon the best available information for the subject and previous year, such as logbook, vessel monitoring system, or electronic monitoring data. Any distribution of quota transferred inseason will be equal among eligible IBQ shareholders or active vessels, and include regional designations of IBQ allocations (see paragraph (c)(3) of this section).

(3) ***Inseason quota adjustments.*** NMFS may increase or decrease the baseline Longline quota on an inseason basis as authorized under § 635.27(a). When doing so, NMFS would apply each IBQ shareholder's share percentage to the amount of quota increase or decrease, and will notify IBQ shareholders of any resulting changes in their IBQ allocations. This adjustment is not subject to appeal under paragraph (e)(1)(i) of this section. Regional designations described in paragraph (c)(3) of this section will be applied to inseason quota distributed to IBQ shareholders, and subject to the applicable cap and other provisions under paragraph (c)(3) of this section.

(f) ***Using IBQ shares and allocations.*** Unless specified otherwise, IBQ shares and resultant allocations will be available for use at the start of each fishing year and expire at the end of each fishing year. IBQ shares and allocations issued under this section are valid for the relevant fishing year unless revoked, suspended, or modified or unless the Atlantic Tunas Longline category quota is closed per § 635.28(a).

(1) ***Usage of Gulf and ATL shares and allocations.*** Gulf shares and resultant allocations can be used to satisfy minimum IBQ allocation requirements under paragraph (f)(2) of this section, or to account for BFT caught with pelagic longline gear in either the Gulf of America or the Atlantic regions. ATL shares and resultant allocations can only be used to satisfy minimum IBQ allocation requirements under paragraph (f)(2) of this section, or to account for BFT caught with pelagic longline gear in the Atlantic region, unless the provisions of paragraph (c)(3)(iii) of this section are in effect. For the

purposes of this section, the Gulf of America region includes all waters of the U.S. EEZ west and north of the boundary stipulated at § 600.105(c) of this chapter, and the Atlantic region includes all other waters of the Atlantic Ocean including fishing taking place in the NED defined at § 635.2.

(2) ***Minimum IBQ allocation.*** For purposes of this section, calendar year quarters start on January 1, April 1, July 1, and October 1.

(i) ***First fishing trip in a calendar year quarter.*** Before departing on the first fishing trip in a calendar year quarter, a vessel with a valid Atlantic Tunas Longline category LAP that fishes with or has pelagic longline or green-stick gear onboard must have the minimum IBQ allocation for either the Gulf of America or Atlantic, depending on fishing location. The minimum Gulf allocation for a vessel fishing in the Gulf of America, or departing for a fishing trip in the Gulf of America, is 0.25 mt ww (551 lb ww). The minimum ATL or Gulf allocation for a vessel fishing in the Atlantic or departing for a fishing trip in the Atlantic is 0.125 mt ww (276 lb ww). A vessel owner or operator may not declare into or depart on the first fishing trip in a calendar year quarter with pelagic longline gear onboard unless the vessel has the relevant required minimum IBQ allocation for the region in which the fishing activity will occur.

(ii) ***Subsequent fishing trips in a calendar year quarter.*** Subsequent to the first fishing trip in a calendar year quarter, a vessel owner or operator may declare into or depart on other fishing trips with pelagic longline gear onboard with less than the relevant minimum IBQ allocation for the region in which the fishing activity will occur, but only within that same calendar year quarter.

(3) ***Accounting for BFT that were landed or discarded dead.*** The following requirements apply to Atlantic Tunas Longline permit holders fishing with pelagic longline or green-stick gear regarding accounting for all BFT landings and dead discards from a vessel's IBQ allocation.

(i) ***Catch deduction from IBQ allocations.*** All BFT landings must be deducted from the vessel's IBQ allocation at the end of each trip by providing information to and coordinating with the dealer. Dead discards will be deducted from the vessel's IBQ allocation by the Catch Shares Online System when the vessel operator reports dead discards through VMS as required under § 635.69(e)(4)(i).

(ii) ***IBQ allocation balances.*** If the amount of BFT landed and discarded dead on a particular trip exceeds the amount of the vessel's IBQ allocation or results in an IBQ balance less than the minimum amount described in paragraph (f)(2) of this section, the vessel may continue to fish, complete the trip, and depart on subsequent trips within the same calendar year quarter. The vessel must resolve any quota debt (see paragraph (f)(4) of this section) before declaring into or departing on a fishing trip with pelagic longline gear onboard in a subsequent calendar year quarter by acquiring adequate IBQ allocation to resolve the debt and acquire the needed minimum allocation through leasing, as described in paragraph (g) of this section.

(iii) ***End-of-year IBQ transactions by dealers.*** Federal Atlantic Tunas Dealer permit holders must comply with reporting requirements at § 635.5(b)(2)(i)(A). No IBQ transactions will be processed between 6 p.m. eastern time on December 31 and 2 p.m. Eastern Time on January 1 of each year to provide NMFS time to reconcile IBQ accounts and update IBQ shares and allocations for the upcoming fishing year.

(4) ***Exceeding an available allocation.*** If the amount of BFT landed or discarded dead for a particular trip (as defined in § 600.10 of this chapter) exceeds the amount of IBQ allocation available to the vessel, the permitted vessel is considered to have a "quota debt" equal to the difference between the catch and the allocation.

(i) ***Quarter-level quota debt.*** A vessel with quota debt incurred in a given calendar year quarter cannot depart on a trip with pelagic longline gear onboard in a subsequent calendar year quarter until the vessel leases allocation or receives additional allocation (see paragraphs (e) and (g) of this section), and applies allocation for the appropriate region to settle the quota debt such that the vessel has the relevant minimum quota allocation required to fish for the region in which the fishing activity will occur (see paragraph (f)(2) of this section). For example, a vessel with quota debt incurred during January through March may not depart on a trip with pelagic longline gear onboard during April through June (or subsequent quarters) until the quota debt has been resolved such that the vessel has the relevant minimum quota allocation required to fish for the region in which the fishing activity will occur.

(ii) ***Annual-level quota debt.*** If, by the end of the fishing year, a permit holder does not have adequate IBQ allocation to settle its vessel's quota debt through leasing or additional allocation (see paragraphs (e) and (g) of this section), the vessel's allocation will be reduced in the amount equal to the quota debt in the subsequent year or years until the quota debt is fully accounted for. A vessel may not depart on any pelagic longline trips if it has outstanding quota debt from a previous fishing year.

(iii) ***Association with permit.*** Quota debt is associated with the vessel's Atlantic Tunas Longline permit, and remains associated with the permit if/when the permit is transferred or sold. At the end of the year, if an owner with multiple permitted vessels has a quota debt associated with one or more vessels owned, the IBQ system will apply any remaining unused IBQ allocation associated with that owner's other vessels to resolve the quota debt.

(5) ***Unused IBQ allocation.*** Any IBQ allocation that is unused at the end of the fishing year may not be carried forward by a permit-holder to the following year, but would remain associated with the Longline category as a whole, and subject to the quota regulations under § 635.27, including annual quota adjustments.

(g) ***IBQ allocation leasing*** —

(1) ***Eligibility.*** The permit holders of vessels issued valid Atlantic Tunas Longline category LAPs are eligible to lease IBQ allocation to and/or from each other. A person who holds an Atlantic Tunas Longline category LAP that is not associated with a vessel may not lease IBQ allocation.

(2) ***Application to lease*** —

(i) ***Application information requirements.*** All IBQ allocation leases must occur electronically through the Catch Shares Online System, and include all information required by NMFS.

(ii) ***Approval of lease application.*** Unless NMFS denies an application to lease IBQ allocation according to paragraph (g)(2)(iii) of this section, the Catch Shares Online System will provide an approval code to the IBQ lessee confirming the transaction.

(iii) ***Denial of lease application.*** NMFS may deny an application to lease IBQ allocation for any reason, including, but not limited to: The application is incomplete; the IBQ lessor or IBQ lessee is not eligible to lease per paragraph (g)(1) of this section; the IBQ lessor or IBQ lessee permits

is sanctioned pursuant to an enforcement proceeding; or the IBQ lessor has an insufficient IBQ allocation available to lease (*i.e.,* the requested amount of lease may not exceed the amount of IBQ allocation associated with the lessor). As the Catch Shares Online System is automated, if any of the criteria above are applicable, the lease transaction will not be allowed to proceed. The decision by NMFS is the final agency decision; there is no opportunity for an administrative appeal.

(3) ***Conditions and restrictions of leased IBQ allocation*** —

(i) ***Subleasing.*** In a fishing year, an IBQ allocation may be leased numerous times following the process specified in paragraph (g)(2) of this section.

(ii) ***History of leased IBQ allocation use.*** The fishing history associated with the catch of BFT will be associated with the vessel that caught the BFT, regardless of how the vessel acquired the IBQ allocation (*e.g.,* through annual allocation or lease), for the purpose of any potential, future relevant regulations based upon BFT catch.

(iii) ***Duration of IBQ allocation lease.*** IBQ allocations expire at the end of each calendar year. Thus, an IBQ lessee may only use the leased IBQ allocation during the fishing year in which the IBQ allocation is applicable.

(iv) ***Temporary prohibition on leasing IBQ allocation.*** No leasing of IBQ allocation is permitted between 6 p.m. eastern time on December 31 of one year and 2 p.m. eastern time on January 1 of the next year. This period is necessary to provide NMFS time to reconcile IBQ accounts, and update IBQ shares and allocations for the upcoming fishing year.

(h) ***Sale of IBQ shares.*** Sale of IBQ shares is not permitted.

(i) ***Changes in vessel and permit ownership.*** In accordance with the regulations specified under § 635.4(l), a vessel owner that has an annual IBQ share may transfer their Atlantic Tunas Longline category LAP to another vessel that he or she owns or transfer the permit to another person. The IBQ share as described under this section would transfer with the permit to the new vessel, and remain associated with that permit for the remainder of that fishing year. Within a fishing year, when an Atlantic Tunas Longline category LAP transfer occurs (from one vessel to another), the associated IBQ shares are transferred with the permit, however IBQ allocation is not, unless the IBQ allocation is also transferred through a separate transaction within the Catch Shares Online System. A person that holds an Atlantic Tunas Longline category LAP that is not associated with a vessel may not receive or lease IBQ allocation.

(j) ***Evaluation.*** NMFS will conduct evaluations of the IBQ Program in accordance with Magnuson-Stevens Act requirements for Limited Access Privilege Programs (Section 303(c)(1)(G)).

(k) ***Property rights.*** IBQ shares and resultant allocations issued pursuant to this part may be revoked, limited, modified or suspended at any time subject to the requirements of the Magnuson-Stevens Act, ATCA, or other applicable law. Such IBQ shares and resultant allocations do not confer any right to compensation and do not create any right, title, or interest in any BFT until it is landed or discarded dead.

(l) ***Enforcement and monitoring.*** NMFS will enforce and monitor the IBQ Program through the use of the reporting and record keeping requirements described under § 635.5, the monitoring requirements under §§ 635.9 and 635.69, enforcement of the prohibitions in § 635.71, and its authority to close the pelagic longline fishery specified under § 635.28.

(m) ***Cost recovery program.*** This program of fees is intended to cover costs of management, data collection and analysis, and enforcement activities directly related to and in support of the IBQ Program. This program applies to vessels issued an Atlantic Tunas Longline category LAP that harvested BFT under the IBQ Program. NMFS will undertake the process described in paragraphs (m)(1) through (5) of this section, on an annual basis.

(1) ***Estimation of incremental cost.*** NMFS will calculate the estimated incremental cost of the IBQ Program (*e.g.,* oversight, customer service, database/computer maintenance and other costs, electronic monitoring program, data monitoring, preparation of fleet communications, providing status reports to the HMS Advisory Panel, preparation of FEDERAL REGISTER documents, and enforcement related activities), including an estimate of the administrative and operational cost of implementing the cost recovery program.

(2) ***Estimation of ex-vessel value of catch share species.*** NMFS will calculate the ex-vessel value of BFT harvested under the IBQ Program using dealer data on the estimated average ex-vessel value price per pound (paid by the dealer to the vessel) and the total dressed weight of BFT sold to dealers.

(3) ***Determination of fees.*** NMFS will compare its incremental cost under paragraph (m)(1) of this section to the estimate of BFT ex-vessel value under paragraph (m)(2) of this section to determine the total amount of fees that may be recovered. Fees shall not exceed 3 percent of the BFT ex-vessel value estimated under paragraph (m)(2) of this section. NMFS will determine the fee associated with each vessel that harvested BFT, based on the total dressed weight of BFT sold to dealers by a vessel, and the total amount of fees that may be recovered (fishery-wide). NMFS will not assess fees, if the amount of fees that may be recovered is similar to or less than the estimated cost of implementing the cost recovery program.

(4) ***Notification of fees.*** NMFS will file with the Office of the Federal Register for publication a notification of its determination on fees, and notify Atlantic Tunas Longline permit holders, specifying the fee amount owed, and instructions for payment through the Catch Shares Online System or other Federal payment system. Federally permitted vessels (Atlantic Tunas Longline permit holders) that sold BFT that do not pay the fee or are delinquent in payment would be subject to relevant enforcement penalties, including permit revocation.

(5) ***Annual report.*** NMFS will prepare a brief annual report, made available to the public, which summarizes relevant information including the estimation of recoverable costs, estimation of ex-vessel value of BFT, and determination of the cost recovery fee.

(n) ***IBQ shares cap.*** An individual, partnership, corporation or other entity (collectively, "entity" for purposes of this paragraph) that holds an Atlantic Tunas Longline category LAP may not hold or acquire more than 25 percent of the total IBQ shares or resultant IBQ allocations annually. The cap applies to the sum of IBQ shares or associated IBQ allocations an entity holds, regardless of whether the entity is associated with a single or multiple Atlantic Tunas Longline category permits.

[87 FR 59999, Oct. 3, 2022, as amended at 91 FR 53538, Aug. 19, 2026]

§ 635.16 [Reserved]

Subpart C—Management Measures

§ 635.19 Authorized gears.

(a) ***General.*** No person may fish for, catch, possess, or retain any Atlantic HMS with gears other than the primary gears specifically authorized in this part. Consistent with § 635.21(a), secondary gears may be used at boat side to aid and assist in subduing, or bringing on board a vessel, Atlantic HMS that have first been caught or captured using primary gears. For purposes of this part, secondary gears include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc. Secondary gears may not be used to capture, or attempt to capture, free-swimming or undersized HMS. Except for vessels permitted under § 635.4(o) or as specified in this section, a vessel using or having onboard in the Atlantic Ocean any unauthorized gear may not possess an Atlantic HMS on board.

(b) ***Atlantic tunas.*** Primary gears are the gears specifically authorized in this section for fishing for, catching, retaining, or possessing Atlantic BFT and BAYS.

(1) ***Atlantic BFT.*** A person that fishes for, catches, retains, or possesses an Atlantic BFT may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the specific permit category issued (Atlantic tunas or HMS permit categories) and listed here:

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

(ii) ***Charter/headboat category.*** Rod and reel (including downriggers), bandit gear, handline, and green-stick gear.

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

(iv) ***Harpoon category.*** Harpoon.

(v) ***Trap category.*** Pound net and fish weir.

(vi) ***Longline category.*** Longline and green-stick gear.

(2) ***BAYS.*** Subject to paragraph (b)(1) of this section that applies to possession or retention of BFT or fishing for or catching BFT, a person may otherwise use the primary gears authorized for the Atlantic Tunas or HMS permit categories and listed here to fish for, catch, retain, or possess BAYS:

(i) ***Angling category.*** Speargun, rod and reel (including downriggers), and handline.

(ii) ***Charter/Headboat category.*** Rod and reel (including downriggers), bandit gear, handline, and green-stick gear are authorized for all recreational and commercial Atlantic tuna fisheries. Speargun is authorized for recreational Atlantic BAYS tuna fisheries only.

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

(iv) ***Harpoon category.*** Harpoon.

(v) ***Longline category.*** Longline and green-stick gear.

(3) ***HMS Commercial Caribbean Small Boat Permit.*** A person issued an HMS Commercial Caribbean Small Boat permit may use handline, harpoon, rod and reel, bandit gear, green-stick gear, and buoy gear to fish for, retain, or possess BAYS tunas in the U.S. Caribbean, as defined at § 622.2.

(c) ***Billfish.***

(1) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category or Swordfish General Commercial permit and are participating in a tournament as provided in § 635.4(c), may possess a blue marlin, white marlin, or roundscale spearfish in, or take a blue marlin, white marlin, or roundscale spearfish from, its management unit. Blue marlin, white marlin, or roundscale spearfish may only be harvested by rod and reel.

(2) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category or Swordfish General Commercial permit and are participating in a tournament as provided in § 635.4(c), may possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ. Sailfish may only be harvested by rod and reel.

(d) ***Sharks.***

(1) No person may possess a shark without a permit issued under § 635.4.

(2) No person issued a Federal Atlantic commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet, except that smoothhound sharks may be retained incidentally while fishing with trawl gear subject to the restrictions specified in § 635.24(a)(7).

(3) No person issued an HMS Commercial Caribbean Small Boat permit may possess a shark taken from the U.S. Caribbean, as defined at § 622.2 of this chapter, by any gear other than with rod and reel, handline or bandit gear.

(4) Persons on a vessel issued a permit with a shark endorsement under § 635.4 may possess a shark only if the shark was taken by rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit with a commercial sale endorsement (with or without a shark endorsement) and a Federal Atlantic commercial shark permit may possess sharks taken by rod and reel, handline, bandit gear, longline, or gillnet if the vessel is engaged in a non for-hire fishing trip and the commercial shark fishery is open pursuant to § 635.28(b).

(e) ***Swordfish.***

(1) No person may possess North Atlantic swordfish taken from its management unit by any gear other than handgear, green-stick, or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained by a vessel issued a valid Incidental HMS squid trawl permit, 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.

(2) 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 fishing with or having on board a gillnet.

(3) A person aboard a vessel issued or required to be issued a valid directed handgear LAP for Atlantic swordfish or an HMS Commercial Caribbean Small Boat permit may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel fishing with or having on board longline gear. Only vessels that have been issued a valid directed or handgear swordfish LAP or an HMS Commercial Caribbean Small Boat permit under this part may utilize or possess buoy gear.

(4) Except for persons aboard a vessel that has been issued a directed, incidental, or handgear swordfish LAP, a Swordfish General Commercial permit, an Incidental HMS squid trawl permit, or an HMS Commercial Caribbean Small Boat permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish taken by, any gear other than handline or rod and reel.

(5) A person aboard a vessel issued or required to be issued a valid Swordfish General Commercial permit may only possess North Atlantic swordfish taken from its management unit by rod and reel, handline, bandit gear, green-stick, or harpoon gear.

[79 FR 71594, Dec. 2, 2014, as amended at 80 FR 73144, Nov. 24, 2015; 82 FR 16506, Apr. 4, 2017; 82 FR 57549, Dec. 6, 2017; 83 FR 33154, July 17, 2018; 87 FR 11324, Mar. 1, 2022; 87 FR 60003, Oct. 3, 2022]

§ 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.*** If the head of a BFT is no longer attached, the size class of the BFT 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 notification of the adjustment with the Office of the Federal Register for publication.

(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 aboard a vessel 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. A bigeye or yellowfin tuna that is damaged through predation by sharks or other marine species may be retained, possessed, or landed only if the length of the remainder of the fish is equal to or greater than 27 inches (69 cm). No person shall cut or otherwise alter the predation-damaged area in any manner.

(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.

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

(5) The Atlantic blue marlin, white marlin, and roundscale spearfish minimum size limits, specified in paragraphs (d)(1) and (d)(2) of this section, may be adjusted to sizes between 117 and 138 inches (297.2 and 350.5 cm) for blue marlin and 70 and 79 inches (177.8 and 200.7 cm) for white marlin and roundscale spearfish, to achieve, but not exceed, the annual Atlantic marlin landing limit specified in § 635.27(d). Minimum size limit increases will be based upon a review of landings, the period of time remaining in the current fishing year, current and historical landing trends, and any other relevant factors. NMFS will adjust the minimum size limits specified in this section by filing an adjustment with the Office of the Federal Register for publication. In no case shall the adjustments be effective less than 14 calendar days after the date of publication. The adjusted minimum size limits will remain in effect through the end of the applicable fishing year or until otherwise adjusted.

(e) ***Sharks.*** The following size limits change depending on the species being caught and the retention limit under which they are being caught as specified under § 635.22(c).

(1) All sharks landed under the recreational retention limits specified at § 635.22(c) must have the head, tail, and fins naturally attached.

(2) All sharks, except as otherwise specified in paragraphs (e)(3) through (6) of this section, landed under the recreational retention limits specified at § 635.22(c)(2) must be at least 54 inches (137 cm) FL.

(3) There is no size limit for Atlantic sharpnose or bonnethead sharks taken under the recreational retention limits specified at § 635.22(c)(3).

(4) All hammerhead sharks landed under the recreational retention limits specified at § 635.22(c)(2) must be at least 78 inches (198.1 cm) FL.

(5) There is no size limit for smoothhound sharks taken under the recreational retention limits specified at § 635.22(c)(6).

(6) For shortfin mako sharks landed when the recreational retention limit specified at § 635.22(c)(8) is greater than zero, males must be at least 71 inches (180 cm) fork length, and females must be at least 83 inches (210 cm) fork length.

(f) ***Swordfish.***

(1) For a swordfish that has its head naturally attached, the LJFL is the sole criterion for determining the size of a swordfish. No person shall take, retain, possess, or land a whole (head on) North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 47 inches (119 cm) LJFL. A swordfish with the head naturally attached that is damaged by shark bites may be retained only if the length of the remainder of the fish is equal to or greater than 47 inches (119 cm) LJFL.

(2) If the head of a swordfish is no longer naturally attached, the CK measurement is the sole criterion for determining the size of a swordfish. No person shall take, retain, possess, or land a dressed North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 25 inches (63 cm) CK length. A swordfish that is damaged by shark bites may be retained only if the length of the remainder of the carcass is equal to or greater than 25 inches (63 cm) CK length.

(3) 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.

(4) Except for a swordfish landed in a Pacific state and remaining in that Pacific state of landing, a swordfish, or part thereof, not meeting the minimum size measurements specified in § 635.20(f)(1) or (2) 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 swordfish statistical document attesting that the swordfish was lawfully imported. Refer to § 300.186 of this title for the requirements related to the swordfish statistical document.

(5) 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; 66 FR 42804, Aug. 15, 2001; 68 FR 714, Jan. 7, 2003; 68 FR 74785, Dec. 24, 2003; 69 FR 67284, Nov. 17, 2004; 71 FR 58167, Oct. 2, 2006; 74 FR 66587, Dec. 19, 2009; 75 FR 30525, June 1, 2010; 75 FR 57701, Sept. 22, 2010; 76 FR 70066, Nov. 10, 2011; 77 FR 45280, July 31, 2012; 78 FR 40346, July 3, 2013; 80 FR 73145, Nov. 24, 2015; 83 FR 33154, July 17, 2018; 83 FR 51397, Oct. 11, 2018; 84 FR 5376, Feb. 21, 2019; 87 FR 39382, July 1, 2022]

§ 635.21 Gear operation and deployment restrictions.

Link to an amendment published at 89 FR 85880, Oct. 29, 2024.

(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 and not retained, 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.

(3) Any person on board a vessel that is issued a commercial shark permit must release all shortfin mako sharks, whether alive or dead, caught with any gear other than pelagic longline, bottom longline, or gillnet gear, except that any person on board a vessel that is issued a commercial shark permit in combination with a permit that has a shark endorsement may retain shortfin mako sharks subject to the recreational minimum size limits in § 635.20, the recreational retention limits in § 635.22, and authorized gear requirements in § 635.19.

(4) Any mobulid ray caught by a vessel that has been issued or should have been issued an HMS permit must be released unharmed, to the extent practicable, as soon as it is seen on the hook or at the vessel, except that a vessel with pelagic longline on board must undertake the additional bycatch mitigation measures described in paragraph (c)(6) of this section.

(b) ***Longline—general restrictions.***

(1) All vessels that have pelagic or bottom longline gear onboard and that have been issued, or are required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of America must possess inside the wheelhouse the document provided by NMFS entitled "Careful Release Protocols for Sea Turtle Release with Minimal Injury," and must also post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

(2) When a marine mammal or sea turtle is hooked or entangled by pelagic or bottom longline gear, the owner and operator of the vessel must immediately release the animal, retrieve the pelagic or bottom longline gear, and move at least 1 nmi (2 km) from the location of the incident before resuming fishing. Similarly, when a smalltooth sawfish is hooked or entangled by bottom longline gear, the operator of the vessel must immediately release the animal, retrieve the bottom longline gear, and move at least 1 nmi (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.

(3) Vessels that have pelagic or bottom longline gear on board and that have been issued, or are required to have been issued, a permit under this part must have only corrodible hooks on board.

(c) ***Pelagic Longlines.***

(1) If a vessel issued or required to be issued a permit under this part:

(i) Has bottom longline gear on board and is in one of the areas designated under § 635.35(c) or (d)(3), the vessel may not, at any time, possess or land any pelagic species listed in table 2 of appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in tables 2 and 3 of appendix A to this part.

(ii) Has pelagic longline gear on board, persons aboard that vessel may not possess, retain, transship, land, sell, or store silky sharks, oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks.

(iii) Has pelagic longline gear on board, persons aboard that vessel are required to release unharmed, to the extent practicable, porbeagle sharks that are alive at the time of haulback.

(iv) Has pelagic longline gear on board, persons aboard that vessel are required to promptly release in a manner that causes the least harm any shortfin mako shark that is alive at the time of haulback, consistent with the requirements specified at paragraphs (a)(1) and (c)(5)(i) of this section. When the commercial retention limit specified at § 635.24(a)(4)(v) is greater than zero, any shortfin mako shark that is dead at the time of haulback may be retained provided the electronic monitoring system is installed and functioning in compliance with the requirements at § 635.9.

(2) If pelagic longline gear is on board a vessel issued or required to be issued a LAP under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the NED at any time unless, the vessel complies with paragraphs (c)(2)(i) through (iii) and (c)(4) of this section:

(i) The vessel is limited to possessing on board and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees. The outer diameter of the circle hook at its widest point must be no smaller than 2.16 inches (55 mm) when measured with the eye on the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis), and the distance between

the circle hook point and the shank (*i.e.*, the gap) must be no larger than 1.13 inches (28.8 mm). The allowable offset is measured from the barbed end of the hook and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer. If green-stick gear, as defined at § 635.2, is on board, a vessel may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. J-hooks used with green-stick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook;

(ii) The vessel is limited, at all times, to possessing on board and/or using only whole Atlantic mackerel and/or squid bait, except that artificial bait may be possessed and used only with green-stick gear, as defined at § 635.2, if green-stick gear is on board;

(iii) All sea turtle bycatch mitigation measures specified in paragraph (c)(4) of this section, except for the mitigation measures specified in paragraph (c)(4)(iii)(B) and (C) of this section, as these paragraphs specify bait, hook size, and hook type requirements for vessels fishing outside the NED as defined in § 635.2. Instead, persons on board the vessel must comply with hook size and type requirements in paragraph (c)(2)(i) of this section and bait restrictions in paragraph (c)(2)(ii) of this section.

(3) In the Gulf of America, pelagic longline gear may not be fished or deployed from a vessel issued or required to have been issued a LAP under this part with live bait affixed to the hooks; and, a person aboard a vessel issued or required to have been issued a LAP under this part that has pelagic longline gear on board may not possess live baitfish, maintain live baitfish in any tank or well on board the vessel, or set up or attach an aeration or water circulation device in or to any such tank or well. For the purposes of this section, the Gulf of America includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(4) The owner and operator of a vessel permitted or required to be permitted under this part and that has pelagic longline gear on board must undertake the following sea turtle bycatch mitigation measures:

(i) ***Possession and use of required mitigation gear.*** Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(4)(iv) of this section as meeting the minimum design standards specified in paragraphs (c)(4)(i)(A) through (M) of this section, must be carried onboard, and must be used to disengage any hooked or entangled sea turtles in accordance with the handling requirements specified in paragraph (c)(4)(ii) of this section.

(A) ***Long-handled line clipper or cutter.*** Line cutters are intended to cut high test monofilament line as close as possible to the hook, and assist in removing line from entangled sea turtles to minimize any remaining gear upon release. NMFS has established minimum design standards for the line cutters, which may be purchased or fabricated from readily available and low-cost materials. The LaForce line cutter and the Arceneaux line clipper are models that meet these minimum design standards. One long-handled line clipper or cutter meeting the minimum design standards, and a set of replacement blades, are required to be onboard. The minimum design standards for line cutters are as follows:

(*1*) A protected and secured cutting blade. The cutting blade(s) must be capable of cutting 2.0-2.1 mm (0.078 in.-0.083 in.) monofilament line (400-lb test) or polypropylene multistrand material, known as braided or tarred mainline, and must be maintained in working order. The cutting blade must be curved, recessed, contained

in a holder, or otherwise designed to facilitate its safe use so that direct contact between the cutting surface and the sea turtle or the user is prevented. The cutting instrument must be securely attached to an extended reach handle and be easily replaceable. One extra set of replacement blades meeting these standards must also be carried on board to replace all cutting surfaces on the line cutter or clipper.

(*2*) An extended reach handle. The line cutter blade(s) must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or 6 feet (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. There is no restriction on the type of material used to construct this handle as long as it is sturdy and facilitates the secure attachment of the cutting blade.

(B) ***Long-handled dehooker for internal hooks.*** A long-handled dehooking device is intended to remove internal hooks from sea turtles that cannot be boated. It should also be used to engage a loose hook when a turtle is entangled but not hooked, and line is being removed. The design must shield the point of the hook and prevent the hook from re-engaging during the removal process. One long-handled device, meeting the minimum design standards as described below, is required on board to remove internal hooks. The minimum design standards are as follows:

(*1*) ***Hook removal device.*** Marine-grade stainless steel (316 L or 304 L) or similar (*i.e.,* designed to resist corrosion during exposure to saltwater) must be used for all components. The hook removal device must be constructed of three-sixteenths to five-sixteenths of an inch (4.76-7.94 mm) marine-grade stainless steel and have a dehooking end no larger than $1^{7}/_{8}$-inch (4.76-cm) outside diameter. The device must securely engage and control the leader while shielding the point of the hook to prevent the hook from re-engaging during removal. The hook removal device must not have any unprotected points (including blunt ones), as these could cause injury to the mouth and esophagus during hook removal. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) ***Extended reach handle.*** The dehooking end must be securely fastened to an extended reach handle or pole with a minimum length equal to or greater than 150 percent of the height of the vessel's freeboard, or 6 ft (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

(C) ***Long-handled dehooker for external hooks.*** A long-handled dehooker, meeting the minimum design standards, is required on board for use on externally hooked sea turtles that cannot be boated. The long-handled dehooker for internal hooks described in paragraph (c)(4)(i)(B) of this section meets this requirement. The minimum design standards are as follows:

(*1*) ***Hook removal device.*** Marine-grade stainless steel (316 L or 304 L) or similar (*i.e.,* designed to resist corrosion during exposure to saltwater) must be used for all components on any style of long-handled dehooker. If utilizing a wire-style dehooker (*e.g.,* a pigtail or J-style dehooker), the long-handled dehooker must be constructed of three-sixteenths to five-sixteenths of an inch (4.76-7.94 mm) marine-grade

stainless steel. All long-handled dehookers must have a dehooking end no larger than $1^{7}/_{8}$-inch (4.76-cm) outside diameter. Smaller dehooking ends may be appropriate when encountering small turtles. A 5-inch (12.7-cm) tube T-handle of 1-inch (2.54-cm) outside diameter is recommended, but not required. The design must be such that a fish hook can be rotated out, without pulling it out at an angle, as described in paragraphs (c)(4)(ii)(B) and (C) of this section, and in the NMFS-SEFSC TM-735 Careful Release Protocols. The dehooking end must be blunt with all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) ***Extended reach handle.*** The dehooking end must be securely fastened to an extended reach handle or pole. The handle must be a minimum length equal to or greater than 150 percent of the height of the vessel's freeboard or 6 ft (1.83 m), whichever is greater.

(D) ***Long-handled device to pull an "inverted V."*** This tool is used to pull a "V" in the fishing line when implementing the "inverted V" dehooking technique, as described in paragraph (c)(4)(ii)(C) of this section and in the NMFS-SEFSC TM-735 Careful Release Protocols, for disentangling and dehooking entangled sea turtles. One long-handled device to pull an "inverted V", meeting the minimum design standards, is required on board. If a 6-ft (1.83-m) or longer J-style dehooker is used to comply with paragraph (c)(4)(i)(C) of this section, it will also satisfy this requirement. Minimum design standards are as follows:

(*1*) ***Hook end.*** This device, such as a standard boat hook, gaff, or long-handled J-style dehooker must be constructed of stainless steel or aluminum. A sharp point, such as on a gaff hook, is to be used only for holding the monofilament fishing line and must never contact the sea turtle.

(*2*) ***Extended reach handle.*** The handle must have a minimum length equal to or greater than 150 percent of the height of the vessel's freeboard, or 6 ft (1.83 m), whichever is greater. The handle must be sturdy and strong enough to facilitate the secure attachment of the gaff hook.

(E) ***Boating the turtle.*** A device to bring incidentally caught sea turtles aboard the vessel must be carried on board the vessel to facilitate safe handling of sea turtles by allowing them to be brought on board for fishing gear removal without causing further injury to the animal. Sea turtles must never be brought on board without a net or hoist. Using the involved fishing gear to raise the turtle can result in serious injury. The following devices are options to meet this requirement.

(*1*) ***Dipnet.*** The dipnet must have a sturdy net hoop of at least 31 inches (78.74 cm) of inside diameter and a bag depth of at least 38 inches (96.52 cm) to accommodate turtles below 3 ft (91.44 cm) carapace length. The bag mesh openings may not exceed 3 inches (7.62 cm) bar measure, defined as the non-stretched distance between a side knot and a bottom knot of a net mesh (also known as the square mesh measurement). There must be no sharp edges or burrs on the hoop, or where the hoop is attached to the handle. The dipnet hoop must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or at least 6 ft (1.83 m), whichever is greater. The handle must be made of a rigid material strong enough to facilitate the

sturdy attachment of the net hoop and able to support a minimum of 100 lb (45.36 kg) without breaking or significant bending or distortion. It is recommended, but not required, that the extended reach handle break down into sections.

(*2*) ***Collapsible hoop net.*** The collapsible hoop net frame must be constructed of stiff wire cable that coils to compress the size for storage. This device must have a minimum 31-inch (78.74-cm) inside diameter and a bag depth of at least 38 inches (96.52 cm) to accommodate turtles up to 3 ft (91.44 cm) in straight carapace length. The bag mesh openings may not exceed 3 inches (7.62 cm) bar measure, defined as the non-stretched distance between a side knot and a bottom knot of a net mesh (also known as the square mesh measurement). There must be no sharp edges or burrs on the hoop. The device must be capable of lifting at least 100 lb (45.36 kg). No extended reach handle is needed on this type of net, although the rope handle length must be 6 ft (1.83 m) or 150 percent of freeboard height, whichever is greater.

(*3*) ***Turtle hoist.*** A turtle hoist consists of a supportive frame with mesh netting. A turtle hoist can be used to bring turtles on board that cannot be boated using a dipnet or collapsible hoop net. The two sizes that meet the design standards are described in paragraphs (c)(4)(i)(E)(*3*)(*i*) and (*ii*) of this section. The size of the turtle hoist used should match the size of turtles encountered.

(*i*) ***Small turtle hoist.*** The frame must be capable of supporting at least 100 lb (45.36 kg), with a minimum inside diameter of 31 inches (78.74 cm) to accommodate turtles up to 3 ft (91.44 cm) straight carapace length. This frame can be hinged or otherwise designed so that it can be folded for ease of storage as long as it can be quickly reassembled. If the frame is designed to fold or break down for storage, the hardware must be self-contained (*e.g.,* barrel bolts on both sides to lock down frame with no loose pieces like through bolts and nuts), and there must be no sharp edges. The shape of the frame does not matter (*e.g.,* round, square, rectangular, or a “U-shaped” or “J-shaped” basket) as long as it meets the required specifications and securely contains the turtle. The frame may be constructed of heavy-duty stainless steel tubing welded into shape or polyvinyl chloride (PVC) pipe (recommended 2-inch (5.08-cm) diameter with a required minimum strength of Schedule 40) connected and glued at the corners using 90° elbow fittings. PVC pipes can be drilled to facilitate water drainage for ease of hauling. A shallow bag net with mesh openings not to exceed 3 × 3 inches (7.62 × 7.62 cm) (bar measure) must be securely affixed to the frame, and lines (*e.g.,* polypropylene, nylon, polyester) must be securely attached to each corner to control and retrieve the frame and net. The lines can be operated using a pulley system if available on the vessel. No rigid extended reach handle is needed on this type of net, although the rope handle length must be 6 ft (1.83 m) or 150 percent of freeboard height, whichever is greater.

(*ii*) ***Large turtle hoist.*** The large turtle hoist must be capable of lifting a minimum of half a ton. The structure of the hoist must consist of three circular aluminum bar rings (top, middle, and bottom) connected with mesh and spokes. The hoist should be designed so that when on board, the turtle is suspended above the deck on a platform of mesh netting (8 mm, 6.5 inches (16.51 cm) stretch knotless 600-ply polyethylene netting) stretched across the middle ring. The

turtle should be contained within a webbing fence (at least 18 inches (45.72 cm) high) which is supported by the top and middle rings and made of 3 mm, 4.7 inches (11.94 cm) stretch mesh braided polyethylene webbing, and wrapped along the top ring with $^{1}/_{2}$-inch (1.27-cm) polypropylene rope. The top and middle rings ($1^{3}/_{4}$ inch (4.45 cm) 50 series aluminum round bar) should be 7 ft and 6 inches (2.29 m) in diameter. The bottom ring ($1^{1}/_{2}$ inches (3.81 cm) 50 series aluminum round bar) should be 4 ft (1.22 m) in diameter. The middle and bottom rings are connected using 12 spoke braces (approximately 23 inches (58.42 cm) long, 1 inch (2.54 cm) round 50 series aluminum round bar or 6061 T6 1 inch (2.54 cm) Schedule 40 pipe) angled at approximately 25° and welded in place with an appropriate welding wire (5052, 6061 or 3003 wire). Rubber cookies (8 × $2^{1}/_{2}$ inches (20.32 × 6.35 cm), 4 per each of 12 sections) may be used on the middle ring to facilitate rolling the hoist up the side of the vessel and to cushion impact of the hoist against the side of the vessel. When deployed in rough seas, the hoist should be held to the side of the vessel to prevent swinging and collision with the vessel hull. A 3- or 4-point bridle is attached to the top ring using pair links and three-quarter-inch (1.91-cm) nylon 3-strand line, and a hydraulic lift is used to bring hoist aboard.

(F) ***Cushion/support device for boated turtles.*** Each vessel is required to carry a device that effectively cushions and supports a sea turtle while it is on board. The device used must be appropriately sized to support the sea turtle encountered. The device must be puncture proof (*e.g.,* no inner tubes, pool toys) and cannot be a primary safety device (*e.g.,* primary life ring or life jacket dedicated to personnel on board). Examples that meet current design standards include:

(*1*) ***A standard automobile tire.*** A standard (not from a truck or heavy equipment) passenger vehicle tire not mounted on a rim and free of exposed steel belts, is effective for supporting a turtle in an upright orientation while it is on board. An assortment of sizes is recommended to accommodate a range of turtle sizes. If the turtle is too large for the tire, it must be contained and supported on an alternative cushioned surface.

(*2*) ***Boat cushion.*** A standard boat cushion can effectively support smaller turtles.

(*3*) ***Large turtle hoist.*** This style is recommended for supporting large turtles such as leatherbacks, which need a supportive platform while on board. The large turtle hoist described in paragraph (c)(4)(i)(E)(*3*)(*ii*) of this section satisfies this requirement.

(G) ***Short-handled dehooker for internal hooks.*** One short-handled device, meeting the minimum design standards, is required on board for removing hooks that are internal or ingested. This dehooker is designed to remove internal hooks from boated sea turtles. It can also be used on external hooks or hooks in the front of the mouth. Minimum design standards are as follows:

(*1*) ***Hook removal device.*** Unless otherwise noted, all components must be made of marine-grade stainless steel (316 L or 304 L). If utilizing a wire-style dehooker (*e.g.,* a pigtail or J-style dehooker), the hook removal device must be constructed of three-sixteenths to five-sixteenths of an inch (4.76-7.94 mm) marine-grade stainless steel (316 L or 304 L) rod and have a dehooking end no wider than $1^{7}/_{8}$ inches (4.76 cm) total width. The end must allow the hook to be secured and the point to be shielded

without re-engaging during the removal process. It may not have any unprotected terminal points or sharp edges, as this could cause injury to the esophagus during hook removal. A sliding PVC bite block must be used to protect the beak and facilitate hook removal if the turtle bites down on the dehooking device. The bite block should be constructed of a three-quarter- to 1-inch (1.91-2.54 cm) inside diameter high-impact plastic cylinder (*e.g.,* Schedule 80 PVC) that is 4-6 in (10.16-15.24 cm) long to allow for at least 5 inches (12.7 cm) of slide along the shaft. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) ***Handle length.*** The handle must be 16-24 inches (40.64-60.96 cm) in length, with a tube T-handle, wire loop handle, or similar type of handle that is approximately 4-6 inches (10.16-15.24 cm) long.

(H) ***Short-handled dehooker for external hooks.*** One short-handled dehooker for external hooks, meeting the minimum design standards, is required on board. The short-handled dehooker for internal hooks required to comply with paragraph (c)(4)(i)(G) of this section will also satisfy this requirement. Minimum design standards are as follows:

(*1*) ***Hook removal device.*** Marine-grade stainless steel (316 L or 304 L) must be used for all components. If utilizing a wire-style dehooker (*e.g.,* a pigtail or J-style dehooker), the dehooker must be constructed of three-sixteenths to five-sixteenths of an inch (4.76-7.94 mm) marine-grade stainless steel (316 L or 304 L) and have a dehooking end no wider than $1^{7}/_{8}$ inches (4.76 cm) total width. The design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the pelagic longline fishery targeting swordfish and tuna.

(*2*) ***Handle length.*** The handle must be 16-24 inches (40.64-60.96 cm) long with a tube T-handle, wire loop handle, or similar type of handle that is approximately 4-6 inches (10.16-15.24 cm) long.

(I) ***Long-nose or needle-nose pliers.*** One pair of long-nose or needle-nose pliers is required to be on board. Such pliers must be a minimum of 11 inches (27.94 cm) in length, and should be constructed of stainless steel material or other material designed to resist corrosion during exposure to saltwater. The pliers can be used to remove embedded hooks from the turtle's flesh or hooks in the front of the mouth. The pliers are also useful for holding PVC splice couplings in place as mouth openers.

(J) ***Bolt cutters.*** One pair of bolt cutters is required on board. Such bolt cutters must be a minimum of 14 inches (35.56 cm) in total length, with a minimum of 4 inches (10.16 cm) long blades that are a minimum of $2^{1}/_{4}$ inches (5.72 cm) wide, when closed, and with 10- to 13-inch (25.40- to 33.02-cm) long handles. Such bolt cutters must be able to cut hard metals, such as stainless or carbon steel hooks, up to one-quarter of an inch (6.35 mm) in diameter, and they must be capable of cutting through the hooks used on a vessel. The required bolt cutters may be used to cut hooks to facilitate their removal. They should be used to cut off the eye or point of a hook, so that it can safely be pushed through a sea turtle without causing further injury. They should also be used to cut off as much of the hook as possible, when the remainder of the hook cannot be removed.

(K) ***Monofilament line cutters.*** One pair of monofilament line cutters is required on board. Such monofilament line cutters must be a minimum of 6 inches (15.24 cm) in overall length. The blades must be 1 inch (2.54 cm) in length and five-eighths inch (1.59 cm) wide, when closed, and are recommended to be coated with Teflon (a trademark owned by E.I. DuPont de Nemours and Company Corp.). The line cutters must be used to remove netting, entangling line, or fishing line as close to the eye of the hook as possible, if the hook is swallowed or cannot be removed safely.

(L) ***Mouth openers/mouth gags.*** Required mouth openers and mouth gags are used to open sea turtle mouths, and to keep them open when removing internal hooks from boated turtles. They must allow access to the hook or line without causing further injury to the turtle. Design standards are included in the item descriptions. At least 2 of the 7 different types of mouth openers/gags described below are required on board the vessel:

(*1*) ***A block of hard wood.*** Placed in the corner of the jaw, a block of hard wood may be used to gag open a turtle's mouth. A smooth block of hard wood of a type that does not splinter (*e.g.,* maple) with rounded edges must be sanded smooth. The dimensions should be appropriately sized for the size of turtles that may be caught or approximately 10 × 0.75 × 0.75 inches (25.40 × 1.91 × 1.91 cm). A long-handled, wire shoe brush with a wooden handle, and with the wires removed, is an inexpensive, effective and practical mouth-opening device that meets these requirements. A wooden hammer handle (without the head attached) may also be suitable, provided it is made from wood that does not splinter under pressure (*e.g.,* ash, maple).

(*2*) ***A set of three canine mouth gags.*** Canine mouth gags are highly recommended to hold a turtle's mouth open, because the gag locks into an open position to allow for hands-free operation after it is in place. A set of canine mouth gags must include one of each of the following sizes: small (5 in; 12.7 cm), medium (6 in; 15.24 cm), and large (7 in; 17.78 cm). They must be constructed of stainless steel.

(*3*) ***A set of two sturdy dog chew bones.*** Placed in the corner of a turtle's jaw, canine chew bones are used to gag open a sea turtle's mouth. Required canine chews must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5.5-8 inches (13.97-20.32 cm) in length) and one small (3.5-4.5 inches (8.89-11.43 cm) in length) canine chew bone.

(*4*) ***A set of two rope loops covered with hose.*** A set of two rope loops covered with a piece of hose or flexible tubing can be used as a mouth opener, and to keep a turtle's mouth open during hook and/or line removal. A required set consists of two 3-ft (91.44-cm) lengths of poly braid rope (three-eighths of an inch (9.53 mm) in diameter is suggested), each covered with an 8-inch (20.32-cm) section of half-inch (1.27-cm) or three-quarter-inch (1.91-cm) light-duty garden hose or flexible tubing, and each tied into a loop. The upper loop of rope covered with hose is secured on the upper beak to give control with one hand, and the second piece of rope covered with hose is secured on the lower beak to give control with the user's foot.

(*5*) ***A hank of rope.*** Placed in the corner of a turtle's jaw, a hank of rope can be used to gag open a sea turtle's mouth. A 6-ft (1.83-m) lanyard with a minimum of three-sixteenths-inch (4.76-mm) braided soft rope may be folded to create a hank, (or a coiled or looped bundle), of rope. Any size braided soft rope is allowed; however, it must create a hank of approximately 2-4 inches (5.08-10.16 cm) in thickness.

(*6*) ***A set of four PVC splice couplings.*** PVC splice couplings can be positioned inside a turtle's mouth to allow access to the back of the mouth for hook and line removal. They are to be held in place with the needle-nose pliers. To ensure proper fit and access, a required set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), $1^{1}/_{4}$ inches (3.18 cm), $1^{1}/_{2}$ inches (3.81 cm), and 2 inches (5.08 cm).

(*7*) ***A large avian oral speculum.*** A large avian oral speculum provides the ability to hold a turtle's mouth open and to control the head with one hand, while removing a hook with the other hand. The avian oral speculum must be 9 inches (22.86 cm) long and constructed of three-sixteenths-inch (4.76-mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing (five-sixteenths-inch (7.94-mm) outside diameter, three-sixteenths-inch (4.76-mm) inside diameter), friction tape, or similar material to pad the surface.

(M) ***Turtle control devices.*** One turtle control device, as described in paragraph (c)(4)(i)(M)(*1*) or (*2*) of this section, and meeting the minimum design standards, is required onboard and must be used to secure a front flipper of the sea turtle so that the animal can be controlled at the side of the vessel. It is strongly recommended that a pair of turtle control devices be used to secure both front flippers when crew size and conditions allow. Minimum design standards consist of:

(*1*) ***Turtle tether and extended reach handle.*** Approximately 15-20 ft (4.57-6.10 m) of half-inch (1.27 cm) hard lay negative buoyancy line or similar is used to make an approximately 30-inch (76.2-cm) loop to slip over the flipper. The line is fed through a three-quarter-inch (1.91-cm) inside diameter fair lead, eyelet, or eyebolt at the working end of a pole and through a three-quarter-inch (1.91-cm) eyelet or eyebolt in the midsection. A half-inch (1.27-cm) quick release cleat holds the line in place near the end of the pole. A final three-quarter-inch (1.91-cm) eyelet or eyebolt should be positioned approximately 7 inches (17.78 cm) behind the cleat to secure the line, while allowing a safe working distance to avoid injury when releasing the line from the cleat. The line must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or a minimum of 6 ft (1.83 m), whichever is greater. There is no restriction on the type of material used to construct this handle, as long as it is sturdy. The handle must include a tag line to attach the tether to the vessel to prevent the turtle from breaking away with the tether still attached.

(*2*) ***Ninja sticks and extended reach handles.*** Approximately 30-35 ft (9.14-10.67 m) of one-half to five-eighths of an inch (1.27-1.59 cm) of soft lay polypropylene line, nylon line or similar line is fed through two PVC conduit, fiberglass, or similar sturdy poles and knotted using an overhand (recommended) knot at the end of both poles or otherwise secured. There should be approximately 18-24 inches (45.72-60.96 cm) of exposed rope between the poles to be used as a working surface to capture and

secure the flipper. Knot the line at the ends of both poles to prevent line slippage if they are not otherwise secured. The remaining line is used to tether the apparatus to the boat unless an additional tag line is used. Two lengths of sunlight resistant three-quarter-inch (1.91-cm) schedule 40 PVC electrical conduit, fiberglass, aluminum, or similar material should be used to construct the apparatus with a minimum length equal to, or greater than, 150 percent of the height of the vessel's freeboard, or 6 ft (1.83 m), whichever is greater.

(ii) ***Handling and release requirements*** —

(A) ***Sea turtle bycatch mitigation gear and protocols.*** Sea turtle bycatch mitigation gear, as required by paragraphs (c)(4)(i)(A) through (D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought on board. Sea turtle bycatch mitigation gear, as required by paragraphs (c)(4)(i)(E) through (M) of this section, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought on board, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraphs (c)(4)(ii)(B) and (C) of this section, and in accordance with the onboard handling and resuscitation requirements specified in 50 CFR 223.206(d)(1).

(B) ***Boated turtles.*** When practicable, active and unresponsive sea turtles must be brought on board, with a minimum of injury, using a dipnet, collapsible hoop net, or turtle hoist, as required by paragraph (c)(4)(i)(E) of this section. All turtles less than 3 ft (91.44 cm) carapace length must be boated, if sea conditions permit. Turtles must be lifted and carried by holding the front and back of the carapace (shell) or by holding the shell by both sides. A turtle must be cradled while holding the shell and base of the flippers. A turtle must never be lifted or dragged by the flippers when it is brought on board, handled on deck, or released.

(*1*) ***Preparation for gear and hook removal.*** A boated turtle must be placed on a device that effectively cushions and supports a sea turtle while it is on board, as described in paragraph (c)(4)(i)(F) of this section. The turtle must be in an upright orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury.

(*2*) ***External hook removal.*** All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if it has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury.

(*3*) ***Irremovable hook protocol.*** If a hook cannot be removed, as much line as possible must be removed from the turtle using monofilament cutters as required by paragraph (c)(4)(i)(K) of this section, and the hook should be cut as close as possible to the insertion point before releasing the turtle, using bolt cutters as required by paragraph (c)(4)(i)(J) of this section.

(*4*) ***Removable hook protocol.*** If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, a mouth-opener, as required by paragraph (c)(4)(i)(L) of this section, may facilitate opening the turtle's

mouth and a gag may facilitate keeping the mouth open. Short-handled dehookers for internal hooks, long-nose pliers, or needle-nose pliers, as required by paragraphs (c)(4)(i)(G) through (I) of this section, should be used to remove visible hooks from the mouth that have not been swallowed, as appropriate.

(*5*) ***Gear removal.*** As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in this paragraph (c)(4)(ii)(B), and the handling and resuscitation requirements specified in 50 CFR 223.206(d)(1), for additional information.

(C) ***Non-boated turtles.*** If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear required by paragraphs (c)(4)(i)(A) through (D) of this section must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in this paragraph.

(*1*) ***Preparation for hook removal.*** Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured with an approved turtle control device from the list specified in paragraph (c)(4)(i)(M) of this section.

(*2*) ***Hook removal protocol.*** All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using a line cutter as required by paragraph (c)(4)(i)(K) of this section. If the hook can be removed, it must be removed using a long-handled dehooker as required by paragraph (c)(4)(i) of this section.

(*3*) ***Gear removal.*** Without causing further injury, as much gear and line as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in this paragraph (c)(4)(ii)(C), and the handling and resuscitation requirements specified in 50 CFR 223.206(d)(1) for additional information.

(iii) ***Gear modifications.*** The following measures are required of vessel owners and operators to reduce the incidental capture and mortality of sea turtles:

(A) ***Gangion length.*** The length of any gangion on vessels that have pelagic longline gear on board and that have been issued, or are required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of America must be at least 10 percent longer than any floatline length if the total length of any gangion plus the total length of any floatline is less than 100 meters.

(B) ***Bait.*** Vessels fishing outside of the NED, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued or are required to be issued a LAP under this part, are limited, at all times, to possessing on board and/or using only whole finfish and/or squid bait except that if green-stick gear is also on board, artificial bait may be possessed, but may be used only with green-stick gear.

(C) ***Hook size and type.*** Vessels fishing outside of the NED, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued or are required to be issued a LAP under this part are limited, at all times, to possessing on board and/or using only 16/0 or larger non-offset circle hooks or 18/0 or larger circle hooks with an offset not to exceed 10°. These hooks must meet the criteria listed in paragraphs (c)(4)(iii)(C)(1) through (3) of this section. A limited exception for the possession and use of J-hooks when green-stick gear is on board is described in paragraph (c)(4)(iii)(C)(4) of this section.

(*1*) For the 18/0 or larger circle hooks with an offset not to exceed 10°, the outer diameter of an 18/0 circle hook at its widest point must be no smaller than 2.16 inches (55 mm), when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). The distance between the hook point and the shank (*i.e.,* the gap) on an 18/0 circle hook must be no larger than 1.13 inches (28.8 mm). The allowable offset is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer.

(*2*) For the 16/0 or larger non-offset circle hooks, the outer diameter of a 16/0 circle hook at its widest point must be no smaller than 1.74 inches (44.3 mm), when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). The distance between the hook point and the shank (*i.e.,* the gap) on a 16/0 circle hook must be no larger than 1.01 inches (25.8 mm).

(*3*) Between the months of January through June of any given calendar year in the Gulf of America, all circle hooks must also be constructed of corrodible round wire stock that is no larger than 3.65 mm in diameter. For the purposes of this section, the Gulf of America includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(*4*) If green-stick gear, as defined at § 635.2, is also on board, a vessel that has pelagic longline gear on board, may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. J-hooks used with green-stick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook.

(iv) ***Approval of sea turtle bycatch mitigation gear.*** NMFS will file with the Office of the Federal Register for publication an initial list of required sea turtle bycatch mitigation gear that NMFS has approved as meeting the minimum design standards specified under paragraph (c)(4)(i) of this section. Other devices proposed for use, such as line clippers or cutters or dehookers, as specified under paragraphs (c)(4)(i)(A) through (C), (G), and (H) through (K) of this section, must be approved as meeting the minimum design standards before being used. NMFS will

examine new devices, as they become available, to determine if they meet the minimum design standards, and will file with the Office of the Federal Register for publication notification of any new devices that are approved as meeting the standards.

(5) The owner or operator of a vessel permitted or required to be permitted under this part and that has pelagic longline gear on board must undertake the following shark bycatch mitigation measures:

(i) ***Handling and release requirements.*** As safely as practicable, any hooked or entangled sharks that are not being retained must be released using dehookers or line clippers or cutters. If using a line clipper or cutter, the gangion must be cut so that less than three feet (91.4 cm) of line remains attached to the hook.

(ii) ***Fleet communication and relocation protocol.*** The owner or operator of any vessel that catches a dusky shark must, as quickly as practicable, broadcast the location of the dusky shark interaction over the radio to other fishing vessels in the surrounding area. Subsequent fishing sets by that vessel on that trip must be at least 1 nmi from the reported location of the dusky shark catch. Vessel owners and operators are encouraged to move the vessel further away than 1 nmi if conditions (*e.g.,* water temperature, depth, tide, *etc.*) indicate that moving a greater distance is warranted to avoid additional dusky shark interactions.

(6) The owner or operator of a vessel permitted or required to be permitted under this part and that has pelagic longline gear on board must, as safely as practicable, disentangle and release any hooked or entangled mobulid ray using dehookers or line clippers or cutters. If using a line clipper or cutter to release the mobulid ray, to the extent practicable, the gangion must be cut so that less than 3 feet (91.4 cm) of line remains attached to the hook and any line that is wrapped around the animal is removed. Mobulid rays must be released without removing the ray from the water. No mobulid ray may be gaffed.

(d) ***Bottom longlines.***

(1) The owner and operator of a vessel required to be permitted under this part and that has bottom longline gear on board must undertake the following bycatch mitigation measures:

(i) ***Possession and use of required mitigation gear.*** The equipment listed in paragraph (c)(4)(i) of this section must be carried on board and must be used to handle, release, and disentangle hooked or entangled sea turtles, prohibited sharks, or smalltooth sawfish in accordance with requirements specified in paragraph (d)(1)(ii) of this section.

(ii) ***Handling and release requirements.*** Sea turtle bycatch mitigation gear, as required by paragraph (d)(1)(i) of this section, must be used to disengage any hooked or entangled sea turtle as stated in paragraph (c)(4)(ii) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed under heading D, Prohibited Sharks, of table 1 of appendix A to this part, any hooked or entangled species of sharks that exceed the retention limits as specified in § 635.24(a), and any hooked or entangled smalltooth sawfish. In addition, if a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and the fish should be examined for research tags. All smalltooth sawfish must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water or any research tags from the fish.

(iii) ***Fleet communication and relocation protocol.*** The owner or operator of any vessel that catches a dusky shark must, as quickly as practicable, broadcast the location of the dusky shark interaction over the radio to other fishing vessels in the surrounding area. Subsequent fishing

sets by that vessel on that trip must be at least 1 nmi from the reported location of the dusky shark catch. Vessel owners and operators are encouraged to move the vessel further away than 1 nmi if conditions (*e.g.,* water temperature, depth, tide, *etc.*) indicate that moving a greater distance is warranted to avoid additional dusky shark interactions.

(2) If a vessel issued or required to be issued a permit under this part is in one of the areas designated under § 635.35(b) or (e)(2) and has pelagic longline gear on board, the vessel may not, at any time, possess or land any demersal species listed in table 3 of appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in tables 2 and 3 of appendix A to this part.

(3) Vessels that have bottom longline gear on board and that have been issued, or are required to have been issued, a directed shark limited access permit under § 635.4(e) must have only circle hooks as defined at § 635.2 on board.

(4) If a vessel issued or required to be issued a permit under this part has bottom longline gear on board persons aboard that vessel are required to promptly release in a manner that causes the least harm, any shortfin mako shark that is alive at the time of haulback.

(e) ***Rod and reel.***

(1) Persons who have been issued or are required to be issued a permit under this part and who are participating in a "tournament," as defined in § 635.2, that bestows points, prizes, or awards for Atlantic billfish must deploy only non-offset circle hooks when using natural bait or natural bait/artificial lure combinations, and may not deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination.

(2) A person on board a vessel that has been issued or is required to be issued a permit with a shark endorsement under this part and who is participating in an HMS registered tournament that bestows points, prizes, or awards for Atlantic sharks must deploy only non-offset, corrodible circle hooks when fishing for, retaining, possessing, or landing sharks, except when fishing with flies or artificial lures.

(3) A person on board a vessel that has been issued or is required to be issued an HMS Angling permit with a shark endorsement or an HMS Charter/Headboat permit with a shark endorsement must deploy only non-offset, corrodible circle hooks when fishing for, retaining, possessing, or landing sharks, except when fishing with flies or artificial lures.

(f) ***Gillnet.***

(1) Persons fishing with gillnet gear must comply with the provisions implementing the Atlantic Large Whale Take Reduction Plan, the Bottlenose Dolphin Take Reduction Plan, the Harbor Porpoise Take Reduction Plan, and any other relevant Take Reduction Plan set forth in §§ 229.32 through 229.35 of this title. If a listed whale is taken, the vessel operator must cease fishing operations immediately and contact NMFS as required under part 229 of this title.

(2) While fishing with a drift gillnet, a vessel issued or required to be issued a Federal Atlantic commercial shark LAP and/or a Federal commercial smoothhound permit must conduct net checks at least every 2 hours to look for and remove any sea turtles, marine mammals, Atlantic sturgeon, or smalltooth sawfish, and the drift gillnet must remain attached to at least one vessel at one end, except during net checks. Smalltooth sawfish must not be removed from the water while being removed from the net.

(3) While fishing with a sink gillnet, vessels issued or required to be issued a Federal Atlantic commercial shark LAP and/or a Federal commercial smoothhound permit must limit the soak time of the sink gillnet gear to no more than 24 hours, measured from the time the sink gillnet first enters the water to the time it is completely removed from the water. Smalltooth sawfish must not be removed from the water while being removed from the net.

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

(5) ***Fleet communication and relocation protocol.*** The owner or operator of any vessel issued or required to be issued a Federal Atlantic commercial shark limited access permit that catches a dusky shark must, as quickly as practicable, broadcast the location of the dusky shark interaction over the radio to other fishing vessels in the surrounding area. Subsequent fishing sets by that vessel that trip must be at least 1 nmi from the reported location of the dusky shark catch. Vessel owners and operators are encouraged to move the vessel further away than 1 nmi if conditions (*e.g.,* water temperature, depth, tide, etc.) indicate that moving a greater distance is warranted to avoid additional dusky shark interactions.

(6) If a vessel issued or required to be issued a permit under this part has gillnet gear onboard, persons aboard that vessel are required to promptly release in a manner that causes the least harm any shortfin mako shark that is alive at the time of haulback.

(g) ***Buoy gear.*** Vessels utilizing buoy gear may not possess or deploy more than 35 floatation devices, and may not deploy more than 35 individual buoy gears per vessel. Buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline. Floatation devices may be attached to one but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. Buoy gears must be released and retrieved by hand. All deployed buoy gear must have some type of monitoring equipment affixed to it including, but not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is affixed, the vessel deploying the buoy gear must possess on board an operable spotlight capable of illuminating deployed floatation devices. If a gear monitoring device is positively buoyant, and rigged to be attached to a fishing gear, it is included in the 35 floatation device vessel limit and must be marked appropriately.

(h) ***Speargun fishing gear.*** Speargun fishing gear may only be utilized when recreational fishing for Atlantic BAYS tunas and only from vessels issued either a valid HMS Angling or valid HMS Charter/Headboat permit. Persons fishing for Atlantic BAYS tunas using speargun gear, as specified in § 635.19, must be physically in the water when the speargun is fired or discharged, and may freedive, use SCUBA, or other underwater breathing devices. Only free-swimming BAYS tunas, not those restricted by fishing lines or other means, may be taken by speargun fishing gear. “Powerheads,” as defined at § 600.10 of this chapter, or any other explosive devices, may not be used to harvest or fish for BAYS tunas with speargun fishing gear.

(i) ***Green-stick gear.*** Green-stick gear may only be utilized when fishing from vessels issued a valid Atlantic Tunas General, Swordfish General Commercial, HMS Charter/Headboat, or Atlantic Tunas Longline category permit. The gear must be attached to the vessel, actively trolled with the mainline at or above the water's surface, and may not be deployed with more than 10 hooks or gangions attached.

(j) ***Handline.***

(1) A person on board a vessel that has been issued or is required to be issued a permit with a shark endorsement under this part and who is participating in an HMS registered tournament that bestows points, prizes, or awards for Atlantic sharks must deploy only non-offset, corrodible circle hooks when fishing for, retaining, possessing, or landing sharks, except when fishing with flies or artificial lures.

(2) A person on board a vessel that has been issued or is required to be issued an HMS Angling permit with a shark endorsement or a person on board a vessel with an HMS Charter/Headboat permit with a shark endorsement must deploy only non-offset, corrodible circle hooks when fishing for, retaining, possessing, or landing, except when fishing with flies or artificial lures.

[79 FR 71594, Dec. 2, 2014, as amended at 80 FR 60567, Oct. 7, 2015; 80 FR 73145, Nov. 24, 2015; 81 FR 57806, Aug. 24, 2016; 82 FR 16507, Apr. 4, 2017; 83 FR 33154, July 17, 2018; 84 FR 5376, Feb. 21, 2019; 85 FR 18841, Apr. 2, 2020; 85 FR 65479, Oct. 16, 2020; 87 FR 11324, Mar. 1, 2022; 87 FR 39382, July 1, 2022; 87 FR 60004, Oct. 3, 2022; 89 FR 85880, Oct. 29, 2024; 91 FR 10734, Mar. 4, 2026; 91 FR 29378, May 20, 2026]

§ 635.22 Recreational retention limits.

(a) ***General.***

(1) Atlantic HMS caught, possessed, retained, or landed under these recreational limits may not be sold or transferred to any person for a commercial purpose. 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 Ocean including the Gulf of America and Caribbean Sea, to a North Atlantic swordfish taken from or possessed in the Atlantic Ocean, and to bluefin and 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 for 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.

(2) Vessels issued an Atlantic Tunas General category permit under § 635.4(d) that are participating in an HMS registered tournament, vessels issued an HMS Angling category permit under § 635.4(c), or vessels issued an HMS Charter/Headboat permit under § 635.4(b) may not retain, possess, or land scalloped, smooth, or great hammerhead sharks if swordfish, tuna, or billfish are retained or possessed on board, or offloaded from, the vessel. Such vessels also may not retain, possess or land swordfish, tuna, or billfish if scalloped, smooth, or great hammerhead sharks are retained or possessed on board, or offloaded from, the vessel.

(3) Vessels issued an Atlantic Tunas General category permit under § 635.4(d) that are participating in an HMS registered tournament, vessels issued a Swordfish General commercial permit under § 635.4(f) that are participating in an HMS registered tournament, vessels issued a HMS Angling category permit under § 635.4(c), or vessels issued an HMS Charter/Headboat permit under § 635.4(b) are required to release unharmed, to the extent practicable, porbeagle sharks that are alive at the time of haulback if swordfish, tuna, or billfish are retained or possessed on board, or offloaded from, the vessel during that trip.

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

(c) ***Sharks.***

(1) The recreational retention limit for sharks applies to any person who fishes in any manner on a vessel that has been issued or is required to have been issued a permit with a shark endorsement, except as noted in paragraph (c)(7) of this section. 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). 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 is required to use non-offset, corrodible circle hooks as specified in § 635.21(e) and (j) in order to retain sharks per the retention limits specified in this section.

(2) Only one shark from the following list may be retained per vessel per trip, subject to the size limits described in § 635.20(e)(2) and (4): Atlantic blacktip, Gulf of America blacktip, bull, great hammerhead, scalloped hammerhead, smooth hammerhead, lemon, nurse, spinner, tiger, blue, common thresher, porbeagle, Atlantic sharpnose, finetooth, Atlantic blacknose, Gulf of America blacknose, and bonnethead.

(3) In addition to the sharks listed under paragraph (c)(2) of this section, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip, subject to the size limits described in § 635.20(e)(3).

(4) No prohibited sharks, including parts or pieces of prohibited sharks, which are listed in section D of Table 1 of Appendix A to this part, may be retained regardless of where harvested.

(5) Sharks listed in Table 1 of appendix A to this part that are not listed in this section, must be released by persons aboard a vessel that has not been issued a Federal Atlantic commercial shark vessel permit under § 635.4(e).

(6) The smoothhound sharks listed in Section E of Table 1 of Appendix A to this part may be retained and are subject only to the size limits described in § 635.20(e)(5).

(7) For persons on board vessels issued both a commercial shark permit and a permit with a shark endorsement, the recreational retention limit and sale prohibition applies for shortfin mako sharks at all times, even when the commercial pelagic shark quota is open. If such vessels retain a shortfin mako shark under the recreational retention limit, all other sharks retained by such vessels may only be retained under the applicable recreational retention limits and may not be sold. If a commercial Atlantic shark quota is closed under § 635.28(b), the recreational retention limit for sharks and no sale provision in paragraph (a) of this section will be applied to persons aboard a vessel issued a Federal Atlantic commercial shark vessel permit under § 635.4(e), if that vessel has also been issued a permit with a shark endorsement under § 635.4(b) and is engaged in a for-hire fishing trip or is participating in a registered HMS tournament per § 635.4(c)(2).

(8) At the start of each fishing year, the default shortfin mako shark retention limit of zero sharks per vessel per trip will apply. During the fishing year, NMFS may adjust the default shortfin mako shark trip limit per the inseason trip limit adjustment criteria listed in § 635.24(a)(8). Any retention within the trip limit is subject to the size limits described in § 635.20(e)(6).

(9) No person who has been issued or should have been issued a permit under § 635.4 of this part may retain, possess, or land scalloped, smooth, or great hammerhead sharks in or from the Caribbean, as defined at § 622.2 of this chapter.

(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. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard

a vessel issued an Atlantic Tunas vessel permit under § 635.4(d). The recreational retention limit for yellowfin tuna applies to persons, including captain and crew, aboard a vessel that has been issued an Atlantic HMS Charter/Headboat permit under § 635.4(b) only when the vessel is engaged in a for-hire trip.

(e) ***Bluefin tuna.*** Refer to § 635.23 for Atlantic bluefin tuna recreational retention limits.

(f) ***North Atlantic swordfish.*** The recreational retention limits for North Atlantic swordfish apply to persons who fish in any manner, except to persons aboard a vessel that has been issued an HMS Charter/Headboat permit with a commercial sale endorsement under § 635.4(b) and only when on a non for-hire trip; a directed, incidental or handgear swordfish LAP 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 have been issued a commercial sale endorsement and 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 have been issued a commercial sale endorsement and 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.

(g) ***Mobulid rays.*** No mobulid ray, a whole carcass or part thereof, may be retained, landed, or stored by a vessel issued or required to be issued a permit for HMS under § 635.4.

[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.govinfo.gov*.

§ 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 school, large school, or small medium size class BFT may be possessed, retained, landed, or sold on or from a vessel that has an Atlantic Tunas General category permit.

(2) The following default daily retention limits apply to vessels that have an Atlantic Tunas General category permit or HMS Charter/Headboat permit with a commercial sale endorsement fishing under the General category restrictions and retention limits when the General category is open and the day is not an RFD and the retention limit has not been adjusted per paragraph (a)(3) of this section.

(i) January 1 through March 31—one large medium or giant BFT, per vessel per day;

(ii) June 1 through June 30—three large medium or giant BFT per vessel per day; and

(iii) July 1 through December 30—one large medium or giant BFT per vessel per day.

(3) To provide for maximum utilization of the quota for BFT, NMFS may adjust the daily retention limit of large medium or giant BFT over a range from zero (on RFDs) to a maximum of five per vessel per the inseason criteria provided under § 635.27(a)(7).

(4) Regardless of the length of trip, no person may land, possess, or retain more than the daily retention limit in effect for that day. When the applicable retention limit for large medium or giant BFT has been reached, no person aboard such vessels may continue to fish, and the vessel must immediately proceed to port.

(5) From July 1 through November 30 of each year, every Tuesday, Friday, and Saturday is an RFD unless waived per paragraph (a)(7) of this section. On an RFD, no person who has been issued an Atlantic Tunas General category permit or issued an HMS Charter/Headboat permit and fishing commercially may fish for, possess, retain, land, or sell a BFT of any size class; or catch and release or tag and release, as specified under § 635.26(a), a BFT of any size class.

(6) NMFS may remove or establish additional designated RFDs, as appropriate, following public comment via publication in the FEDERAL REGISTER.

(7) Designated RFDs may be waived in the following circumstances.

(i) If the General category fishery is closed under § 635.28(a), any remaining RFDs for the relevant time period(s) are waived so that persons aboard vessels issued an Atlantic Tunas General category permit may conduct tag-and-release fishing for BFT under § 635.26(a).

(ii) If, based on the criteria at § 635.27(a)(7), NMFS determines that RFDs are not necessary, NMFS may waive RFDs by increasing the daily retention limit per paragraph (a)(3) of this section for a specific time period(s) via publication in the FEDERAL REGISTER.

(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 America, 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 America.

(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 America.

(ii) One school, large school, or small medium BFT per vessel per day may be retained, possessed, or landed outside the Gulf of America. 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)(7). 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.

(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 America, the restrictions and retention limits applicable to the Angling category specified in paragraph (b)(1) of this section apply.

(2) When fishing other than in the Gulf of America when the fishery for the General category is closed or on an RFD, the restrictions and retention limits 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 America when the General category fishery is open and no RFD is in effect, a person aboard a vessel that has been issued an HMS Charter/Headboat permit with a commercial sale endorsement may fish under either the General category restrictions and retention limits as specified in paragraphs (a)(1) through (2) and paragraphs (4) through (5) of this section or the Angling category restrictions and retention limits as specified in paragraphs (b)(1) through (3) of this section. The size category of the first BFT retained will determine whether the General category or Angling category restrictions and retention limits apply to the vessel that day.

(4) When fishing other than in the Gulf of America when the General category fishery is open and not on an RFD, a person aboard a vessel that has been issued an HMS Charter/Headboat permit without a commercial sale endorsement permit may only fish for, possess, retain, or land BFT under the Angling category restrictions and retention limits as specified in paragraphs (b)(1) through (3) of this section.

(d) ***Harpoon category.***

(1) Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land no more than 10 large medium and giant BFT, combined, per vessel per day. The incidental catch of large medium BFT is limited as specified in paragraph (d)(2) of this section. NMFS may increase or decrease the overall daily retention limit of large medium and giant BFT, combined, per vessel per day over a range of 5 to a maximum of 10 fish per vessel per day. Such increase or decrease will be based upon the criteria under § 635.27(a)(7). NMFS will adjust the daily retention limit by filing an adjustment with the Office of the Federal Register for publication.

(2) Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land an incidental catch of no more than two large medium BFT per vessel per day, unless adjusted. NMFS may increase or decrease the incidental daily catch limit through an inseason adjustment over a range of two to a maximum of four, large medium BFT per vessel per day, based upon the criteria under § 635.27(a)(7).

(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 an Atlantic Tunas Harpoon category permit.

(e) ***Longline category.*** Persons aboard a vessel permitted in the Atlantic Tunas Longline category are subject to the BFT retention restrictions in paragraphs (e)(1) through (e)(3) 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 and land all dead large medium or giant BFT.

(3) A vessel permitted in the Atlantic Tunas Longline LAP category may retain, possess, land, and sell one large medium or giant BFT incidentally caught with green-stick gear per trip, if the vessel is in compliance with all the IBQ requirements of § 635.15, including the VMS set report requirement (§ 635.69(e)(4)), and IBQ allocation and usage requirements (§ 635.15(b)).

(f) ***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; 82 FR 57550, Dec. 6, 2017; 83 FR 33156, July 17, 2018; 86 FR 43428, Aug. 9, 2021; 87 FR 60004, Oct. 3, 2022; 89 FR 47104, May 31, 2024]

§ 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, the gear operation and deployment restrictions in § 635.21, and the spatial management area restrictions in § 635.35.

(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, possess, or land LCS, including sandbar sharks, in excess of the retention limits in paragraphs (a)(2) through (6) of this section. The amount of LCS that can be landed by such a person will vary as specified on the shark research permit. Only a person who owns or operates a vessel issued a valid shark research permit with a NMFS-approved observer on board may retain, possess, or land sandbar sharks.

(2) The commercial retention limit for LCS other than sandbar sharks for a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a shark research permit but does not have a NMFS-approved observer on board, may range between 0 and 55 LCS other than sandbar sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks. At the start of each fishing year, the default commercial retention limit is 55 LCS other than sandbar sharks per vessel per trip unless NMFS determines otherwise and files with the Office of the Federal Register for publication notification of an inseason adjustment. During the fishing year, NMFS may adjust the retention limit per the inseason trip limit adjustment criteria listed in paragraph (a)(8) of this section.

(3) A person who owns or operates a vessel that has been issued an incidental LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued an incidental LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 3 LCS other than sandbar sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks.

(4) ***Additional retention limits for sharks.***

(i) Except as provided in § 635.22(c)(7), a person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, land, or sell pelagic sharks if the pelagic shark fishery is open per §§ 635.27 and 635.28. Shortfin mako sharks may be retained by persons aboard vessels using pelagic longline, bottom longline, or gillnet gear only if NMFS has adjusted the commercial retention limit above zero pursuant to paragraph (a)(4)(v) of this section and only if the shark is dead at the time of haulback and consistent with the provisions of §§ 635.21(c)(1), (d)(4), and (f)(6) and 635.22(c)(7).

(ii) A person who owns or operates a vessel that has been issued a shark LAP and is operating south of 34°00' N. lat. in the Atlantic region, as defined at § 635.27(b)(1), may retain, possess, land, or sell blacknose and non-blacknose SCS if the respective blacknose and non-blacknose SCS management groups are open per §§ 635.27 and 635.28. Such persons may retain, possess, land, or sell no more than 8 blacknose sharks per vessel per trip. A person who owns or operates a vessel that has been issued a shark LAP and is operating north of 34°00' N. lat. in the Atlantic region, as defined at § 635.27(b)(1), or a person who owns or operates a vessel that has been issued a shark LAP and is operating in the Gulf of America region, as defined at § 635.27(b)(1), may not retain, possess, land, or sell any blacknose sharks, but may retain, possess, land, or sell non-blacknose SCS if the respective non-blacknose SCS management group is open per §§ 635.27 and 635.28.

(iii) Consistent with paragraph (a)(4)(ii) of this section, a person who owns or operates a vessel that has been issued an incidental shark LAP may retain, possess, land, or sell no more than 16 SCS and pelagic sharks, combined, per vessel per trip, if the respective fishery is open per §§ 635.27 and 635.28. Of those 16 SCS and pelagic sharks per vessel per trip, no more than 8 shall be blacknose sharks. Shortfin mako sharks may be retained only under the commercial retention limits by persons using pelagic longline, bottom longline, or gillnet gear only if NMFS has adjusted the commercial retention limit above zero pursuant to paragraph (a)(4)(v) of this section and only if the shark is dead at the time of haulback and consistent with the provisions

at § 635.21(c)(1), (d)(4), and (f)(6). If the vessel has also been issued a permit with a shark endorsement and retains a shortfin mako shark, recreational retention limits apply to all sharks retained and none may be sold, per § 635.22(c)(7).

(iv) A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may retain, possess, land, or sell any blacktip, bull, lemon, nurse, spinner, tiger, Atlantic sharpnose, bonnethead, finetooth, and smoothhound shark, subject to the HMS Commercial Caribbean Small Boat permit shark retention limit. A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may not retain, possess, land, or sell any hammerhead, blacknose, silky, sandbar, blue, thresher, shortfin mako, or prohibited shark, including parts or pieces of these sharks. The shark retention limit for a person who owns, operates, or is aboard a vessel issued an HMS Commercial Caribbean Small Boat permit will range from zero to three sharks per vessel per trip. At the start of each fishing year, the default shark trip limit will apply. During the fishing year, NMFS may adjust the default shark trip limit per the inseason trip limit adjustment criteria listed in paragraph (a)(8) of this section. The default shark retention limit for the HMS Commercial Caribbean Small Boat permit is three sharks per vessel per trip.

(v) At the start of each fishing year, the default shortfin mako shark retention limit of zero sharks will apply. During the fishing year, NMFS may adjust the default shortfin mako shark trip limit per the inseason trip limit adjustment criteria listed in paragraph (a)(8) of this section.

(5) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit may not retain, possess, land, sell, or purchase prohibited sharks, including any parts or pieces of prohibited sharks, which are listed in section D of Table 1 of Appendix A to this part under prohibited sharks.

(6) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit, and who decides to retain sharks, must retain, subject to the trip limits, all dead, legal-sized, non-prohibited sharks that are brought onboard the vessel and cannot replace those sharks with sharks of higher quality or size that are caught later in the trip. Any fish that are to be released cannot be brought onboard the vessel and must be released in the water in a manner that maximizes survival.

(7) A person who owns or operates a vessel that has been issued a Federal commercial smoothhound permit may retain, possess, and land smoothhound sharks if the smoothhound fishery is open in accordance with §§ 635.27 and 635.28. Persons aboard a vessel in a trawl fishery that has been issued a Federal commercial smoothhound permit and are in compliance with all other applicable regulations, may retain, possess, land, or sell incidentally-caught smoothhound sharks, but only up to an amount that does not exceed 25 percent, by weight, of the total catch on board and/or offloaded from the vessel. A vessel is in a trawl fishery when it has no commercial fishing gear other than trawls on board and when smoothhound sharks constitute no more than 25 percent by weight of the total catch on board or offloaded from the vessel.

(8) ***Inseason trip limit adjustment criteria.*** NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustments to trip limits by region or sub-region. Before making any adjustment, NMFS will consider the following criteria and other relevant factors:

(i) The amount of remaining shark quota in the relevant area, region, or sub-region, to date, based on dealer reports;

(ii) The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports;

(iii) Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates and whether they are projected to reach 100 percent before the end of the fishing season;

(iv) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments;

(v) Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge;

(vi) Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota; and/or

(vii) Any shark retention allowance set by ICCAT, the amount of remaining allowance, and the expected or reported catch rates of the relevant shark species, based on dealer and other harvest reports.

(9) Notwithstanding other provisions in this subsection, possession, retention, transshipment, landing, sale, or storage of silky sharks, and scalloped, smooth, and great hammerhead sharks is prohibited on vessels issued a permit under this part that have pelagic longline gear on board or on vessels issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

(10) Notwithstanding other provisions in this paragraph (a), vessels issued a permit under this part that have pelagic longline gear on board or on vessels issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish, or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel, are required to release unharmed, to the extent practicable, porbeagle sharks that are alive at the time of haulback.

(11) No person who has been issued or should have been issued a permit under § 635.4 of this part may retain, possess, or land scalloped, smooth, or great hammerhead sharks in or from the Caribbean, as defined at § 622.2 of this chapter.

(b) ***Swordfish.***

(1) Persons aboard a vessel that has been issued an incidental LAP for swordfish may retain, possess, land, or sell no more than 30 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 HMS squid trawl permit may retain, possess, land, or sell no more than 15 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.

(3) A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may retain, possess, land, or sell North Atlantic swordfish, subject to the HMS Commercial Caribbean Small Boat permit swordfish retention limit. The swordfish retention limit for a person who owns, operates, or is aboard a vessel issued an HMS Commercial Caribbean Small Boat permit will range from 0 to 18 swordfish per vessel per trip. At the start of each fishing

year, the default retention limit will apply. During the fishing year, NMFS may adjust the default retention limit per the inseason regional retention limit adjustment criteria listed in paragraph (b)(5) of this section. The default retention limit for the HMS Commercial Caribbean Small Boat permit is eighteen swordfish per vessel per trip.

(4) A person who owns, operates, or is aboard a vessel that has been issued a Swordfish General Commercial permit or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip) are subject to the regional swordfish retention limits specified at paragraph (b)(4)(iii) of this section, which may be adjusted during the fishing year based upon the inseason regional retention limit adjustment criteria listed in paragraph (b)(5) of this section.

(i) ***Regions.*** Regional retention limits for swordfish apply in four regions. For purposes of this section, these regions are: the Florida Swordfish Management Area as defined in § 635.2; the Northwest Atlantic region (federal waters along the entire Atlantic coast of the United States north of 28°17'10" N. latitude); the Gulf of America region (any water located in the EEZ in the entire Gulf of America west of 82° W. longitude); and the Caribbean region (the U.S. territorial waters within the Caribbean as defined in § 622.2 of this chapter).

(ii) Vessels that have been issued a Swordfish General Commercial permit or an HMS Charter/ Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip), as a condition of these permits, may not possess, retain, or land any more swordfish than is specified for the region in which the vessel is located.

(iii) ***Regional retention limits.*** The swordfish regional retention limits for each region will range from 0 to 18 swordfish per vessel per trip. At the start of each fishing year, the default regional retention limits will apply. During the fishing year, NMFS may adjust the default retention limits per the inseason regional retention limit adjustment criteria listed in paragraph (b)(5) of this section. The default retention limits for the regions set forth under paragraph (b)(4)(i) of this section are:

(A) Zero swordfish per vessel per trip for the Florida Swordfish Management Area;

(B) Eighteen swordfish per vessel per trip for the Caribbean region;

(C) Eighteen swordfish per vessel per trip for the Northwest Atlantic region; and

(D) Eighteen swordfish per vessel per trip for the Gulf of America region.

(5) NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustments to the default swordfish retention limits specified at paragraphs (b)(3) and (b)(4)(iii) of this section. Before making any inseason adjustments to swordfish retention limits, NMFS will consider the following criteria and other relevant factors:

(i) The usefulness of information obtained from biological sampling and monitoring of the North Atlantic swordfish stock;

(ii) The estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year;

(iii) The estimated amounts by which quotas for other categories of the fishery might be exceeded;

(iv) Effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments;

(v) Variations in seasonal distribution, abundance, or migration patterns of swordfish;

(vi) Effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota; and

(vii) Review of dealer reports, landing trends, and the availability of swordfish on the fishing grounds.

(c) BAYS tunas. Persons aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit under § 635.4 may retain, possess, land, or sell no more than 10 BAYS tunas per vessel per trip.

(d) ***Mobulid rays.*** No mobulid ray, a whole carcass or part thereof, may be retained, transshipped, landed, or stored by a vessel issued or required to be issued a permit for HMS under § 635.4.

[64 FR 29135, May 28, 1999]

Editorial Note: For FEDERAL REGISTER citations affecting § 635.24, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 635.25 Fishing areas.

(a) ***General.*** Persons on board fishing vessels subject to the jurisdiction of the United States are authorized to fish for, catch, retain, or land species governed by an international catch sharing agreement implemented under this part only in or from those management areas for which the United States has received an allocation.

(b) ***Exemptions.*** Persons and vessels subject to the jurisdiction of the United States intending to fish for regulated species in fishing areas not otherwise authorized under this part, whether for the purposes of scientific research or commercial fishing under a chartering arrangement, must have a permit from NMFS issued under § 635.32.

(c) ***Atlantic bluefin tuna.*** No person aboard a U.S. fishing vessel shall fish for bluefin tuna in, or possess on board that fishing vessel a bluefin tuna taken from, the Mediterranean Sea.

[67 FR 70026, Nov. 20, 2002]

§ 635.26 Catch and release.

(a) ***BFT.***

(1) Notwithstanding the other provisions of this part, a person aboard a vessel issued a permit under this part, other than a person aboard a vessel permitted in the General category on a designated RFD, may fish with rod and reel or handline gear for BFT under a catch-and-release or tag-and-release program. When fishing under a tag-and-release program, vessel owner/operators should use tags issued or approved by NMFS. If a BFT is tagged, the tag information, including information on any previously applied tag remaining on the fish, must be reported to NMFS. All BFT caught under the catch-and-release or tag-and-release programs must be returned to the sea immediately with a minimum of injury.

(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.

[64 FR 29135, May 28, 1999, as amended at 65 FR 42887, July 12, 2000; 70 FR 10900, Mar. 7, 2005]

§ 635.27 Quotas.

(a) ***BFT.*** Consistent with ICCAT recommendations, the baseline annual U.S. BFT quota will be allocated among the General, Angling, Harpoon, Longline, Trap, and Reserve categories, as described in this section. BFT quotas are specified in whole weight. The baseline annual U.S. BFT quota is 1,509.98 mt, not including an additional annual 62.5-mt pelagic longline bycatch set-aside quota provided in paragraph (a)(3) of this section. This baseline BFT quota is divided among the categories according to the following percentages: General—54 percent (815.4 mt); Angling—22.6 percent (341.3 mt), which includes the school BFT held in reserve as described under paragraph (a)(6)(ii) of this section; Longline—15.9 percent (240.1 mt) (total not including the 62.5-mt pelagic longline bycatch set-aside quota from paragraph (a)(3) of this section); Harpoon—4.5 percent (67.9 mt); Trap—0.1 percent (1.5 mt); and Reserve—2.9 percent (43.8 mt). NMFS may make inseason and annual adjustments to quotas as specified in paragraphs (a)(8) and (9) of this section.

(1) ***General category quota.***

(i) Catches from vessels for which Atlantic Tunas General category permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category quota is 815.4 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

(A) January 1 through March 31—5.3 percent;

(B) June 1 through August 31—50 percent;

(C) September 1 through September 30—26.5 percent;

(D) October 1 through November 30—13 percent; and

(E) December 1 through December 31—5.2 percent.

(ii) NMFS may adjust each period's apportionment based on overharvest or underharvest in the prior period, and may transfer subquota from one time period to another time period, earlier in the year, through inseason action or annual specifications. For example, subquota could be transferred from the December 1 through December 31 time period to the January 1 through

March 31 time period; or from the October 1 through November 30 time period to the September 1 through September 30 time period. This inseason adjustment may occur prior to the start of that year. In other words, although subject to the inseason criteria under paragraph (a)(7) of this section, the adjustment could occur prior to the start of the fishing year. For example, an inseason action transferring the 2016 December 1 through December 31 time period subquota to the 2016 January 1 through March 31 time period subquota could be filed in 2015.

(iii) When the General category fishery has been closed in any quota period specified under paragraph (a)(1)(i) of this section, NMFS will publish a closure action as specified in § 635.28. The subsequent time-period subquota will automatically open in accordance with the dates specified under paragraph (a)(1)(i) of this section.

(2) ***Angling category quota.*** In accordance with the framework procedures as described under § 635.34, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. In accordance with paragraph (a) of this section, the total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 341.3 mt. No more than 3.1 percent of the annual Angling category quota may be large medium or giant BFT. In addition, no more than 10 percent of the baseline annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school BFT. The Angling category quota includes the amount of school BFT held in reserve under paragraph (a)(6)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) After adjustment for the school BFT quota held in reserve (under paragraph (a)(6)(ii) of this section), 52.8 percent of the school BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining school BFT Angling category quota may be caught, retained, possessed or landed north of 39°18' N. lat.

(ii) After adjustment (Angling category quota minus school and large medium/giant subquotas), resulting in a large school/small medium subquota of 173.4 mt, an amount equal to 52.8 percent may be caught, retained, possessed, or landed south of 39°18' N lat. The remaining large school/small medium BFT Angling category quota may be caught, retained, possessed, or landed north of 39°18' N lat.

(iii) One fourth of the large medium and giant BFT Angling category quota may be caught retained, possessed, or landed, in each of the four following geographic areas: North of 42° N. lat.; south of 42° N. lat. and north of 39°18' N. lat.; south of 39°18' N. lat., and outside of the Gulf of America; and in the Gulf of America region. For the purposes of this section, the Gulf of America region includes all waters of the U.S. EEZ west and north of the boundary stipulated at § 600.105(c) of this chapter.

(3) ***Longline category quota.*** Pursuant to paragraph (a) of this section, the total amount of large medium and giant BFT that may be caught, discarded dead, or retained, possessed, or landed by vessels that possess Atlantic Tunas Longline category permits is 240.1 mt. In addition, pelagic longline vessels with ATL IBQ are allocated, as described in § 635.15(d)(2), a pelagic longline bycatch set-aside quota of 62.5 mt. For purposes of the closure authority under § 635.28(a)(1), regional IBQ allocations under § 635.15(c)(3) and the BFT catch cap for fishing in the Gulf of America (§ 635.15(c)(3)(iii)) are considered quotas.

(4) ***Harpoon category quota.*** The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels that possess Atlantic Tunas Harpoon category permits is 67.9 mt. The Harpoon category fishery commences on June 1 of each year and closes on November 15 of each year.

(5) ***Trap.*** The total amount of large medium and giant BFT, that may be caught, retained, possessed, or landed by vessels that possess Atlantic Tunas Trap category permits is 1.5 mt.

(6) ***Reserve category quota.***

(i) The total amount of BFT that is held in reserve is 43.8 mt, which may be augmented by allowable underharvest from the previous year. Consistent with paragraphs (a)(7) through (9) of this section, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota. NMFS may also use any portion of the Reserve category quota for adjustments to, or appeals of, IBQ allocations (see § 635.15(e)(1)(i)) and research using quota or subquotas (see § 635.32).

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent of the total school BFT Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in paragraph (a)(6)(i) of this section. Consistent with paragraph (a)(7) of this section, NMFS may allocate any portion of the school BFT Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

(7) ***Determination criteria.*** NMFS will file with the Office of the Federal Register for publication notification of any inseason or annual adjustments. Before making any adjustment, NMFS will consider the following criteria and other relevant factors:

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

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

(iii) 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.

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

(v) Effects of the adjustment on BFT rebuilding and overfishing.

(vi) Effects of the adjustment on accomplishing the objectives of the fishery management plan.

(vii) Variations in seasonal distribution, abundance, or migration patterns of BFT.

(viii) Effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota.

(ix) Review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

(x) Optimize fishing opportunity.

(xi) Account for dead discards.

(xii) Facilitate quota accounting.

(xiii) Support other fishing monitoring programs through quota allocations and/or generation of revenue.

(xiv) Support research through quota allocations and/or generation of revenue.

(8) ***Inseason adjustments.*** To be effective for all, or part of a fishing year, NMFS may transfer quotas specified under this section, among fishing categories or, as appropriate, subcategories, based on the criteria in paragraph (a)(7) of this section.

(9) ***Annual adjustments.***

(i) Adjustments to category quotas specified under paragraphs (a)(1) through (a)(6) of this section may be made in accordance with the restrictions of this paragraph and ICCAT recommendations. Based on landing, catch statistics, other available information, and in consideration of the criteria in paragraph (a)(7) of this section, if NMFS determines that a BFT quota for any category or, as appropriate, subcategory has been exceeded (overharvest), NMFS may subtract all or a portion of the overharvest from that quota category or subcategory for the following fishing year. If NMFS determines that a BFT quota for any category or, as appropriate, subcategory has not been reached (underharvest), NMFS may add all or a portion of the underharvest to, that quota category or subcategory, and/or the Reserve category for the following fishing year. The underharvest that is carried forward may not exceed 100 percent of each category's baseline allocation specified in paragraph (a) of this section, and the total of the adjusted fishing category quotas and the Reserve category quota must be consistent with ICCAT recommendations. Although quota may be carried over for the Longline category as a whole, IBQ shares and IBQ allocations may not be carried over from one year to the next, as specified under § 635.15(f).

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

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school bluefin tuna quota to ensure compliance with the ICCAT-recommended procedures for addressing overharvest of school bluefin tuna.

(iv) NMFS may subtract the best available estimate of dead discards from the amount of BFT that can be landed in the subsequent fishing year by those categories accounting for the dead discards.

(v) NMFS will file any annual adjustment with the Office of the Federal Register for publication and specify the basis for any quota reduction or increases made pursuant to this paragraph (a)(9).

(b) ***Sharks*** —

(1) ***Commercial quotas.*** The commercial quotas for sharks specified in this section apply to all sharks harvested from the management unit, regardless of where harvested. Sharks caught and landed commercially from state waters, even by fishermen without Federal shark permits, must be counted against the appropriate commercial quota. Any of the base quotas listed below, including regional and/or sub-regional base quotas, may be adjusted per paragraph (b)(2) of this section. Any sharks landed commercially as “unclassified” will be counted against the appropriate quota based on the species composition calculated from data collected by observers on non-research trips and/or

dealer data. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D, Prohibited Sharks, of Table 1 of appendix A to this part, may be retained except as authorized under § 635.32. For the purposes of this section, the boundary between the Gulf of America region and the Atlantic region is defined as a line beginning on the east coast of Florida at the mainland at 25°20.4' N. lat., proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of America region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

(i) ***Commercial quotas that apply only in the Atlantic Region.*** The commercial quotas specified in this paragraph (b)(1)(i) apply only to those species of sharks and management groups within the management unit that were harvested in the Atlantic region, as defined in paragraph (b)(1) of this section.

(A) ***Atlantic aggregated LCS.*** The base annual commercial quota for Atlantic aggregated LCS is 168.9 mt dw.

(B) ***Atlantic hammerhead sharks.*** The regional base annual commercial quota for hammerhead sharks caught in the Atlantic region is 27.1 mt dw (51.7% of the overall base quota established in paragraph (b)(1)(iii) of this section).

(C) ***Atlantic non-blacknose SCS.*** The base annual commercial quota for Atlantic non-blacknose SCS is 264.1 mt dw.

(D) ***Atlantic blacknose sharks.*** The base annual commercial quota for Atlantic blacknose sharks is 17.2 mt dw. Blacknose sharks may only be harvested for commercial purposes in the Atlantic region south of 34°00' N. lat. The harvest of blacknose sharks by persons aboard a vessel that has been issued or should have been issued a shark LAP and that is operating north of 34°00' N. lat. is prohibited.

(E) ***Atlantic smoothhound sharks.*** The base annual commercial quota for Atlantic smoothhound sharks is 1,201.7 mt dw.

(ii) ***Commercial quotas that apply only in the Gulf of America Region.*** The commercial quotas specified in this paragraph (b)(1)(ii) apply only to those species of sharks and management groups within the management unit that were harvested in the Gulf of America region, as defined in paragraph (b)(1) of this section. The Gulf of America region is further split into western and eastern Gulf of America sub-regions by a boundary that is drawn along 88°00' W. long. All sharks harvested within the Gulf of America region in fishing catch areas in waters westward of 88°00' W. long. are considered to be from the western Gulf of America sub-region, and all sharks harvested within the Gulf of America region in fishing catch areas in waters east of 88°00' W. long., including within the Caribbean Sea, are considered to be from the eastern Gulf of America sub-region.

(A) ***Gulf of America aggregated LCS.*** The base annual commercial quota for Gulf of America aggregated LCS is 157.5 mt dw. The eastern Gulf of America sub-region base quota is 85.5 mt dw (54.3% of the Gulf of America region base quota) and the western Gulf of America sub-region base quota is 72.0 mt dw (45.7% of the Gulf of America region base quota).

(B) ***Gulf of America hammerhead sharks.*** The regional base annual commercial quota for hammerhead sharks caught in the Gulf of America region is 25.3 mt dw (48.3% of the overall base quota established in paragraph (b)(1)(iii) of this section). The eastern Gulf of America sub-region base quota is 13.4 mt dw (52.8% of this regional base quota) and the western Gulf of America sub-region base quota is 11.9 mt dw (47.2% of this regional base quota).

(C) ***Gulf of America blacktip sharks.*** The base annual commercial quota for Gulf of America blacktip sharks is 256.6 mt dw. The eastern Gulf of America sub-region base quota is 25.1 mt dw (9.8% of the Gulf of America region base quota) and the western Gulf of America sub-region base quota is 231.5 mt dw (90.2% of the Gulf of America region base quota).

(D) ***Gulf of America non-blacknose SCS.*** The base annual commercial quota for Gulf of America non-blacknose SCS is 112.6 mt dw. This base quota is not split between the eastern and western Gulf of America sub-regions.

(E) ***Gulf of America blacknose sharks.*** The base annual commercial quota for Gulf of America blacknose sharks is 0.0 mt dw. The harvest of blacknose sharks by persons aboard a vessel that has been issued or should have been issued a shark LAP and that is operating in the Gulf of America region is prohibited.

(F) ***Gulf of America smoothhound sharks.*** The base annual commercial quota for Gulf of America smoothhound sharks is 336.4 mt dw.

(iii) ***Commercial quotas that apply in all regions.*** The commercial quotas specified in this section apply to any sharks or management groups within the management unit that were harvested in either the Atlantic or Gulf of America regions.

(A) ***Sandbar sharks.*** The base annual commercial quota for sandbar sharks is 90.7 mt dw. This quota, as adjusted per paragraph (b)(2) of this section, is available only to the owners of commercial shark vessels that have been issued a valid shark research permit and that have a NMFS-approved observer onboard.

(B) ***Research LCS.*** The base annual commercial quota for Research LCS is 50 mt dw. This quota, as adjusted per paragraph (b)(2) of this section, is available only to the owners of commercial shark vessels that have been issued a valid shark research permit and that have a NMFS-approved observer onboard.

(C) ***Hammerhead sharks.*** The overall base annual commercial quota for hammerhead sharks is 52.4 mt dw. This overall base quota is further split for management purposes between the regions defined in paragraphs (b)(1)(i) and (ii) of this section.

(D) ***Pelagic sharks.*** The base annual commercial quotas for pelagic sharks are 273.0 mt dw for blue sharks, 1.7 mt dw for porbeagle sharks, and 488.0 mt dw for pelagic sharks other than blue sharks or porbeagle sharks.

(2) ***Annual and inseason adjustments of commercial quotas.*** NMFS will publish in the FEDERAL REGISTER any annual or inseason adjustments to the base annual commercial overall, regional, or sub-regional quotas. Unless the opening date of a commercial shark fishery is adjusted under paragraph (b)(3) of this section, on January 1 of each year, base quotas, as established in paragraph (b)(1) of this section, will be available, and any adjustments will be published in the FEDERAL REGISTER. Within a

fishing year or at the start of a fishing year, NMFS may transfer quotas between regions and sub-regions of the same species or management group, as appropriate, based on the criteria in paragraph (b)(2)(iii) of this section.

(i) ***Annual overharvest adjustments*** —

(A) ***Adjustments of annual overall and regional base quotas.*** Except as noted in this section, if any of the available commercial base or adjusted overall quotas or regional quotas, as described in this section, is exceeded in any fishing year, NMFS will deduct an amount equivalent to the overharvest(s) from the base overall or regional quota the following fishing year or, depending on the level of overharvest(s), NMFS may deduct from the overall or regional base quota an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of five years. If the blue shark quota is exceeded, NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded prior to the start of the next fishing year or, depending on the level of overharvest(s), deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of five years.

(B) ***Adjustments to sub-regional quotas.*** If a sub-regional quota is exceeded but the regional quota is not, NMFS will not reduce the annual regional base quota the following year and sub-regional quotas will be determined as specified in paragraph (b)(1) of this section. If both a sub-regional quota(s) and the regional quota are exceeded, for each sub-region in which an overharvest occurred, NMFS will deduct an amount equivalent to that sub-region's overharvest from that sub-region's quota the following fishing year or, depending on the level of overharvest, NMFS may deduct from that sub-region's base quota an amount equivalent to the overharvest spread over a number of subsequent fishing years to a maximum of five years.

(C) ***Adjustments to quotas when the species or management group is split into regions or sub-regions for management purposes and not as a result of a stock assessment.*** If a regional quota for a species that is split into regions for management purposes only is exceeded but the overall quota is not, NMFS will not reduce the overall base quota for that species or management group the following year and the regional quota will be determined as specified in paragraph (b)(1) of this section. If both a regional quota(s) and the overall quota is exceeded, for each region in which an overharvest occurred, NMFS will deduct an amount equivalent to that region's overharvest from that region's quota the following fishing year or, depending on the level of overharvest(s), NMFS may deduct from that region's base quota an amount equivalent to the overharvest spread over a number of subsequent fishing years to a maximum of five years. If a sub-regional quota of a species or management group that is split into regions for management purposes only is exceeded, NMFS will follow the procedures specified in paragraph (b)(2)(i)(B) of this section.

(ii) ***Annual underharvest adjustments.*** Except as noted in this paragraph (b)(2)(ii), if any of the annual base or adjusted quotas, including regional quotas, as described in this section is not harvested, NMFS may adjust the annual base quota, including regional quotas, depending on the status of the stock or management group. If a species or a specific species within a management group is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may not adjust the following fishing year's base quota, including

regional quota, for any underharvest, and the following fishing year's quota will be equal to the base annual quota. If the species or all species in a management group is not declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may increase the following year's base annual quota, including regional quota, by an equivalent amount of the underharvest up to 50 percent above the base annual quota. Except as noted in paragraph (b)(2)(iii) of this section, underharvests are not transferable between regions, species, and/or management groups.

(iii) ***Determination criteria for inseason and annual quota transfers between regions and sub-regions.*** Inseason or annual quota transfers of quotas between regions or sub-regions may be conducted only for species or management groups where the species are the same between regions or sub-regions and the quota is split between regions or sub-regions for management purposes and not as a result of a stock assessment. Before making any inseason or annual quota transfer between regions or sub-regions, NMFS will consider the following criteria and other relevant factors:

(A) The usefulness of information obtained from catches in the particular management group for biological sampling and monitoring of the status of the respective shark species and/or management group;

(B) The catches of the particular species and/or management group quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made;

(C) The projected ability of the vessels fishing under the particular species and/or management group quota to harvest the additional amount of corresponding quota before the end of the fishing year;

(D) Effects of the adjustment on the status of all shark species;

(E) Effects of the adjustment on accomplishing the objectives of the fishery management plan;

(F) Variations in seasonal distribution, abundance, or migration patterns of the appropriate shark species and/or management group;

(G) Effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the quota; and/or

(H) Review of dealer reports, daily landing trends, and the availability of the respective shark species and/or management group on the fishing grounds.

(3) ***Opening commercial fishing season.*** Unless adjusted under this paragraph (b)(3), the commercial shark fisheries will open on January 1 of each year under base quotas, as established in paragraph (b)(1) of this section. If NMFS determines a commercial shark fishery or a part of a commercial shark fishery should open on a date other than January 1, NMFS will file with the Office of the Federal Register for publication notification of the opening date(s) of the relevant overall, regional, or sub-regional shark fishery(ies) for the relevant species or management group(s). Before making any decisions, NMFS would consider the following criteria and other relevant factors in establishing the opening date(s):

(i) The available annual quotas for the current fishing season for the different species/management groups based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons;

(ii) Estimated season length based on available quota(s) and average weekly catch rates of different species and/or management group from the previous years;

(iii) Length of the season for the different species and/or management group in the previous years and whether fishermen were able to participate in the fishery in those years;

(iv) Variations in seasonal distribution, abundance, or migratory patterns of the different species/management groups based on scientific and fishery information;

(v) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas;

(vi) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or,

(vii) Effects of a delayed opening with regard to fishing opportunities in other fisheries.

(4) ***Public display and non-specific research quotas.*** All sharks collected under the authority of a display permit or EFP, subject to restrictions at § 635.32, will be counted against the following:

(i) The base annual quota for persons who collect LCS other than sandbar, SCS, pelagic sharks other than shortfin mako, blue sharks, porbeagle sharks, or prohibited species under a display permit or EFP is 57.2 mt ww (41.2 mt dw).

(ii) The base annual quota for persons who collect sandbar sharks under a display permit is 1.4 mt ww (1.0 mt dw) and under an EFP is 1.4 mt ww (1.0 mt dw).

(iii) No persons may collect dusky sharks under a display permit. Collection of dusky sharks for research under EFPs and/or SRPs may be considered on a case-by-case basis and any associated mortality would be deducted from the shark research and display quota.

(iv) The base annual quota for persons who collect smoothhound sharks under a display permit or EFP is 6 mt ww (4.3 mt dw).

(v) No persons may collect shortfin mako sharks under a display permit. Collection of shortfin mako sharks for research under EFPs and/or SRPs may be considered on a case-by-case basis and any associated mortality would be deducted from the shark research and display quota if shortfin mako shark retention is otherwise prohibited or counted against U.S. allowable retention levels established at ICCAT when retention is allowed.

(c) ***Swordfish*** —(1) (1) *Categories.* Consistent with ICCAT recommendations, the ICCAT North Atlantic swordfish management procedure, and domestic management objectives, 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 equal semi-annual directed fishery quotas, an annual incidental catch quota for fishermen targeting other species or taking swordfish recreationally, and a reserve category.

(i) *North Atlantic swordfish.* (A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed swordfish LAP, a swordfish handgear LAP, an HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial open access permit, or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip) has been issued or is required to have been issued is counted against the directed fishery quota. The total

baseline annual fishery quota, before any adjustments, is 2,937.6 mt dw for each fishing year. Consistent with applicable ICCAT recommendations, a portion of the total baseline annual fishery quota may be used for transfers to another ICCAT contracting party. The annual directed category quota is calculated by adjusting for over- or under harvests, dead discards, any applicable transfers, the incidental category quota, the reserve quota and other adjustments as needed, and is subdivided into two equal semiannual periods: One for January 1 through June 30, and the other for July 1 through December 31.

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental swordfish LAP, an incidental HMS Squid Trawl permit, an HMS Angling permit, or an HMS Charter/Headboat permit (and only when on a for-hire trip) has been issued, or a swordfish from the North Atlantic stock caught after the effective date of a closure of the directed fishery from a vessel for which a swordfish directed LAP, a swordfish handgear LAP, an HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial open access permit, or an HMS Charter/Headboat permit with a commercial sale endorsement (when on a non for-hire trip) has been issued, is counted against the incidental category quota. The annual incidental category quota is 300 mt dw for each fishing year.

(C) All swordfish discarded dead from U.S. fishing vessels, regardless of whether such vessels are permitted under this part, shall be counted against the annual directed fishing quota.

(D) Fifty (50) mt of the annual fishery quota of North Atlantic swordfish may be held in reserve for inseason adjustments to fishing categories, to compensate for projected or actual overharvest in any category, for fishery research, or for other purposes consistent with management objectives.

(E) In the event of an overharvest of South Atlantic swordfish, up to 150.4 mt dw of swordfish landed between 5 degrees North and 5 degrees South latitude may be applied against the North Atlantic swordfish quota. Otherwise, swordfish landed from this area shall be applied against the South Atlantic swordfish quota. For example, if the South Atlantic swordfish quota were 100 mt dw, and 50 mt dw were landed between 5 degrees North and 5 degrees South latitude, and 75 mt dw were caught south of 5 degrees South latitude, then 25 mt dw of the swordfish caught between 5 degrees North and 5 degrees South latitude would be applied against the North Atlantic swordfish quota. If only 25 mt dw of swordfish were caught between 5 degrees North and 5 degrees South latitude, and 150 mt dw of swordfish were caught south of 5 degrees South latitude, 25 mt dw would be applied against the North Atlantic swordfish quota. The remaining 50 mt dw overharvest would be counted against the following year's South Atlantic swordfish quota.

(ii) *South Atlantic Swordfish.* The annual directed fishery quota for the South Atlantic swordfish stock is 75.2 mt dw. After December 31, 2007, the annual quota is subdivided into two equal semi-annual quotas of 37.6 mt dw: one for January 1 through June 30, and the other for July 1 through December 31. The entire quota for the South Atlantic swordfish stock is reserved for vessels with pelagic longline gear onboard and that have been issued a directed fishery permit for swordfish. No person may retain swordfish caught incidental to other fishing activities or with other fishing gear in the Atlantic Ocean south of 5 degrees North latitude.

(2) ***Inseason adjustments.***

(i) NMFS may adjust the July 1 through December 31 semiannual directed fishery quota or, as applicable, the reserve category, to reflect actual directed fishery and incidental fishing category catches during the January 1 through June 30 semiannual period.

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

(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 or the reserve as necessary to maintain landings and discards within the required annual limits.

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

(3) ***Annual adjustments.*** NMFS will file with the Office of the Federal Register for publication notice of the following adjustments to or apportionments of the annual quota:

(i) Adjustments to the quota necessary to meet the objectives of the Consolidated Highly Migratory Species Fishery Management Plan consistent with the quota provisions of paragraph (c)(1) of this section.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such adjustments may be apportioned to fishing categories and/or to the reserve. Carryover adjustments for the North Atlantic shall be limited to 15 percent of the annual baseline quota allocation. Carryover adjustments for the South Atlantic shall be limited to 100 mt ww (75.2 mt dw). Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons.

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section will be subtracted from the landings quota in the following fishing year or from the reserve category.

(d) ***Atlantic blue and white marlin.***

(1) Unless adjusted under paragraph (d)(2) of this section or by an ICCAT recommendation, the annual landings limit is 250 Atlantic blue and white marlin, combined. Annual landings of roundscale spearfish are also included to the blue and white marlin annual landings limit. Should the U.S. recreational Atlantic marlin landing limit be adjusted by an ICCAT recommendation, NMFS will file a notice identifying the new landing limit with the Office of the Federal Register for publication prior to the start of the next fishing year or as early as possible.

(2) Consistent with ICCAT recommendations and domestic management objectives, and based on landings statistics and other information as appropriate, if NMFS determines that aggregate landings of Atlantic blue marlin, white marlin, and roundscale spearfish exceeded the annual landings limit for a given fishing year, as established in paragraph (d)(1) of this section, NMFS will subtract any overharvest from the landings limit for the following fishing year. Additionally, if NMFS determines that aggregate landings of Atlantic blue marlin, white marlin, and roundscale spearfish were below the annual landings limit for a given fishing year, as established in paragraph (d)(1) of

this section, NMFS 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.

(e) ***Northern albacore tuna*** —

(1) ***Annual quota.*** Consistent with ICCAT recommendations, the ICCAT northern albacore management procedure, and domestic management objectives, the baseline annual quota, before any adjustments, is 889.4 mt. The total quota, after any adjustments made per paragraph (e)(2) of this section, is the fishing year's total amount of northern albacore tuna that may be landed by persons and vessels subject to U.S. jurisdiction.

(2) ***Annual adjustments.*** Consistent with ICCAT recommendations and domestic management objectives, and based on landings statistics and other information as appropriate, if for a particular year the total landings are above or below the annual quota for that year, the difference between the annual quota and the landings will be subtracted from, or added to, the following year's quota, respectively, or subtracted or added through a delayed, or multi-year adjustment. Carryover adjustments shall be limited to 25 percent of the baseline quota allocation for that year. NMFS will file with the Office of the Federal Register for publication any adjustment or apportionment made under this paragraph (e)(2).

[64 FR 29135, May 28, 1999, as amended at 89 FR 77033, Sept. 20, 2024]

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.govinfo.gov*.

§ 635.28 Fishery closures.

(a) ***Bluefin tuna.***

(1) When a BFT quota specified in § 635.27(a) has been reached, or projected to be reached, NMFS will file a closure action 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) 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)(7).

(3) When the Atlantic Tunas Longline category quota is reached, projected to be reached, or exceeded, or when there is high uncertainty regarding the estimated or documented levels of bluefin tuna catch, NMFS will file a closure action 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 closure action, vessels that have been issued or are required to have a LAP under § 635.4 and that have pelagic longline gear onboard are prohibited from leaving port, regardless of the amount of bluefin tuna quota allocation remaining to each vessel or the amount of fishery quota remaining for other species. In addition to providing notice in the FEDERAL REGISTER, NMFS will also notify vessels of any closures and their timing via VMS and may use other electronic methods, such as email. Vessels would be required to return to port prior to the closure date/time. When considering whether to close or reopen the Longline category quota, NMFS may consider the following factors:

(i) Total estimated bluefin tuna catch (landings and dead discards) in relation to the quota;

(ii) The estimated amount by which the bluefin tuna quota might be exceeded;

(iii) The usefulness of data relevant to monitoring the quota;

(iv) The uncertainty in the documented or estimated dead discards or landings of bluefin tuna;

(v) The amount of bluefin tuna landings or dead discards within a short time;

(vi) The effects of continued fishing on bluefin tuna rebuilding and overfishing;

(vii) The provision of reasonable opportunity for pelagic longline vessels to pursue the target species;

(viii) The variations in seasonal distribution, abundance or migration patterns of bluefin tuna; and

(viii) Other relevant factors.

(b) ***Sharks.***

(1) A shark fishery that meets any of the following circumstances is closed and subject to the requirements of paragraph (b)(6) of this section:

(i) No overall, regional, and/or sub-regional quota, as applicable, is specified at § 635.27(b)(1);

(ii) The overall, regional, and/or sub-regional quota, as applicable, specified at § 635.27(b)(1) is zero;

(iii) After accounting for overharvests as specified at § 635.27(b)(2), the overall, regional, and/or sub-regional quota, as applicable, is determined to be zero or close to zero and NMFS has closed the fishery by publication of a notice in the FEDERAL REGISTER;

(iv) The species is a prohibited species as listed under heading D, Prohibited Species of Table 1 of appendix A to this part; or

(v) Landings of the species and/or management group meet the requirements specified in § 635.28(b)(2) through (5) and NMFS has closed the fishery by publication of a notice in the FEDERAL REGISTER.

(2) ***Non-linked quotas.*** If the overall, regional, and/or sub-regional quota of a species or management group is not linked to another species or management group and that overall, regional, and/or sub-regional quota is available, then that overall, regional, and/or sub-regional commercial fishery for the shark species or management group will open as specified in § 635.27(b). When NMFS calculates that the overall, regional, and/or sub-regional landings for a shark species and/or management group, as specified in § 635.27(b)(1), has reached or is projected to reach 80 percent of the applicable available overall, regional, and/or sub-regional quota as specified in § 635.27(b)(1) and is projected to reach 100 percent of the relevant quota by the end of the fishing season, NMFS will file for publication with the Office of the Federal Register a closure action, as applicable, for that shark species and/or shark management group that will be effective no fewer than 4 days from date of filing. From the effective date and time of the closure until the start of the following fishing year or until NMFS announces, via publication in the FEDERAL REGISTER, that additional overall, regional, and/or sub-regional quota is available and the season is reopened, the overall, regional, and/or sub-regional fisheries for that shark species or management group are closed.

(3) ***Linked quotas.*** As specified in paragraph (b)(4) of this section, the overall, regional, and/or sub-regional quotas of some shark species and/or management groups are linked to the overall, regional, and/or sub-regional quotas of other shark species and/or management groups. For each pair of linked species and/or management groups, if the overall, regional, and/or sub-regional quota specified in § 635.27(b)(1) is available for both of the linked species and/or management groups, then the overall, regional, and/or sub-regional commercial fishery for both of the linked species and/or management groups will open as specified in § 635.27(b)(1). When NMFS calculates that the overall, regional, and/or sub-regional landings for any species and/or management group of a linked group have reached or are projected to reach 80 percent of the applicable available overall, regional, and/or sub-regional quota as specified in § 635.27(b)(1) and are projected to reach 100 percent of the relevant quota before the end of the fishing season, NMFS will file for publication with the Office of the Federal Register a closure action for all of the species and/or management groups in that linked group that will be effective no fewer than 4 days from date of filing. From the effective date and time of the closure until the start of the following fishing year or until NMFS announces, via publication in the FEDERAL REGISTER, that additional overall, regional, and/or sub-regional quota is available and the season is reopened, the overall, regional, and/or sub-regional fishery for all species and/or management groups in that linked group is closed.

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

(i) Atlantic hammerhead sharks and Atlantic aggregated LCS.

(ii) Eastern Gulf of America hammerhead sharks and eastern Gulf of America aggregated LCS.

(iii) Western Gulf of America hammerhead sharks and western Gulf of America aggregated LCS.

(iv) Atlantic blacknose sharks and Atlantic non-blacknose SCS south of 34°00' N. lat.

(5) NMFS may close the regional or sub-regional Gulf of America blacktip shark management group(s) before landings reach, or are expected to reach, 80 percent of the quota, after considering the following criteria and other relevant factors:

(i) Estimated Gulf of America blacktip shark season length based on available sub-regional quotas and average sub-regional weekly catch rates during the current fishing year and from previous years;

(ii) Variations in regional and/or sub-regional 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 quotas in the relevant sub-regions, to date, based on dealer or other reports; and,

(v) The regional and/or sub-regional catch rates of the relevant shark species or management group(s), to date, based on dealer or other reports.

(6) When the overall, regional, and/or sub-regional 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, retain, land, or sell a shark of that species and/or management group that was caught within the closed region or sub-region, 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, as applicable, 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 that was caught within the closed region or sub-region from a vessel issued a Federal Atlantic commercial shark permit, except that a permitted shark dealer or processor may possess sharks that were caught in the closed region or sub-region 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 species or 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 shark was 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 an overall, a regional, or a sub-regional 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 or Research LCS fishery, as applicable, is open and the shark was 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 the shark was collected.

(7) If the Atlantic Tunas Longline category quota is closed as specified in paragraph (a)(3) of this section, vessels that have pelagic longline gear on board cannot possess, retain, land, or sell sharks.

(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 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 Atlantic 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.

(3) ***Bluefin tuna Longline category closure.*** If the Atlantic Tunas Longline category quota is closed as specified in paragraph (a)(3) of this section, vessels that have pelagic longline gear on board cannot possess or land any North Atlantic swordfish or bluefin tuna.

(d) ***Northern albacore tuna.*** When the annual fishery quota specified in § 635.27(e) is reached, or is projected to be reached, NMFS will file a closure action with the Office of the Federal Register for publication. When the fishery for Northern albacore tuna is closed, Northern albacore tuna may not be retained. If the Atlantic Tunas Longline category quota is closed as specified in paragraph (a)(3) of this section, vessels that have pelagic longline gear on board cannot possess or land any Northern albacore tuna.

[64 FR 29135, May 28, 1999]

Editorial Note: For FEDERAL REGISTER citations affecting § 635.28, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 635.29 Transfer at sea and transshipment.

(a) A person who owns or operates a vessel issued a permit, or required to be issued a permit, under § 635.4 may not transfer any tuna or tuna-like species, or other HMS, at sea or in port, regardless of where the fish was harvested, except as provided in paragraph (c) of this section.

(b) For the purposes of this part, "transfer" means the act of "transshipping" as defined at 50 CFR 300.301. Notwithstanding the definition of "harvest" at § 600.10, for the purposes of this part, transfer also includes, but is not limited to, moving or attempting to move a tuna that is on fishing gear or other gear in the water from one vessel to another vessel.

[79 FR 72559, Dec. 8, 2014, as amended at 80 FR 52204, Aug. 28, 2015; 87 FR 60006, Oct. 3, 2022]

§ 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. The upper and lower lobes of the tuna tail may be removed for storage purposes as long as the fork of the tail remains intact.

(b) ***Billfish.*** Any person that possesses a blue marlin, white marlin, or roundscale spearfish taken from its management unit or a sailfish taken shoreward of the outer boundary of the EEZ or lands a blue marlin, white marlin, or roundscale spearfish 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.

(c) ***Shark.***

(1) In addition to the regulations issued at part 600, subpart N, of this chapter, a person who owns or operates a vessel issued a Federal Atlantic commercial shark permit under § 635.4 must maintain all the shark fins including the tail naturally attached to the shark carcass until the shark has been offloaded from the vessel, except for under the conditions specified in paragraph (c)(5) of this

section. While sharks are on board and when sharks are being offloaded, persons issued a Federal Atlantic commercial shark permit under § 635.4 are subject to the regulations at part 600, subpart N, of this chapter.

(2) A person who owns or operates a vessel that has a valid Federal Atlantic commercial shark permit may remove the head and viscera of the shark while on board the vessel. At any time when on the vessel, sharks must not have the backbone removed and must not be halved, quartered, filleted, or otherwise reduced. All fins, including the tail, must remain naturally attached to the shark through offloading, except under the conditions specified in paragraph (c)(5) of this section. While on the vessel, fins may be sliced so that the fin can be folded along the carcass for storage purposes as long as the fin remains naturally attached to the carcass via at least a small portion of uncut skin. The fins and tail may only be removed from the carcass once the shark has been landed and offloaded, except under the conditions specified in paragraph (c)(5) of this section.

(3) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit and who lands sharks in an Atlantic coastal port, including ports in the Gulf of America and Caribbean Sea, must have all fins and carcasses weighed and recorded on the weighout slips specified in § 635.5(a)(2) and in accordance with part 600, subpart N, of this chapter. Persons may not possess any shark fins not naturally attached to a shark carcass on board a fishing vessel at any time, except under the conditions specified in paragraph (c)(5) of this section. Once landed and offloaded, sharks that have been halved, quartered, filleted, cut up, or reduced in any manner may not be brought back on board a vessel that has been or should have been issued a Federal Atlantic commercial shark permit.

(4) Persons aboard a vessel that has been issued or is required to be issued a permit with a shark endorsement must maintain a shark intact through landing and offloading with the head, tail, and all fins naturally attached. The shark may be bled and the viscera may be removed.

(5) A person who owns or operates a vessel that has been issued a Federal commercial smoothhound permit may remove the fins and tail of a smooth dogfish shark prior to offloading if the conditions in paragraphs (c)(5)(i) through (iv) of this section have been met. If the conditions in paragraphs (c)(5)(i) through (iv) of this section have not been met, all fins, including the tail, must remain naturally attached to the smooth dogfish through offloading from the vessel:

(i) The smooth dogfish was caught within waters of the United States located shoreward of a line drawn in such a manner that each point on it is 50 nautical miles from the baseline of an Atlantic State from which the territorial sea is measured, from Maine south through Florida to the Atlantic and Gulf of America shark regional boundary defined in § 635.27(b)(1).

(ii) The vessel has been issued both a Federal commercial smoothhound permit and a valid State commercial fishing permit that allows for fishing for smooth dogfish.

(iii) Smooth dogfish make up at least 25 percent of the catch on board at the time of landing.

(iv) Total weight of the smooth dogfish fins landed or found on board a vessel cannot exceed 12 percent of the total dressed weight of smooth dogfish carcasses on board or landed from the fishing vessel.

(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 off-loading.

[64 FR 29135, May 28, 1999, as amended at 67 FR 6201, Feb. 11, 2002; 69 FR 53362, Sept. 1, 2004; 71 FR 58173, Oct. 2, 2006; 73 FR 40711, July 15, 2008; 75 FR 30528, June 1, 2010; 75 FR 57702, Sept. 22, 2010; 76 FR 39032, July 5, 2011; 80 FR 73145, Nov. 24, 2015; 84 FR 5377, Feb. 21, 2019]

§ 635.31 Restrictions on sale and purchase.

(a) ***Atlantic tunas.***

(1) A person who owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit with a commercial sale endorsement; a valid Atlantic Tunas General, Harpoon, Longline, or Trap category permit; or a valid HMS Commercial Caribbean Small Boat permit issued under this part and the appropriate category has not been closed as specified at § 635.28(a). No person may sell a BFT smaller than the large medium size class. No large medium or giant BFT may be sold if caught by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of America at any time or outside the Gulf of America when the General category fishery has been closed (see § 635.23(c)). A person may sell Atlantic BFT only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear. A person issued an Atlantic Tunas General category permit or HMS Charter/Headboat permit with a commercial sale endorsement must land, sell, or transfer a BFT to a dealer that has a valid permit for purchasing Atlantic tunas no later than 0000 local time the day prior to an RFD, as specified at § 635.23(a). If that person is unable to sell or otherwise transfer the BFT to a dealer who has a dealer permit for Atlantic tunas no later than 0000 local time, the person must follow the restrictions applicable to landed but not sold BFT specified at § 635.5(a)(3). In no case shall such person possess a BFT on an RFD.

(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 and the appropriate category has not been closed, as specified at § 635.28(a).

(i) Dealers may purchase Atlantic bluefin tuna only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category. Vessel owners and operators of vessels that have been issued an Atlantic Tunas Longline category permit can sell bluefin tuna and dealers can purchase bluefin tuna from such vessels only if the Longline category is open, per § 635.28(a) and if:

(A) The vessel has met the minimum quota allocation and accounting requirements at § 635.15(b)(4) and (5) for vessels departing on a trip with pelagic longline gear aboard, and

(B) The dealer and vessel have met the IBQ program participant requirements at § 635.15(a)(2).

(ii) Dealers may first receive BAYS tunas only if they have submitted reports to NMFS according to reporting requirements at § 635.5(b)(1)(ii), and only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category. Vessel owners and operators of vessels that have been issued an Atlantic Tunas Longline category permit can sell BAYS tunas and dealers can purchase BAYS tunas from such vessels only if the Longline category is open per § 635.28(a). Individuals issued a valid HMS Commercial Caribbean Small Boat permit, and operating in the U.S. Caribbean as defined at § 622.2 of this

chapter, may sell their trip limits of BAYS tunas, codified at § 635.24(c), to dealers and non-dealers. Persons may only sell albacore tuna and dealers may only first receive albacore tuna if the northern albacore tuna fishery has not been closed as specified at § 635.28 (d).

(iii) Dealers may not first receive a BFT from a vessel that has a valid Atlantic Tunas General permit or HMS Charter/Headboat permit with a commercial sale endorsement after 0000 local time on an RFD, as specified at § 635.23(a).

(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 bluefin tuna statistical document, as specified in § 300.185(a) of this title.

(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 bluefin tuna statistical document, as specified in § 300.185(a) of this title.

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

(c) ***Shark.***

(1) Persons that own or operate a vessel that possesses, retains, or lands a shark from the management unit may sell such shark only if the vessel has a valid commercial shark permit issued under this part. Persons may possess, retain, land, and sell a shark only to a federally-permitted dealer and only when the fishery for that species, management group, region, and/or sub-region has not been closed, as specified in § 635.28(b). Persons that own or operate a vessel that has pelagic longline gear onboard can possess, retain, land, and sell a shark only if the Atlantic Tunas Longline category has not been closed, as specified in § 635.28(a).

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

(3) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart N, of this chapter and in § 635.30(c).

(4) Only dealers who have a valid Federal Atlantic shark dealer permit and who have submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii) may first receive a shark from an owner or operator of a vessel that has, or is required to have, a valid Federal Atlantic commercial shark permit issued under this part. Dealers may purchase a shark only from an owner or operator of a vessel who has a valid commercial shark permit issued under this part, except that dealers may purchase a shark from an owner or operator of a vessel who does not have a Federal Atlantic commercial shark permit if that vessel fishes exclusively in state waters and does not possess a HMS Angling permit or HMS Charter/Headboat permit pursuant to § 635.4. Atlantic shark dealers may purchase a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer onboard the vessel for the trip in which the sandbar shark was collected. Atlantic shark dealers may purchase a shark from an owner or operator of a fishing vessel who has a valid commercial shark permit issued under this part only when the fishery for that species, management group, region, and/or sub-region has not been closed,

as specified in § 635.28(b). Atlantic shark dealers may first receive a shark from a vessel that has pelagic longline gear onboard only if the Atlantic Tunas Longline category has not been closed, as specified in § 635.28(a).

(5) An Atlantic shark dealer issued a permit under this part may first receive shark fins from an owner or operator of a fishing vessel only if the shark fins were harvested in accordance with the regulations found at part 600, subpart N, of this chapter and in § 635.30(c).

(6) A dealer issued a permit under this part may not first receive silky sharks, oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from an owner or operator of a fishing vessel with pelagic longline gear on board, or from the owner of a fishing vessel issued both a HMS Charter/Headboat permit with a commercial sale endorsement and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

(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 offload such swordfish only to a dealer who has a valid permit for swordfish issued under this part; except that individuals issued a valid HMS Commercial Caribbean Small Boat permit, and operating in the U.S. Caribbean as defined at § 622.2 of this chapter, may sell swordfish, as specified at § 635.24(b)(3), to non-dealers. Persons that own or operate a vessel that has pelagic longline gear onboard can only possess and sell a swordfish if the Atlantic Tunas Longline category has not been closed, as specified in § 635.28(a)(4).

(2) Atlantic swordfish dealers may first receive 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, and only if the dealer has submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii). Atlantic swordfish dealers may first receive a swordfish from a vessel that has pelagic longline gear onboard only if the Atlantic Tunas Longline category has not been closed, as specified in § 635.28(a)(3).

(e) ***Mobulid rays.*** Persons may not sell or purchase any mobulid ray, a whole carcass or part thereof, that was caught by a vessel issued or required to be issued a permit for HMS under § 635.4.

[64 FR 29135, May 28, 1999]

Editorial Note: For FEDERAL REGISTER citations affecting § 635.31, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 635.32 Specifically authorized activities.

(a) ***General.***

(1) Consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, NMFS may authorize activities otherwise prohibited by the regulations contained in this part for the conduct of scientific research, the acquisition of information and data, the enhancement of safety at sea, the purpose of collecting animals for public education or display, the investigation of bycatch, economic discard and regulatory discard, or for chartering arrangements.

(2) 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 educational activities; programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks; or chartering arrangements. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, EFP, scientific research permit (SRP), display permit, chartering permit, or shark research permit issued in response to requests for authorization under this section.

(3) 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.

(4) Inspection requirements specified in § 635.5(e) apply to the owner or operator of a fishing vessel that has been issued an exempted fishing permit, scientific research permit, display permit, or chartering permit.

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

(2) [Reserved]

(d) ***Display permits.***

(1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, NMFS may issue display permits.

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

(3) To be eligible for a display permit, a person must provide all information concerning his or her identification, numbers by species of HMS 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) Collectors of HMS for public display must notify the local NMFS Office for Law Enforcement at least 24 hours, excluding weekends and holidays, prior to departing on a collection trip, regardless of whether the fishing activity will occur in or outside the EEZ, as to collection plans and location and the number of animals to be collected. In the event that a NMFS agent is not available, a message may be left.

(5) All live HMS collected for public display are required to have either a conventional dart tag or a microchip Passive Integrated Transponder (PIT) tag applied by the collector at the time of the collection. Both types of tags will be supplied by NMFS. Conventional dart tags will be issued unless PIT tags are specifically requested in the permit application and their use approved by NMFS. Terms and conditions of the permit will address requirements associated with the use of the tags supplied on a case-by-case basis.

(e) ***Chartering permits.***

(1) For activities consistent with the purposes of this section, § 635.5(a), and § 600.745(b)(1) of this chapter, NMFS may issue chartering permits for record keeping and reporting purposes. An application for a chartering permit must include all information required under § 600.745(b)(2) of this chapter and, in addition, written notification of: the species of fish covered by the chartering arrangement and quota allocated to the Contracting Party of which the chartering foreign entity is a member; duration of the arrangement; measures adopted by the chartering Contracting Party of which the foreign entity is a member to implement ICCAT chartering provisions; copies of fishing licenses, permits, and/or other authorizations issued by the chartering Contracting Party of which the foreign entity is a member for the vessel to fish under the arrangement; a copy of the High Seas Fishing Compliance Act Permit pursuant to 50 CFR 300.10; documentation regarding interactions with protected resources; and documentation regarding the legal establishment of the chartering company. To be considered complete, an application for a chartering permit for a vessel must include all information specified in § 600.745(b)(2) of this chapter and in § 635.32(e) and (f).

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid chartering permit is required to fish for, take, retain, or possess ICCAT-regulated species under chartering arrangements as specified in § 635.5(a)(6). A valid chartering permit must be on board the harvesting vessel, must be available when ICCAT-regulated species are landed, and must be presented for inspection upon request of an authorized officer. A chartering permit is valid for the duration of the chartering arrangement or until the expiration date specified on the permit, whichever comes first. Vessels issued a chartering permit shall not be authorized to fish under applicable Atlantic Highly Migratory Species quotas or entitlements of the United States until the chartering permit expires or is terminated.

(3) Charter permit holders must submit logbooks and comply with reporting requirements as specified in § 635.5. NMFS will provide specific conditions and requirements in the chartering permit, so as to ensure consistency, to the extent possible, with laws of foreign countries, the 2006 Consolidated HMS FMP and its amendments, as well as ICCAT recommendations.

(4) Observers may be placed on board vessels issued chartering permits as specified under § 635.7.

(5) NMFS will issue a chartering permit only if it determines that the chartering arrangement is in conformance with ICCAT's conservation and management programs.

(6) A vessel shall be authorized to fish under only one chartering arrangement at a time.

(7) All chartering permits are subject to sanctions and denials as indicated under § 635.4(a)(6).

(f) ***Shark research permits.***

(1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, NMFS may issue shark research permits.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid shark research permit is required to fish for, take, retain, or possess Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24(a). A valid shark research permit must be on board the harvesting vessel, must be available for inspection when the shark is landed, and must be presented for inspection upon request of an authorized officer. A shark research permit is only valid for the vessel and owner(s) combination specified and cannot be transferred to another vessel or owner(s). A shark research permit is only valid for the retention limits, time, area, gear specified, and other terms and conditions as listed on the permit and only when a NMFS-approved observer is onboard. Species landed under a shark research permit shall be counted against the appropriate quota specified in § 635.27 or as otherwise provided in the shark research permit.

(3) Regardless of the number of applicants, NMFS will issue only a limited number of shark research permits depending on available quotas as described in § 635.27, research needs for stock assessments and other scientific purposes, and the number of sharks expected to be harvested by vessels issued LAPs for sharks.

(4) In addition to the workshops required under § 635.8, persons issued a shark research permit, and/or operators of vessels specified on the shark research permit, may be required to attend other workshops (e.g., shark identification workshops, captain's meeting, etc.) as deemed necessary by NMFS to ensure the collection of high quality data.

(5) Issuance of a shark research permit does not guarantee the permit holder that a NMFS-approved observer will be deployed on any particular trip. Rather, permit issuance indicates that a vessel is eligible for a NMFS-approved observer to be deployed on the vessel for a particular trip and that, on such observed trips, the vessel may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24(a).

(6) The shark research permit may be revoked, limited, or modified at any time, does not confer any right to engage in activities beyond those authorized by the permit, and does not confer any right of compensation to the holder.

(g) ***Applications and renewals.***

(1) Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the Federal Register, on an annual or more frequent basis as necessary, notification of previously authorized exempted fishing, scientific research, public display, chartering, and shark research activities and to solicit public comment on anticipated EFP, scientific research permit, letter of acknowledgment, public display, chartering, or shark research permit activities. Applications for EFPs, scientific research permits, public display permits, chartering permits, or shark research permits are required to include all reports specified in the applicant's previous permit including, if applicable, the year-end report, all delinquent reports for permits issued in prior years, and all other specified information. In situations of delinquent reports, applications will be deemed incomplete and a permit will not be issued under this section.

(2) For the shark research permit, NMFS will publish annually, in a FEDERAL REGISTER notice(s), a description for the following fishing year of the expected research objectives. This description may include information such as the number of vessels needed, regions and seasons for which vessels are needed, the specific criteria for selection, and the application deadline. Complete applications, including all information requested in the applicable FEDERAL REGISTER notice(s) and on the application form and any previous reports required pursuant to this section and § 635.5, must be received by NMFS by the application deadline in order for the vessel to be considered. Requested information could include, but is not limited to, applicant name and address, permit information, vessel information, availability of the vessel, past involvement in the shark fishery, and compliance with HMS regulations including observer regulations. NMFS will only review complete applications received by the published deadline to determine eligibility for participation in the shark research fishery. Qualified vessels will be chosen based on the information provided on the applications and their ability to meet the selection criteria as published in the FEDERAL REGISTER notice. A commercial shark permit holder whose vessel was selected to carry an observer in the previous two years for any HMS fishery but failed to comply with the observer regulations specified in § 635.7 will not be considered. A commercial shark permit holder that has been charged criminally or civilly (i.e., issued a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction) for any HMS related violation will not be considered for participation in the shark research fishery. Qualified vessels will be randomly selected to participate in the shark research fishery based on their availability and the temporal and spatial needs of the research objectives. If a vessel issued a shark research permit cannot conduct the shark research tasks, for whatever reason, that permit will be revoked and, depending on the status of the research and the fishing year, NMFS will randomly select another qualified vessel to be issued a shark research permit.

(3) NMFS may issue EFPs and SRPs to conduct research and collect information specifically regarding the spatial management areas described in § 635.35(c) and (d)(3). In addition to all of the information required under § 600.745(b)(2) of this chapter, an application for an EFP or SRP to conduct research and collect information regarding the spatial management areas should include the objective of the research; a description of the how the researchers intend to verify that the catch and all of the terms and conditions of the EFP or SRP are being met (*e.g.,* via a working EM system, authorized researchers, NMFS-approved observers); and a description of how the research is being conducted. As with other EFPs or SRPs, any EFP or SRP provides authorization only for the time and area, retention limits, and gear specified in the permit, and based upon the terms and conditions set forth in the permit and as acknowledged and agreed to by the permit holder under § 600.745(b)(4) of this chapter. The terms and conditions for a spatial management area EFP or SRP may require reporting more frequently than is described in paragraph (h)(1) of this section.

(h) ***Terms and conditions.***

(1) For EFPs, scientific research permits, and public display permits: Written reports on fishing activities, and disposition of all fish captured under a permit issued under this section must be submitted to NMFS within 5 days of return to port. NMFS will provide specific conditions and requirements as needed, consistent with the Consolidated HMS Fishery Management Plan, in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a “no-catch” report must be submitted to NMFS within 5 days of the last day of that month.

(2) For chartering permits, written reports of fishing activities must be submitted to NMFS by a date specified, and to an address designated, in the terms and conditions of each chartering permit.

(3) An annual written summary report of all fishing activities, and disposition of all fish captured, under the permit must be submitted to NMFS for all EFPs, scientific research permits, display permits, and chartering permits issued under this section within 30 days after the expiration date of the permit.

(4) For shark research permits, all owners and/or operators must comply with the recordkeeping and reporting requirements specified in § 635.5 per the requirement of holding a LAP for sharks.

(5) As stated in § 635.4(a)(6), failure to comply with the recordkeeping and reporting requirements of this section could result in the EFP, scientific research permit, display permit, chartering permit, or shark research permit being revoked, suspended, or modified, and in the denial of any future applications.

(6) EFPs, SRPs, display permits, chartering permits, and shark research permits may be revoked, suspended, or modified at any time, do not confer any right to engage in activities beyond those authorized by the permit, and do not confer any right of compensation to the holder.

[64 FR 29135, May 28, 1999, as amended at 68 FR 63742, Nov. 10, 2003; 68 FR 74786, Dec. 24, 2003; 69 FR 70399, Dec. 6, 2004; 73 FR 40711, July 15, 2008; 75 FR 30528, June 1, 2010; 91 FR 10740, Mar. 4, 2026]

§ 635.33 Archival tags.

(a) ***Landing an HMS with a surgically implanted archival tag.*** Notwithstanding other provisions of this part, persons may catch, possess, retain, and land an Atlantic HMS in which an archival tag has been surgically implanted, provided such persons return the tag to the research entity indicated on the tag or to NMFS at an address designated by NMFS and report the fish as required in § 635.5.

(b) ***Quota monitoring.*** If an Atlantic HMS landed under the authority of paragraph (a) of this section is subject to a quota, the fish will be counted against the applicable quota for the species consistent with the fishing gear and activity which resulted in the catch. In the event such fishing gear or activity is otherwise prohibited under applicable provisions of this part, the fish shall be counted against the reserve or research quota established for that species, as appropriate.

[81 FR 55379, Aug. 19, 2016]

§ 635.34 Adjustment of management measures.

(a) NMFS may adjust the EM video review rates in the monitoring areas, as specified in § 635.9; the IBQ shares or resultant allocations for bluefin tuna, as specified in § 635.15; catch limits for bluefin tuna, as specified in § 635.23; the overall, regional, and/or sub-regional quotas for bluefin tuna, sharks, swordfish, and northern albacore tuna as specified in § 635.27; the retention limits for sharks, as specified at § 635.24; the regional retention limits for Swordfish General Commercial permit holders, as specified at § 635.24; the marlin landing limit, as specified in § 635.27(d); the minimum sizes for Atlantic blue marlin, white marlin, and roundscale spearfish as specified in § 635.20; and the annual effort cap thresholds and the apportionment of those thresholds as specified in § 635.35(d).

(b) In accordance with the framework procedures in the 2006 Consolidated HMS FMP, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: Maximum sustainable yield or optimum yield 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; shark fishing regions, or regional and/or sub-regional quotas; species in the management unit and the specification of the species groups to which they belong; species

in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; workshop requirements; the IBQ shares or resultant allocations for bluefin tuna; administration of the IBQ program (including but not limited to requirements pertaining to leasing of IBQ allocations, regional or minimum IBQ share requirements, IBQ share caps (individual or by category), permanent sale of shares, NED IBQ rules, *etc.*); *de minimis* bluefin tuna quota set-aside for new entrants and associated requirements, process and conditions; spatial management area restrictions; allocations among user groups; gear prohibitions, modifications, or use restrictions; effort restrictions; observer coverage requirements; EM requirements and administration of the EM program including requirements both inside and outside of the monitoring areas; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

(c) NMFS may add species to the prohibited shark species group specified in heading D, Prohibited Sharks, of Table 1 of appendix A to this part if, after considering the criteria in paragraphs (c)(1) through (4) of this section, the species is determined to meet at least two of the criteria. Alternatively, NMFS may remove species from the prohibited shark species group and place them in the appropriate shark species group in Table 1 of appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, NMFS determines the species only meets one criterion.

(1) Biological information indicates that the stock warrants protection.

(2) Information indicates that the species is rarely encountered or observed caught in HMS fisheries.

(3) Information indicates that the species is not commonly encountered or observed caught as bycatch in fishing operations for species other than HMS.

(4) The species is difficult to distinguish from other prohibited species.

(d) Consistent with the Magnuson-Stevens Act, the FMP, and other applicable law, when considering a framework adjustment to add, change, or modify measures related to spatial management areas, NMFS will consider, but is not limited to, the following: any Endangered Species Act related issues, concerns, or requirements, including applicable Biological Opinions; bycatch rates of protected species, prohibited HMS, or non-target species both within the specified or potential spatial management areas and throughout the fishery; bycatch rates and post-release mortality rates of bycatch species associated with different gear types; new or updated landings, bycatch, and fishing effort data; evidence or research indicating that changes to fishing gear and/or fishing practices can significantly reduce bycatch; effectiveness of EM video review rates; social and economic impacts; and the practicability of implementing new or modified spatial management areas compared to other bycatch reduction options. If the species is an ICCAT managed species, NMFS will also consider the overall effect of the U.S. catch on that species. Additionally, NMFS may also consider relevant factors listed at § 635.35(f).

[64 FR 29135, May 28, 1999, as amended at 68 FR 74788, Dec. 24, 2003; 71 FR 58173, Oct. 2, 2006; 75 FR 57702, Sept. 22, 2010; 78 FR 52031, Aug. 21, 2013; 79 FR 71606, Dec. 2, 2014; 80 FR 50102, Aug. 18, 2015; 83 FR 33157, July 17, 2018; 87 FR 60007, Oct. 3, 2022; 91 FR 10740, Mar. 4, 2026]

§ 635.35 Spatial management area restrictions.

(a) ***General Restrictions.*** Spatial management areas are the gear restricted and monitoring areas in paragraphs (b) through (d) of this section and other areas in paragraph (e) of this section. Coordinates for gear restricted areas and monitoring areas are set forth in the definitions under § 635.2. If a vessel issued or required to be issued a LAP under this part has pelagic or bottom longline gear on board and is in a gear restricted area (see paragraphs (b) and (c) of this section), a monitoring area (see paragraphs (d) of

this section), or other restricted area (see paragraph (e) of this section), it is a rebuttable presumption that any fish on board such a vessel were taken with pelagic or bottom longline gear in the area except where such fish is aboard a vessel transiting such an area with all fishing gear stowed appropriately. Longline gear is stowed appropriately if all gangions and hooks are disconnected from the mainline and are stowed on or below deck, hooks are not baited, and all buoys and weights are disconnected from the mainline and drum (buoys may remain on deck).

(b) ***Bottom Longline Gear Restricted Area.*** If bottom longline gear is on board a vessel issued or required to be issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the Mid-Atlantic Bottom Longline Gear Restricted Area from November 1 of one calendar year through May 31 of the following calendar year, unless persons on board the vessel are authorized to conduct research under a shark research permit, an EFP, or a SRP as specified at § 635.32.

(c) ***Pelagic Longline Gear Restricted Areas.*** If pelagic longline gear is on board a vessel issued or required to be issued a permit under this part:

(1) In the Charleston Bump Gear Restricted Area, persons aboard that vessel may not fish or deploy any type of fishing gear from February 1 through April 30, unless persons aboard the vessel are authorized to conduct research under an EFP or a scientific research permit as specified at § 635.32.

(2) In the East Florida Coast Gear Restricted Area, persons aboard that vessel may not fish or deploy any type of fishing gear at any time, unless persons aboard the vessel are authorized to conduct research under an EFP or SRP as specified at § 635.32.

(3) In the DeSoto Canyon Gear Restricted Area, persons aboard that vessel may not fish or deploy any type of fishing gear at any time, unless persons aboard the vessel are authorized to conduct research under an EFP or SRP as specified at § 635.32.

(4) In the NED, persons aboard that vessel may not fish or deploy any type of fishing gear at any time unless they comply with the requirements under § 635.21(c)(2) and (4) or are authorized to conduct research under an EFP or SRP as specified at § 635.32.

(d) ***Pelagic Longline Monitoring Areas*** —

(1) ***General restrictions.*** Persons aboard a vessel with pelagic longline gear on board that is issued or required to be issued a permit under this part may, consistent with other applicable sections of this part, fish in a monitoring area (see paragraph (d)(4) of this section) when the monitoring area is effective if:

(i) The vessel has a functioning EM system consistent with § 635.9(h);

(ii) The vessel has a functioning VMS unit and can submit the set reports as required under § 635.69(e)(5);

(iii) The vessel owner and/or operator has notified NMFS via the vessel's VMS unit of their intent to fish in a monitoring area as required under § 635.69(e)(2); and

(iv) The monitoring area has not been closed as specified under paragraph (d)(4) of this section).

(2) ***Effort caps.*** Each monitoring area is designated an annual number of pelagic longline sets called an effort cap (see paragraph (d)(3) of this section). NMFS may apportion the effort cap (see § 635.34(a)) in a monitoring area across monthly, quarterly, or other time frames, if there are indications that fishing effort is temporally clustered, distribution of effort caps across the effective period of the monitoring area would further support data collection and conservation protection

goals, or other considerations, which may include some of the factors described in paragraph (f) of this section. NMFS would review, among other things, current and historical trends of effort and catch in the monitoring area, as well as the time left until the monitoring area is no longer effective. If NMFS determines that an adjustment or apportionment of the annual effort caps are necessary to meet management objectives, NMFS will file an action for publication in the FEDERAL REGISTER.

(3) ***The monitoring areas.*** For the purposes of this section, the effective dates and annual effort caps in the monitoring areas are:

(i) The Charleston Bump Monitoring Area is effective from February 1 through April 30 of each calendar year unless closed under paragraph (d)(4) of this section. The annual effort cap is 380 pelagic longline sets.

(ii) The East Florida Coast Monitoring Area is effective year-round unless closed under paragraph (d)(4) of this section. The annual effort cap is 250 pelagic longline sets.

(4) ***Closures of the monitoring areas.*** When an effort cap under paragraph (d)(3) of this section is reached, or is projected to be reached within the monitoring area's effective time period for a given calendar year, NMFS will file for publication in the FEDERAL REGISTER a closure for the monitoring area, which will be effective no fewer than five days from date of filing. NMFS may also file for publication in the FEDERAL REGISTER a closure of the monitoring area before the effort cap is reached, if warranted by conservation and management concerns raised by unexpectedly high bycatch, high fishing effort, fishing effort that is overly clustered temporally or spatially, or other relevant considerations. From the effective date and time of the closure until the date specified in the closure action, vessels issued or required to be issued a LAP under this part and that have pelagic longline gear on board are prohibited from fishing with any kind of gear within the boundaries of the relevant monitoring area. NMFS may reopen a monitoring area at a later date during its effective period in that calendar year by filing an action for publication in the FEDERAL REGISTER, if NMFS determines that an effort cap has not in fact been reached, or the closure is no longer needed to address the conservation and management concerns that prompted the closure.

(e) ***Other area restrictions applicable to HMS permitted vessels.***

(1) In addition to the area restrictions listed above, vessels that have been issued or are required to be issued a permit under this part, may not fish for, catch, possess, or retain any Atlantic HMS in the following spatial management times and areas:

(i) As specified at § 622.34(a)(1)(iii) and (3) of this chapter, within the Edges from January through April of each year. Additionally, no person may anchor a fishing vessel that has been issued a permit or is required to be permitted under this part, in the areas and seasons designated at § 622.34(a)(3) of this chapter.

(ii) As specified at § 622.34(a)(1)(i) and (ii) of this chapter, within the Madison and Swanson and the Steamboat Lumps sites:

(A) From November through April of each year, no vessel issued or required to be issued a permit under this part may fish or deploy any type of fishing gear.

(B) From May through October of each year, no vessel issued or required to be issued a permit under this part may fish or deploy any type of fishing gear except for surface trolling. For the purposes of this section, surface trolling is defined as fishing with lines trailing behind a vessel that is in constant motion at speeds in excess of 4 knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

(iii) Within the areas of the Gulf coral Habitat Areas of Particular Concern (HAPCs), as specified in § 622.74 of this chapter, no person may bottom anchor a fishing vessel or deploy fishing gear that may not be deployed pursuant to § 622.74 of this chapter. For purposes of this provision, fishing gear is deployed if any part of the gear is in contact with the water.

(2) If bottom longline gear is on board a vessel issued or required to be issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the following areas:

(i) In the Caribbean, the areas designated at §§ 622.439(a)(1) through (2), 622.479(a)(1) through (2), and 622.514(a)(1) of this chapter, year-round; and

(ii) In the South Atlantic, the areas designated at § 622.183(a)(1)(i)(A) through (H) of this chapter, year-round.

(f) ***Review of spatial management measures.*** NMFS will regularly review the gear restricted and monitoring areas described in paragraphs (b), (c), and (d) of this section to determine if adjustments are needed to add, change, or modify an area or any applicable requirements for an area. NMFS may review other existing area restrictions (see paragraph (e) of this section) or new or revised area restrictions for potential applicability to HMS permitted vessels. After reviewing an area, NMFS may consider changes or modifications to the area or its management measures, as appropriate, through framework adjustments as specified at § 635.34. When reviewing a spatial management area, NMFS may consider, but is not limited to consideration of, the following relevant factors:

(1) Fishery statistics such as landings, discards, catch rates, and effort.

(2) Fishery social and economic data regarding fishing vessels and shoreside business, including revenue, costs, and profitability.

(3) Effects of total catches from the spatial management areas and other regions on the stock status of target and non-target species or on fishing opportunities in other regions or fisheries.

(4) Fishing practices, including tactics, strategy, and gear.

(5) Biological, ecological, and life history data and research on primary bycatch and target species.

(6) Variations in seasonal distribution, abundance, or migration patterns of the relevant species.

(7) Resilience to oceanographic and fishery changes including changes in species distribution, fishing effort location, and access to fishery resources.

(8) Oceanographic data and research including, but not limited to, sea surface temperature, chlorophyll a concentrations and bathymetry.

(9) Variations in oceanographic features such as currents, fronts, and sea surface temperature.

(10) Other technical considerations such as ecosystem modeling parameters (*e.g.,* ocean currents, bottom topography), safety, enforceability (*e.g.,* regular shapes), gear conflicts, timing of evaluation, access to the area for data collection, access to the fishery itself, conservation and management

objectives, state or other jurisdictional boundaries, efficiency in the size of area (given the highly variable and mobile nature of the HMS fisheries), and non-fishery activity (*e.g.,* transportation, energy production).

(11) Other considerations as may be applicable to the specific management goals of any particular spatial management area.

[91 FR 10741, Mar. 4, 2026]

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 971d(6)(a) 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) [Reserved]

(c) ***Removal of import restrictions.*** Upon a determination by NMFS that the conditions no longer exist that warranted 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.

[64 FR 29135, May 28, 1999, as amended at 83 FR 33157, July 17, 2018]

§ 635.41 Products denied entry.

(a) [Reserved]

(b) All shipments of tuna or tuna-like species, or their products, in any form, harvested in the ICCAT convention area by a fishing vessel that is required to be listed, but not listed on the ICCAT record of authorized vessels will be denied entry into the United States.

(c) All shipments of tuna or tuna-like species, or their products, in any form, harvested in the ICCAT convention area by a fishing vessel listed on the ICCAT record as engaged in illegal, unreported, and unregulated fishing will be denied entry into the United States.

(d) All shipments of tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing will be denied entry into the United States.

(e) For the purposes of this section, it is a rebuttable presumption that any shipment containing swordfish, bluefin tuna, bigeye tuna, or their products offered for entry into the United States has been harvested by a vessel or vessels of the exporting nation.

[69 FR 70400, Dec. 6, 2004, as amended at 70 FR 28218, May 17, 2005; 77 FR 52261, Aug. 29, 2012]

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 conduct inspections for the purpose of determining compliance with ICCAT conservation and management measures and who possesses identification issued by the authorized officer's national government.

[79 FR 72559, Dec. 8, 2014]

§ 635.52 Vessels subject to inspection.

(a) All U.S. fishing vessels carrying fish species subject to regulation pursuant to a recommendation of ICCAT that have not been previously landed or transshipped at port, as well as the vessel's catch, gear, equipment, records, and any documents the authorized officer deems necessary to determine compliance with ICCAT conservation and management measures, are subject to inspection when in a port of any

ICCAT contracting or cooperating non-contracting party. A list of ports, designated by ICCAT contracting or cooperating non-contracting parties, to which foreign vessels carrying fish species subject to regulation pursuant to a recommendation of ICCAT may seek entry is available on the ICCAT Web site.

(b) While in port, the master, crewmember, or any other person on a U.S. 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, including by facilitating safe boarding. ICCAT recommendations require that inspections be carried out so that the vessel suffers minimum interference and inconvenience, and so that degradation of the quality of catch is avoided.

[79 FR 72559, Dec. 8, 2014]

§ 635.53 Prior notification.

(a) U.S. vessels carrying tuna or tuna-like species or other HMS that are seeking to enter the port of another ICCAT contracting or cooperating party must provide to the port State, at least 72 hours before the estimated time of arrival at the port or in accordance with any other time period specified by the foreign government, the following information:

(1) Vessel identification (External identification; Name; Flag State; ICCAT Record No., if any; IMO No., if any; and international radio call sign);

(2) Name of the designated port, as referred to in the ICCAT register, to which it seeks entry and the purpose of the port call;

(3) Fishing authorization or, where appropriate, any other authorization held by the vessel to support fishing operations on ICCAT-managed species and/or fish products originating from such species;

(4) Estimated date and time of arrival in port;

(5) In kilograms, the estimated quantities of each ICCAT-managed species and/or fish products originating from such species to be held on board and to be landed, with associated catch areas;

(6) Other information, as requested by the foreign ICCAT contracting or cooperating non-contracting party, to determine whether a vessel has engaged in IUU fishing, or related activities;

(b) After receiving information pursuant to paragraph (a) of this section, the foreign ICCAT contracting or cooperating non-contracting party should decide whether to authorize or deny the entry of a vessel into its port.

[79 FR 72559, Dec. 8, 2014]

§ 635.54 Reports.

Owners and operators of U.S. vessels subject to inspection under § 635.52 are hereby notified that the ICCAT recommendation establishing a scheme for minimum standards for inspection in port requires that:

(a) Upon completion of the inspection, the authorized officer shall provide the Master of the U.S. fishing vessel with the inspection report containing the findings of the inspection, including any violations found and possible subsequent measures that could be taken by the foreign ICCAT contracting or cooperating non-contracting party. The Master of the U.S. vessel is entitled to add or have added to the report any comments or objections, and to add his or her own signature as an acknowledgement of receipt,

(b) Copies of the inspection report shall also be provided by the port State to the ICCAT Secretariat and, as appropriate, to NMFS and other contracting or cooperating non-contracting parties of ICCAT,

(c) Any enforcement action taken by the foreign ICCAT contracting or cooperating non-contracting party in response to an infringement shall be reported to the United States and to the ICCAT Secretariat, and

(d) The foreign ICCAT contracting or cooperating non-contracting party shall refer any infringements found that do not fall within its jurisdiction, or with respect to which it has not taken action, to the flag State of the vessel (*i.e.,* to NMFS).

[79 FR 72560, Dec. 8, 2014, as amended at 87 FR 11325, Mar. 1, 2022]

Subpart F—Enforcement

§ 635.69 Vessel monitoring systems.

Link to an amendment published at 91 FR 10742, Mar. 4, 2026.

(a) ***Applicability.*** To facilitate enforcement of time/area and fishery closures, enhance reporting, and support the IBQ Program (§ 635.15), an owner or operator of a commercial vessel that has been issued or is required to be issued an Atlantic Tunas Longline category LAP or a vessel that is permitted, or required to be permitted, to fish for Atlantic HMS under § 635.4 and that fishes with pelagic or bottom longline or gillnet gear is required to install a NMFS-approved enhanced mobile transmitting unit (E-MTU) vessel monitoring system (VMS) on board the vessel and operate the VMS unit under the circumstances listed in paragraphs (a)(1) through (a)(5) of this section. For purposes of this section, a NMFS-approved E-MTU VMS is one that has been approved by NMFS as satisfying its type approval listing for E-MTU VMS units. Those requirements are published in the FEDERAL REGISTER and may be updated periodically.

(1) Whenever the vessel has pelagic longline gear on board;

(2) Whenever a vessel issued a directed shark LAP has bottom longline gear on board, is located between 33°00' N lat. and 36°30' N lat., and the Mid-Atlantic Bottom Longline Restricted Area is closed as specified in § 635.35(b); or

(3) Pursuant to Atlantic large whale take reduction plan requirements at 50 CFR 229.32(h), whenever a vessel issued a directed shark LAP has a gillnet(s) on board.

(4) A vessel is considered to have pelagic or bottom longline gear on board, for the purposes of this section, when the gear components as specified at § 635.2 are on board. A vessel is considered to have gillnet gear on board, for the purposes of this section, when gillnet, as defined in § 600.10 of this chapter, is on board a vessel that has been issued a shark LAP.

(5) Whenever a vessel issued an Atlantic Tunas Longline permit has green-stick 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 activation.*** Only an E-MTU VMS that has been approved by NMFS for Atlantic HMS Fisheries may be used. Any VMS unit must be installed by a qualified marine electrician. When any NMFS-approved E-MTU VMS is installed and activated or reinstalled and reactivated, the vessel owner or operator must—

(1) Follow procedures indicated on a NMFS-approved installation and activation checklist for the applicable fishery, which is available from NMFS;

(2) Submit to NMFS a statement certifying compliance with the checklist, as prescribed on the checklist; and,

(3) Submit to NMFS the checklist, completed by a qualified marine electrician. Vessels fishing prior to NMFS' receipt of the completed checklist and compliance certification statement will be in violation of the VMS requirement.

(e) ***Operation.***

(1) Owners or operators of vessels subject to requirements specified in paragraph (a) of this section must ensure the VMS unit is on so that it will submit automatic position reports every hour, 24 hours a day. Except as otherwise noted in this paragraph (e)(1), the VMS unit must always be on, operating and reporting without interruption, and NMFS enforcement must receive hourly position reports without interruption. No person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit, 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. Owners of vessels may request a documented power down exemption from NMFS enforcement if the vessel will not be fishing for an extended period of time. The request must describe the reason an exemption is being requested; the location of the vessel during the time an exemption is sought; the exact time period for which an exemption is needed (*i.e.,* the time the VMS signal will be turned off and turned on again); and sufficient information to determine that a power down exemption is appropriate. Approval of a power down must be documented and will be granted, at the discretion of NMFS enforcement, only in certain circumstances (*e.g.,* when the vessel is going into dry dock for repairs, or will not be fishing for an extended period of time).

(2) ***Hailing out.*** Prior to departure for each trip, a vessel owner and/or operator must submit a pre-trip hail out to NMFS declaring any HMS the vessel will target on that trip and the specific type(s) of fishing gear that will be on board the vessel, using NMFS-defined gear codes. If the vessel owner and/or operator participates in multiple HMS fisheries, or possesses multiple fishing gears on board the vessel, the vessel owner and/or operator must submit multiple electronic reports to NMFS. If, during the trip, the vessel switches to a gear type or species group not reported on the initial declaration, another in-trip hail out declaration must be submitted before new fishing begins. This information must be reported to NMFS using an attached VMS terminal or using another method as instructed by NMFS. Additionally, if a vessel owner or operator intends to fish with pelagic longline

gear within a monitoring area (see §§ 635.2 and 635.35(d)(3)), such intent must be declared in the pre-trip or in-trip hail-out. Vessel owners and operators shall not deploy pelagic longline sets in any monitoring area until such declaration is submitted in the pre-trip or in-trip hail-out.

(3) ***Hailing in.*** A vessel owner or operator must report advance notice of landing to NMFS. For the purposes of this paragraph (e)(3), landing means to arrive at a dock, berth, beach, seawall, or ramp. The vessel owner or operator is responsible for ensuring that NMFS is contacted at least 3 hours and no more than 12 hours in advance of landing regardless of trip duration. This information must be reported to NMFS using an attached VMS terminal and must include the date, approximate time, and location of landing.

(4) BFT and fishing effort reporting requirements for vessels fishing with pelagic longline gear or vessels issued an Atlantic Tunas Longline category LAP fishing with green-stick gear.

(i) ***Pelagic longline gear.*** The vessel owner or operator of a vessel that has pelagic longline gear on board must report to NMFS using the attached VMS terminal, or using an alternative method specified by NMFS as follows: For each set, as instructed by NMFS, the date and area of the set, the number of hooks and the length of all bluefin retained (actual), and the length of all bluefin tuna discarded dead or alive (approximate), must be reported within 12 hours of the completion each pelagic longline haul-back.

(ii) ***Green-stick gear.*** The owner or operator of a vessel with an Atlantic Tunas Longline permit that is fishing with green-stick gear must report to NMFS using the attached VMS terminal, or using an alternative method specified by NMFS as follows: For each green-stick set that interacts with BFT, as instructed by NMFS, the date and area of the set, the length of BFT retained (actual), and the numbers and lengths of all BFT discarded dead or alive (approximate), must be reported within 12 hours of the completion of the retrieval of each set.

(5) Any vessel owner and/or operator of a vessel fishing with pelagic longline gear within the boundaries of the monitoring areas (see §§ 635.2 and 635.35(d)(3)) must report within 12 hours of the completion of each pelagic longline haul-back the following information to NMFS using the attached VMS terminal, or using an alternative method specified by NMFS:

(i) All the reporting requirements specified under paragraph (e)(4) of this section; and

(ii) The number of individuals of the following species that are caught and discarded alive or dead: blue marlin, white marlin, roundscale spearfish, sailfish, leatherback sea turtles, loggerhead sea turtles, and shortfin mako sharks.

(6) Vessel owners or operators that decide not to fish for or retain HMS for a period of time encompassing two or more trips may follow the requirements of this paragraph (e)(5) in lieu of paragraphs (e)(2) and (e)(3) of this section.

(i) If a vessel owner or operator decides not to fish for or retain HMS for a period of time encompassing two or more trips, that owner or operator may choose to “declare out” of the fishery. To “declare out,” the vessel owner or operator must contact NMFS using an attached VMS terminal to indicate the operator does not plan to fish for or retain HMS. By “declaring out” of the HMS fishery, the vessel owner or operator is exempt from the requirements of paragraphs (e)(2) and (e)(3) of this section, unless the circumstances described in paragraph (e)(5)(ii) of this section apply, but must still comply with all other HMS regulations that are applicable to the vessel including area and gear closures.

(ii) If a vessel owner or operator has advised NMFS that it will not be fishing for or retaining HMS as described in paragraph (e)(5)(i) of this section, but incidentally catches and retains any HMS while fishing, the vessel owner is required to change the target species declaration and advise NMFS, as described in paragraph (e)(2) of this section while at sea before landing with any HMS. The vessel must also report advance notice of landing to NMFS as described in paragraph (e)(3) of this section.

(iii) Once the vessel owner or operator changes the declaration per paragraph (e)(5)(ii) of this section, that vessel is assumed to be fishing under the requirements of paragraphs (e)(1) through (e)(3) of this section until the vessel owner or operator makes another declaration under paragraph (e)(5) of this section.

(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 have a qualified marine electrician 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 installation and activation requirements specified at § 635.69(d) of this part.

(h) ***Access.*** As a condition to obtaining a LAP for Atlantic swordfish, sharks, or tunas, all vessel owners or operators using pelagic or bottom longline or gillnet 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 the vendor or receiver, as the case may be.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37705, July 13, 1999; 65 FR 47238, Aug. 1, 2000; 68 FR 45169, Aug. 1, 2003; 68 FR 74788, Dec. 24, 2003; 69 FR 51012, Aug. 17, 2004; 72 FR 57194, Oct. 5, 2007; 73 FR 40712, July 15, 2008; 75 FR 30528, June 1, 2010; 76 FR 75502, Dec. 2, 2011; 78 FR 68763, 68764, Nov. 15, 2013; 79 FR 71606, Dec. 2, 2014; 80 FR 73146, Nov. 24, 2015; 87 FR 60007, Oct. 3, 2022; 91 FR 10742, Mar. 4, 2026]

§ 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 § 635.32.

(2) Fish for, catch, possess, retain, land, or sell Atlantic HMS without the appropriate valid vessel permit with the appropriate endorsements, LAP, EFP, scientific research permit, display permit, chartering permit, or shark research permit 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, Atlantic bluefin tuna 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 Atlantic bluefin tuna without the appropriate valid Federal Atlantic tunas dealer permit issued under § 635.4. Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, other than solely for transport, any BAYS tunas, swordfish, or sharks 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, other than solely for transport, any BAYS tunas, swordfish, or sharks without the appropriate valid dealer permit issued under § 635.4 or submission of reports by dealers to NMFS according to reporting requirements specified in § 635.5. This prohibition does not apply to HMS harvested by HMS Commercial Caribbean Small Boat vessel permit holders operating in the U.S. Caribbean as defined at § 622.2 or 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, for commercial purposes, 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 HMS Commercial Caribbean Small Boat vessel permit holders operating in the U.S. Caribbean as defined at § 622.2, or to a shark harvested by 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 and 635.32 or in the terms and conditions of a permit issued under § 635.4 or an EFP, scientific research permit, display permit, chartering permit, or shark research permit issued under § 635.32.

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(e) and (f) or § 635.32.

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

(9) Fail to report the catching of any Atlantic HMS to which a conventional tag has been affixed under a tag and release program as specified in § 635.26(a).

(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 NMFS-approved E-MTU vessel monitoring system prior to leaving port with pelagic longline gear, bottom longline gear, or gillnet gear on board the vessel, or with green-stick gear on board a vessel issued an Atlantic Tunas Longline category permit as specified in § 635.69.

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

(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 or possess Atlantic tunas or swordfish on board a vessel with a gillnet on board, as specified in § 635.19(a), (b), and (e).

(18) Fail to retrieve fishing gear and move after an interaction with a protected species, as specified in § 635.21(b)(3).

(19) Utilize secondary gears as specified in § 635.19(a) to capture, or attempt to capture, any undersized or free swimming Atlantic HMS, or fail to release a captured Atlantic HMS in the manner specified in § 635.21(a).

(20) Fail to return a surgically implanted archival tag of a retained Atlantic HMS to NMFS or the research entity, as specified in § 635.33, or fail to report the fish, as specified in § 635.5.

(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 pelagic longline, bottom longline, gillnet, buoy gear, speargun gear, or green-stick gear as specified in § 635.21.

(24) Import, or attempt to import, any fish or fish products regulated under this part in a manner contrary to any import requirements or import restrictions specified at § 635.40 or 635.41.

(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 a permit issued under § 635.4 or § 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(b).

(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) Land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control:

(i) Any fish that the person knows, or should have known, was taken, retained, possessed, or landed contrary to this part, without regard to the citizenship of the person or registry of the fishing vessel that harvested the fish.

(ii) Any fish of a species regulated pursuant to a recommendation of ICCAT that was harvested, retained, or possessed in a manner contrary to the regulations of another country.

(30) Deploy or fish with any fishing gear from a vessel, or anchor a fishing vessel, permitted or required to be permitted under this part, in any spatial management area contrary to the requirements specified and defined at § 635.35.

(31) [Reserved]

(32) In the Gulf of America, deploy or fish a pelagic longline with live bait affixed to the hooks or to possess live bait, or set up a well or tank to maintain live bait, aboard a vessel with pelagic longline gear on board as specified at § 635.21(c)(3).

(33) Deploy or fish with any fishing gear from a vessel with pelagic or bottom longline gear on board without carrying the required sea turtle bycatch mitigation gear, as specified at § 635.21(c)(4)(i) for pelagic longline gear and § 635.21(d)(1) for bottom longline gear. This equipment must be utilized in accordance with § 635.21(c)(4)(ii) and (d)(1) for pelagic and bottom longline gear, respectively.

(34) Fail to disengage any hooked or entangled sea turtle with the least harm possible to the sea turtle as specified at § 635.21(c)(4) or (d)(1).

(35) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of Atlantic HMS.

(36) Fish with bottom or pelagic longline and shark gillnet gear for HMS without adhering to the gear operation and deployment restrictions required in §§ 635.21(b) and 635.35(b), (c), and (d).

(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark gillnet gear as required by § 635.21(f)(1).

(38) Fish for, or possess on board a fishing vessel, species regulated under this part in unauthorized fishing areas as specified in § 635.25.

(39) [Reserved]

(40) Deploy or fish with any fishing gear, from a vessel with bottom longline gear on board, without carrying a dipnet, line clipper, and dehooking device as specified at § 635.21(d)(1).

(41) Fail to immediately notify NMFS upon the termination of a chartering arrangement as specified in § 635.5(a)(5).

(42) Count chartering arrangement catches against quotas other than those defined as the Contracting Party of which the chartering foreign entity is a member as specified in § 635.5(a)(5).

(43) Fail to submit catch information regarding fishing activities conducted under a chartering arrangement with a foreign entity, as specified in § 635.5(a)(5).

(44) Offload charter arrangement catch in ports other than ports of the chartering Contracting Party of which the foreign entity is a member or offload catch without the direct supervision of the chartering foreign entity as specified in § 635.5(a)(5).

(45) Import or attempt to import tuna or tuna-like species harvested from the ICCAT convention area by a fishing vessel that is not listed in the ICCAT record of authorized vessels as specified in § 635.41(b).

(46) Import or attempt to import tuna or tuna-like species harvested by a fishing vessel on the ICCAT illegal, unreported, and unregulated fishing list as specified in § 635.41(c).

(47) Import or attempt to import tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing as specified in § 635.41(d).

(48) Purchase any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24.

(49) Sell any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24.

(50) Fish without a NMFS safe handling, release, and identification workshop certificate, as required in § 635.8.

(51) Fish without having on board the vessel a valid safe handling, release, and identification workshop certificate issued to the vessel owner and operator as required in § 635.8.

(52) Falsify a NMFS safe handling, release, and identification workshop certificate or a NMFS Atlantic shark identification workshop certificate as specified at § 635.8.

(53) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, "buoy gear" as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access 125 permit or a swordfish handgear LAP in accordance with § 635.4(f) or a valid HMS Commercial Caribbean Small Boat permit in accordance with § 635.4(o).

(54) Possess, use, or deploy, in the Gulf of America, with pelagic longline gear on board, any circle hook that is constructed of round wire stock that is larger than 3.65 mm in diameter during the months of January through June of any calendar year as specified in § 635.21(c)(4)(iii).

(55) Fail to electronically submit an Atlantic HMS dealer report through the HMS electronic dealer reporting system to report BAYS tunas, swordfish, and sharks to NMFS in accordance with § 635.5, if issued, or required to be issued, a Federal Atlantic HMS dealer permit pursuant to § 635.4.

(56) Have been issued a valid HMS Commercial Caribbean Small Boat permit and to purchase, barter for, or trade for HMS harvested by other vessels with the intent to sell, as specified in § 635.4(o)(5).

(57) Fail to appropriately stow longline gear when transiting a spatial management area that is closed or restricted, as specified in § 635.35.

(58) Deploy or fish with any fishing gear from a vessel that also has pelagic longline gear on board, in a monitoring area that has been closed as specified in § 635.35(d).

(59) Fish for, retain, possess, or land any HMS from a vessel with a pelagic longline on board when the Atlantic Tunas Longline category fishery is closed, as specified in § 635.28(a)(3), (b)(7), (c)(3), and (d).

(60) Buy, trade, or barter for any HMS from a vessel with pelagic longline gear is on board when the Atlantic Tunas Longline category fishery is closed, as specified in § 635.31(a)(2), (c), and (d).

(61) Transfer in port or at sea any tuna, tuna-like species, or other HMS, as specified in § 635.29(a).

(62) A vessel owner or operator that has an HMS Charter/Headboat permit without a commercial sale endorsement is prohibited from selling any Atlantic HMS.

(63) Fail to comply with the EM vendor responsibilities as specified in § 635.9.

(64) Fail to comply with the vessel owner and/or operator operational requirements as specified in § 635.9.

(65) Fail to comply with the EM requirements specified at § 635.9(h) when fishing with pelagic longline gear within the monitoring areas specified at § 635.35(d).

(66) Fail to report the catch of species through VMS as required when fishing with pelagic longline gear within spatial management areas as specified at § 635.69(e)(5).

(67) Fish with pelagic longline gear in the monitoring areas as specified at § 635.35(d)(4) without submitting a hail out declaration through VMS as specified at § 635.69(e)(2).

(68) Retain, transship, land, store, sell, or purchase any mobulid ray, a whole carcass or part thereof, as specified in § 635.21(a)(5), § 635.22(g), § 635.24(d), and § 635.31(e).

(69) Fail to release a mobulid ray when seen on the hook or at the vessel as specified in § 635.21(a)(4) or fail to comply with mobulid release protocols as specified in § 635.21(c)(6).

(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 been issued an Atlantic Tunas or Atlantic HMS permit 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 and/or brought 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) [Reserved]

(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a person aboard a vessel other than one that has on board a valid HMS Angling or Charter/Headboat permit as authorized under § 635.23(b) and (c).

(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 bluefin tuna that is not sold, as specified in § 635.5(a)(3), or fail to report a bluefin tuna that is sold, as specified in § 635.5(a)(4).

(6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a BFT, as specified in § 635.5(c)(1) or (c)(3).

(7) Fish for, catch, retain, or possess a bluefin tuna with gear not authorized for the category permit issued to the vessel or to have such gear on board when in possession of a bluefin tuna, as specified in § 635.19(b).

(8) Fail to pay cost recovery fees as instructed by NMFS, as specified at § 635.15(m)(4).

(9) Hold or acquire more than 25 percent of the total IBQ shares or associated allocations annually as specified under § 635.15(n).

(10) Fail to retain and land all dead large medium or giant BFT when pelagic longline gear is on board a vessel, as specified in § 635.23(e)(2).

(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 an Atlantic Tunas General category permit, fail to immediately cease fishing and immediately return to port after catching the applicable limit of large medium or giant bluefin tuna on a commercial fishing day, as specified in § 635.23(a)(4).

(14) As a person aboard a vessel issued an HMS Angling or 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 person aboard a vessel issued an HMS Angling or HMS Charter/Headboat permit, sell, offer for sale, or attempt to sell a large medium or giant BFT retained when fishing under the circumstances specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

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

(17) Fish for, catch, retain, or possess BAYS tunas with gear not authorized for the category permit issued to the vessel, as specified in § 635.19(b).

(18) [Reserved]

(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)—(22) [Reserved]

(23) Fish for, catch, possess, or retain a bluefin tuna, except as specified under § 635.23.

(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) [Reserved]

(26) 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.

(27) Possess a large medium or giant BFT, after it has been landed, that does not have a dealer tag affixed to it as specified in § 635.5(b)(2)(ii), unless the BFT is not to be sold and has been reported per the requirements specified in §§ 635.5(a)(3) or 635.5(c).

(28) Participate in any HMS recreational fishing activity aboard a vessel issued an Atlantic Tunas General category permit unless, as specified at § 635.4(c)(2) and (3), the vessel has registered and paid an entry fee to, and is fishing under the rules of, a recreational HMS fishing tournament registered as required under § 635.5(d)

(29) As a dealer or dealer's agent, purchase, first receive, or affix a dealer tag to a BFT that is on or from a vessel that has been issued an Atlantic Tunas General category permit or HMS Charter/Headboat permit with a commercial sale endorsement, as specified in § 635.5(b)(2)(ii)(A), after 0000 local time on an RFD.

(30) Fish for any HMS, other than Atlantic BAYS tunas, with speargun fishing gear, as specified at § 635.21(h).

(31) Harvest or fish for BAYS tunas using speargun gear with powerheads, or any other explosive devices, as specified in § 635.21(h).

(32) Sell, purchase, barter for, or trade for an Atlantic BAYS tuna harvested with speargun fishing gear, as specified at § 635.31(a)(1).

(33) Fire or discharge speargun gear without being physically in the water, as specified at § 635.21(h).

(34) Use speargun gear to harvest a BAYS tuna restricted by fishing lines or other means, as specified at § 635.21(h).

(35) Use speargun gear to fish for BAYS tunas from a vessel that does not possess either a valid HMS Angling or HMS Charter/Headboat category permit, as specified at § 635.21(h).

(36) Possess J-hooks onboard a vessel that has pelagic longline gear on board, and that has been issued or required to be issued a LAP under this part, except when green-stick gear is on board, as specified at § 635.21(c)(2) and (c)(4)(iii)(C).

(37) Use or deploy J-hooks with pelagic longline gear from a vessel that has been issued, or required to be issued a LAP under this part, as specified in § 635.21(c)(4)(iii)(C).

(38) As specified in § 635.21(c)(4)(iii)(C), possess more than 20 J-hooks on board a vessel that has been issued or required to be issued a LAP under this part, when possessing onboard both pelagic longline gear and green-stick gear as defined in § 635.2.

(39) Use or deploy more than 10 hooks at one time on any individual green-stick gear, as specified in § 635.21(c)(2), (c)(4)(iii)(C), or (i).

(40) Possess, use, or deploy J-hooks smaller than 1.5 inch (38.1 mm), when measured in a straight line over the longest distance from the eye to any part of the hook, when fishing with or possessing green-stick gear on board a vessel that has been issued or required to be issued a LAP under this part, as specified at § 635.21(c)(2) or (c)(4)(iii)(C).

(41) Fail to report BFT catch by pelagic longline, through VMS as specified at § 635.69(e)(4).

(42) Fail to report all dead discards or landings of bluefin through the NMFS electronic catch reporting system within 24 hours of landing or the end of the trip as specified at § 635.5(a)(4).

(43) Fish for, retain, possess, or land albacore tuna when the fishery is closed, as specified in § 635.28(d).

(44) Buy, purchase, trade, or barter for albacore tuna when the fishery is closed, as specified in § 635.31(a)(2)(ii).

(45) Fail to comply with landing report requirements, as specified under § 635.5(b)(2)(i)(A).

(46) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board without a minimum amount of IBQ allocation available for that vessel, as specified in § 635.15(f)(2), as applicable.

(47) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board without accounting for BFT as specified in § 635.15(f)(3).

(48) Lease BFT quota allocation to or from the owner of a vessel not issued a valid Atlantic Tunas Longline permit as specified under § 635.15(g)(1).

(49) Fish in the Gulf of America with pelagic longline gear on board if the vessel has only designated Atlantic IBQ allocation, as specified under § 635.15(c)(3).

(50) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board in the Gulf of America, without a minimum amount of designated Gulf IBQ allocation available for that vessel, as specified in § 635.15(f)(2).

(51) If leasing IBQ allocation, fail to provide all required information on the application, as specified under § 635.15(g)(2).

(52) Lease IBQ allocation in an amount that exceeds the amount of IBQ allocation associated with the lessor, as specified under § 635.15(g)(2).

(53) Sell quota share, as specified under § 635.15(h).

(54) Fail to provide BFT landings and dead discard information as specified at § 635.15(f)(3)(iii).

(55) Fish with or have pelagic longline gear on board if any quota debt associated with the permit from a preceding calendar year quarter has not been settled as specified in § 635.15(f)(4)(i).

(56) Lease IBQ allocation during the period from 6 p.m. December 31 to 2 p.m. January 1 (Eastern Time) as specified at § 635.15(g)(3)(iv).

(57) Lease IBQ allocation if the conditions of § 635.15(g)(2) are not met.

(58) Fish with or have pelagic longline gear on board if any annual level quota debt associated with the vessel from a preceding year has not been settled, as specified at § 635.15(f)(4)(ii).

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

(1) As specified in § 635.19(c), retain a billfish harvested by gear other than rod and reel, or retain a billfish on board a vessel unless that vessel has been issued an Atlantic HMS Angling or Charter/Headboat permit or has been issued an Atlantic Tunas General category permit and is participating in a tournament in compliance with § 635.4(c).

(2) Transfer a billfish in port or 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 onboard a vessel a longbill spearfish, or a blue marlin, white marlin, roundscale spearfish, or sailfish that is less than the minimum size specified in § 635.20(d).

(6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a billfish, as specified in § 635.5(c)(2) or (c)(3).

(7) Deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination when participating in a tournament for, or including, Atlantic billfish, as specified in § 635.21(e).

(8) Take, retain, or possess an Atlantic blue marlin, white marlin, and roundscale spearfish when the fishery for these species has been restricted to catch and release fishing only, as specified in § 635.27(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 or management group when the fishery for that species, management group, region, and/or sub-region is closed, as specified in § 635.28(b).

(4) Sell or purchase a shark of a species or management group when the fishery for that species, management group, region, and/or sub-region is closed, as specified in § 635.28(b).

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

(6) Fail to maintain a shark in its proper form, as specified in § 635.30(c). Fail to maintain naturally attached shark fins through offloading as specified in § 635.30(c), except for under the conditions specified in § 635.30(c)(5).

(7) Sell or purchase smooth dogfish fins that are disproportionate to the weight of smooth dogfish carcasses, as specified in § 635.30(c)(5).

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

(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, including parts or pieces of prohibited sharks, as specified under §§ 635.22(c), 635.24(a), and 635.27(b), or fail to disengage any hooked or entangled prohibited shark with the least harm possible to the animal as specified at § 635.21(d).

(11) First receive or attempt to first receive Atlantic sharks without a valid Federal Atlantic shark dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

(12) Fish for Atlantic sharks with unauthorized gear or possess Atlantic sharks on board a vessel with unauthorized gear on board as specified in § 635.19(d).

(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(f).

(14) First receive or attempt to first receive Atlantic sharks without making available for inspection, at each of the dealer's places of business listed on the dealer permit which first receives Atlantic sharks, an original, valid dealer or proxy Atlantic shark identification workshop certificate issued by NMFS to the dealer or proxy in violation of § 635.8(b), except that trucks or other conveyances of the business must possess a copy of such certificate.

(15) Sell or transfer or attempt to sell or transfer a shark or sharks or part of a shark or sharks in excess of the retention limits specified in § 635.24(a).

(16) First receive or attempt to first receive a shark or sharks or part of a shark or sharks landed in excess of the retention limits specified in § 635.24(a).

(17) Replace sharks that are onboard the vessel for retention with sharks of higher quality or size that are caught later in a particular trip as specified in § 635.24(a).

(18) Retain or possess on board a vessel in the trawl fishery smoothhound sharks in an amount that exceeds 25 percent, by weight, of the total fish on board or offloaded from the vessel, as specified at § 635.24(a)(7).

(19) Retain, possess, transship, land, store, sell or purchase silky sharks, oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks as specified in § 635.21(c)(1)(ii), § 635.22(a)(2), § 635.24, and § 635.31(c)(6).

(20) Retain, possess, or land porbeagle sharks that were alive at the time of haulback as specified in §§ 635.21(c)(1)(iii), 635.22(a)(3), and 635.24 (a)(10).

(21) Fish for, retain, possess, or land sharks without a shark endorsement, as specified in § 635.4(b) and (c).

(22) Except when fishing only with flies or artificial lures, fish for, retain, possess, or land sharks without deploying non-offset, corrodible circle hooks when fishing at a registered recreational HMS fishing tournament that has awards or prizes for sharks, as specified in § 635.21(e) and (j).

(23) Except when fishing only with flies or artificial lures, fish for, retain, possess, or land sharks without deploying non-offset, corrodible circle hooks when issued an Atlantic HMS Angling permit or HMS Charter/Headboat category permit with a shark endorsement, as specified in § 635.21(e) and (j).

(24) Release sharks with more than 3 feet (91.4 cm) of trailing gear, as specified in § 635.21(c)(5).

(25) Fail to follow the fleet communication and relocation protocol for dusky sharks as specified at § 635.21(c)(5), (d)(1), and (f)(5).

(26) Deploy bottom longline gear without circle hooks, or have on board both bottom longline gear and non-circle hooks, as specified at § 635.21(d)(4).

(27) Retain, land, or possess a shortfin mako shark that was caught with gear other than pelagic longline, bottom longline, or gillnet gear as specified at § 635.21(a).

(28) Retain, land, or possess a shortfin mako shark that was caught with pelagic longline, bottom longline, or gillnet gear and was alive at haulback as specified at § 635.21(c)(1), (d)(4), and (f)(6).

(29) As specified at § 635.21(c)(1), retain, land, or possess a shortfin mako shark that was caught with pelagic longline gear when the electronic monitoring system was not installed and functioning in compliance with the requirements at § 635.9.

(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 without a dealer permit as specified in § 635.4(g), unless the harvesting vessel possesses a valid HMS Commercial Caribbean Small Boat permit issued under § 635.4 of this part and harvested the swordfish in the U.S. Caribbean as defined at § 622.2.

(2) Fail to comply with the restrictions on use of a pelagic longline specified in §§ 635.21(b) and (c) and 635.35(a), (c), and (d).

(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 a swordfish in port or at sea, 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, possess North Atlantic swordfish on board, or land North Atlantic swordfish from a vessel using or having on board gear other than pelagic longline, green-stick gear, or handgear, except as specified at § 635.19(e).

(9) Fish for swordfish from the South Atlantic swordfish stock using gear other than pelagic longline, as specified at § 635.19(e)(1) and § 635.27(c)(1)(ii).

(10) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, "buoy gear" as defined at § 635.2, unless, as specified in § 635.19(e)(3), the vessel owner has been issued a swordfish directed LAP or a swordfish handgear LAP in accordance with § 635.4(f) or a valid HMS Commercial Caribbean Small Boat permit in accordance with § 635.4(o).

(11) Possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(g).

(12) Fail to mark each buoy gear as required at § 635.6(c)(1).

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

(14) Exceed the recreational catch limit for North Atlantic swordfish, as specified in § 635.22(f).

(15) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or the Atlantic HMS Charter/Headboat category (and only when on a for-hire trip), fail to report a North Atlantic swordfish, as specified in § 635.5(c)(2) or (c)(3).

(16) Possess any HMS, other than Atlantic swordfish, harvested with buoy gear as specified at § 635.19 unless issued a valid HMS Commercial Caribbean Small Boat permit and operating within the U.S. Caribbean as defined at § 622.2 of this chapter.

(17) Fail to construct, deploy, or retrieve buoy gear as specified at § 635.21(g).

(18) As the owner of a vessel permitted, or required to be permitted, in the Swordfish General Commercial permit category, possess North Atlantic swordfish taken from its management unit by any gear other than rod and reel, handline, bandit gear, green-stick, or harpoon gear, as specified in § 635.19(e).

[64 FR 29135, May 28, 1999]

Editorial Note: For FEDERAL REGISTER citations affecting § 635.71, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

Appendix A to Part 635—Species Tables

TABLE 1 OF APPENDIX A TO PART 635—OCEANIC SHARKS

A. Large Coastal Sharks

Atlantic and Gulf of America blacktip, *Carcharhinus limbatus*
Bull, *Carcharhinus leucas*
Great hammerhead, *Sphyrna mokarran*
Lemon, *Negaprion brevirostris*
Nurse, *Ginglymostoma cirratum*
Sandbar, *Carcharhinus plumbeus*
Scalloped hammerhead, *Sphyrna lewini*
Silky, *Carcharhinus falciformis*
Smooth hammerhead, *Sphyrna zygaena*
Spinner, *Carcharhinus brevipinna*
Tiger, *Galeocerdo cuvier*

B. Small Coastal Sharks

Atlantic and Gulf of America Atlantic sharpnose, *Rhizoprionodon terraenovae*
Atlantic and Gulf of America blacknose, *Carcharhinus acronotus*
Atlantic and Gulf of America bonnethead, *Sphyrna tiburo*
Finetooth, *Carcharhinus isodon*

C. Pelagic Sharks

Blue, *Prionace glauca*
Porbeagle, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Thresher, *Alopias vulpinus*

D. Prohibited Sharks

Atlantic angel, *Squatina dumeril*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus nakamurai*
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*
Oceanic whitetip, *Carcharhinus longimanus*
Sand tiger, *Carcharias taurus*
Sevengill, *Heptranchias perlo*
Sixgill, *Hexanchus griseus*
Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*

White, *Carcharodon carcharias*

E. Smoothhound Sharks

Smooth dogfish, *Mustelus canis*

Florida smoothhound, *Mustelus norrisi*

Gulf smoothhound, *Mustelus sinusmexicanus Mustelus species*

Table 2 of Appendix A to Part 635—Pelagic Species

Albacore tuna, *Thunnus alalunga*

Bigeye tuna, *Thunnus obesus*

Blue shark, *Prionace glauca*

Bluefin tuna, *Thunnus thynnus*

Dolphin fish, *Coryphaena hippurus*

Porbeagle shark, *Lamna nasus*

Shortfin mako shark, *Isurus oxyrinchus*

Skipjack tuna, *Katsuwonus pelamis*

Swordfish, *Xiphias gladius*

Thresher shark, *Alopias vulpinus*

Wahoo, *Acanthocybium solandri*

Yellowfin tuna, *Thunnus albacares*

Table 3 of Appendix A to Part 635—Demersal Species

Atlantic sharpnose shark, *Rhizoprionodon terraenovae*

Black grouper, *Mycteroperca bonaci*

Blackfin snapper, *Lutjanus buccanella*

Blacknose shark, *Carcharhinus acronotus*

Blacktip shark, *Carcharhinus limbatus*

Blueline tilefish, *Caulolatilus microps*

Bonnethead shark, *Sphyrna tiburo*

Bull shark, *Carcharhinus leucas*

Cubera snapper, *Lutjanus cyanopterus*

Dog snapper, *Lutjanus jocu*

Finetooth shark, *Carcharhinus isodon*

Gag grouper, *Mycteroperca microlepis*

Lane snapper, *Lutjanus synagris*

Lemon shark, *Negaprion brevirostris*

Mangrove snapper, *Lutjanus griseus*

Marbled grouper, *Dermatolepis inermis*

Misty grouper, *Epinephelus mystacinus*

Mutton snapper, *Lutjanus analis*

Nurse shark, *Ginglymostoma cirratum*

Queen snapper, *Etelis oculatus*

Red grouper, *Epinephelus morio*

Red hind, *Epinephelus guttatus*

Red snapper, *Lutjanus campechanus*

Rock hind, *Epinephelus adscensionis*

Sand tilefish, *Malacanthus plumieri*

Sandbar shark, *Carcharhinus plumbeus*

Schoolmaster snapper, *Lutjanus apodus*

Silk snapper, *Lutjanus vivanus*

Snowy grouper, *Epinephelus niveatus*

Speckled hind, *Epinephelus drummondhayi*

Spinner shark, *Carcharhinus brevipinna*

Tiger shark, *Galeocerdo cuvieri*

Tilefish, *Lopholatilus chamaeleonticeps*

Vermilion snapper, *Rhomboplites aurorubens*

Warsaw grouper, *Epinephelus nigritus*

Yellowedge grouper, *Epinephelus flavolimbatus*

Yellowfin grouper, *Mycteroperca venenosa*

Yellowtail snapper, *Ocyurus chrysurus*

[64 FR 29135, May 28, 1999, as amended at 71 FR 58174, Oct. 2, 2006; 75 FR 30528, June 1, 2010; 76 FR 70066, Nov. 10, 2011; 78 FR 40349, July 3, 2013; 80 FR 50102, Aug. 18, 2015; 80 FR 73146, Nov. 24, 2015; 89 FR 284, Jan. 3, 2024]