

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

**Dated:** April 22, 2002.

**John H. Dunnigan,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 020325069-2069-01; I.D.  
071299C]

**RIN 0648-AM91**

#### Atlantic Highly Migratory Species (HMS) Fishing Vessel Permits; Charter Boat Operations

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** ACTION: Proposed rule; request for comments.

**SUMMARY:** Under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), NMFS proposes to amend the consolidated regulations governing the Atlantic HMS fisheries to: define operations and regulations for HMS Charter/Headboats (CHBs), require an Atlantic HMS recreational permit, adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarify the regulations regarding the retention of Atlantic bluefin tuna (BFT) in the Gulf of Mexico by recreational and HMS CHB vessels, and allow NMFS to set differential BFT retention limits by vessel type (e.g., charter boats, headboats). Additionally, NMFS is requesting comments on, but not proposing at this time, an extension of the existing condition on commercial HMS permits to require that permit holders abide by more restrictive Federal regulations regardless of whether fishing occurs within or beyond the exclusive economic zone (EEZ).

Public hearings on this proposed rule will be held in May 2002 and will be announced in a separate **Federal Register** document. Comments on the proposed rule and supporting documents can be submitted by mail, by fax, or electronically through the NMFS e-Comments pilot project web site. In addition to comments on the proposed rule and supporting documents,

comments are also invited on the e-Comments pilot project.

**DATES:** Comments on the proposed rule and supporting documents must reach NMFS on or before May 28, 2002.

Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before May 28, 2002.

**ADDRESSES:** Please submit your comments on the proposed rule, supporting documents, and the e-Comments pilot project by only one of the following means; comments submitted via e-mail will not be accepted:

(1) By mail to Christopher Rogers, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282.

(2) By fax to Christopher Rogers at NMFS at 301-713-1917.

(3) Electronically through the NMFS e-Comments pilot project web site at <http://www.nmfs.noaa.gov>

Comments on the burden-hour estimates or other aspects of the collection of information that are part of this rulemaking can be submitted to NMFS but must also be mailed to the Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of the supporting documents (see **SUPPLEMENTARY INFORMATION**) are available by sending your request to the address and fax number listed under (1) and (2), respectively, or by calling (301) 713-2347. The supporting documents will also be posted on the e-comments website listed under (3).

**FOR FURTHER INFORMATION CONTACT:** For questions on this proposed rule, or on submitting public comments, call Brad McHale at (978) 281-9260.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On May 28, 1999, NMFS published the final rule (64 FR 29090) that implemented the HMS FMP and Amendment One to the Atlantic Billfish FMP, and that consolidated regulations for Atlantic HMS into one CFR part. After issuance of the final HMS FMP and publication of the final consolidated rule, NMFS received comment that several provisions of the regulations were inconsistent with the HMS FMP. Additionally, several commenters indicated that activities previously authorized under the HMS regulations when issued under separate CFR parts were now prohibited under the consolidated format of the

regulations. NMFS subsequently published a technical amendment to the final consolidated regulations (64 FR 37700, July 13, 1999) to correct certain drafting errors and omissions that were not consistent with the final HMS FMP. However, addressing other more substantive issues raised about omissions from, or corrections to, the consolidated regulations requires a regulatory amendment under the framework provisions of the HMS FMP and the amended Billfish FMP. NMFS issues this proposed rule to solicit public comment on the merits and potential impacts of changes to the regulations intended to address comments received on the consolidated regulations, and to further the objectives of the HMS and Billfish FMPs.

#### **Charter/Headboat Operations**

NMFS first required Charter/Headboat permits for Atlantic tunas vessels in 1994. Given quota reductions and allocation issues in the recreational BFT fisheries, it became necessary to improve inseason monitoring of catch, particularly for school BFT. In response, NMFS began issuing permits in order to develop a telephone dialing frame for a fishing effort survey. Recognizing that charter vessels and headboats tend to have higher effort rates than private recreational vessels and, on average, higher catch rates, NMFS established a separate permit category for the purposes of stratifying the two populations for the telephone survey. Issuing separate permits for private and for-hire vessels also facilitated the issuance of regulations tailored to the unique aspects of each category (e.g., catch limits, sale of fish).

In developing the HMS FMP, the HMS Advisory Panel (AP) noted the significance of the for-hire fleet in the recreational fisheries for tunas, billfishes and sharks. The HMS AP recommended that NMFS expand the CHB permit program from Atlantic tunas to include vessels targeting any HMS so that catch and effort monitoring could be improved, and NMFS adopted this permit requirement in the HMS FMP. With all HMS vessels included in the permit system, NMFS can now select a more representative sample of CHB vessels for the logbook program and telephone survey.

The HMS Charter/Headboat permit is required in lieu of any other commercial or recreational category tunas permit, and is considered a commercial tunas permit because Atlantic tunas caught by persons aboard vessels with this permit may be sold. Given this more restrictive statement of the permit requirement (i.e., the HMS Charter/Headboat permit

is the only permit authorized to embark fee-paying anglers), and the dual nature of the permit (carrying fee-paying recreational anglers, and also allowed to sell tunas), further clarifications to the regulations pertaining to charter/headboat operations are needed relative to sale of fish, applicability of retention limits and the requirements for licensed captains.

As the retention limits applicable to the recreational fisheries for HMS do not generally apply to persons aboard permitted commercial fishing vessels, it is necessary to specify the circumstances under which persons aboard a CHB vessel are subject to the recreational retention limits for any HMS. These retention limits are directly linked to how a for-hire trip on a CHB is defined. Such designation is practical for BFT because the quota categories are related to size classes of fish, thus the size of the fish itself determines authorized catch limits and disposition (i.e., sold or retained for personal consumption). However, in certain situations, the consolidated regulations are not clear with respect to catch limits, size limits and authorized disposition applicable to sharks and yellowfin tuna (YFT) taken aboard vessels issued HMS Charter/Headboat permits.

In a technical amendment to the consolidated regulations, NMFS clarified that the recreational retention limit of three YFT per person per day applies at all times to persons fishing aboard vessels permitted in the Atlantic tunas Charter/Headboat category, now the Atlantic HMS Charter/Headboat permit. While the Atlantic HMS Charter/Headboat permit is classified as a commercial tuna permit, and YFT landed by persons aboard such vessels may be sold to permitted dealers, the number of YFT landed cannot exceed three times the number of persons aboard, including captain and crew.

Since the technical amendment was issued, NMFS has received comment that applying the YFT retention limit at all times precludes legitimate commercial activity when the vessels are not carrying fee-paying anglers. These commenters have indicated that a few dozen charter vessels in the Mid-Atlantic region have historically conducted commercial fishing trips for YFT when not operating as a for-hire vessel. Further, these commenters noted that the HMS FMP did not specifically address commercial fishing by the for-hire fleet and its supporting analyses did not consider the impacts of prohibiting such commercial fishing on a part-time basis.

NMFS recognizes that certain vessels operating as charter vessels and headboats by taking anglers fishing for HMS on a fee basis may, on occasion, sell tunas taken by those anglers. Additionally, some of these vessels may, when not operating as a CHB, directly engage in commercial tuna fishing operations. Therefore, consistent with other regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Stevens Act), NMFS proposes to define a for-hire trip as a trip carrying a passenger who pays a fee and/or having a specified number of persons aboard: More than three persons for a vessel licensed to carry six or fewer; more than the required number of crew for an inspected vessel. Therefore, these trips would be considered for-hire recreational trips and recreational retention limits would apply. Trips where a vessel carries three or fewer passengers, or fewer than the required number of crew for an inspected vessel, would be considered commercial and commercial retention limits would apply. Under this proposal the recreational YFT retention limit would apply to vessels issued an HMS Charter/Headboat permit only when such vessels are engaged in a for-hire trip.

NMFS also proposes to authorize retention of sharks under the recreational catch limits by persons aboard vessels issued limited access permits for sharks after a closure of any shark management group if the vessel has also been issued an HMS Charter/Headboat permit and is engaged in a for-hire fishing trip. In such case, it would be required that the recreational landing and size limits be observed, that the sharks be landed in whole form, and that the sharks not be sold. If the fisheries for all shark species groups are open, vessels that possess a limited access permit for sharks and an HMS Charter/Headboat permit would be subject to the recreational retention limits for sharks when engaged in a for-hire fishing trip, but the shark(s) may be sold.

On December 26, 2001, NMFS published proposed regulations to establish a recreational retention limit for North Atlantic swordfish (66 FR 66390). If a recreational retention for North Atlantic swordfish were adopted, the application of the retention limit to vessels with both swordfish Handgear and HMS CHB permits would be similar to those vessel with shark limited access and HMS Charter/Headboat permits. Such vessels would be subject to the recreational retention limits when engaged in a for-hire fishing trip, and the North Atlantic swordfish could be

sold if the directed fishery quota were open, but could not be sold if the directed fishery quota were closed. Directed and Incidental swordfish limited access permits are only valid if the vessel also possesses a valid Atlantic tunas Longline category permit, which means that the vessel could not possess an Atlantic HMS Charter/Headboat permit and could not be engaged in for-hire fishing.

#### Atlantic HMS Angling Vessel Permits

Current HMS regulations require that vessels fishing recreationally for Atlantic tunas obtain an Atlantic Tunas Angling Category permit. This proposed rule would extend the permit requirement to all recreational vessels fishing for any HMS regulated under the HMS and Billfish FMPs.

This proposed action would provide NMFS with a complete list of recreational vessels participating in the fisheries for Atlantic HMS. Knowing the universe of vessels participating in the recreational fisheries for HMS would enable NMFS to monitor recreational landings and catch and release statistics more accurately, thereby enhancing HMS management and research efforts. The total universe of recreational fishermen in the HMS fisheries, and their effort, catch and bycatch (including discards) is presently unknown. Estimates of some of these parameters are currently made using surveys, such as the Large Pelagic Survey and the Marine Recreational Fisheries Statistics Survey, as well as reporting from registered HMS tournaments. An HMS recreational permit system would greatly improve information available to NMFS regarding the recreational HMS fisheries by providing an accurate measure of participation, effort, catch and bycatch (including discards) from one of its most significant components.

A measure requiring permits for recreational HMS vessels would increase the regulatory burden on recreational fishermen by requiring that they participate in an annual permit process. However, the regulatory burden for both anglers and NMFS should be significantly reduced by incorporating the existing HMS recreational permitting requirement (Angling category permit for Atlantic tunas) into the expanded permit requirement. Many saltwater fishermen target more than one HMS during a single trip or throughout the fishing season; for example, some who target billfish also catch large pelagic species like tuna and sharks.

The universe of affected anglers could include the following: The nearly

13,000 vessels currently permitted in the Atlantic tunas Angling (recreational) category, approximately 10,000 billfish anglers (minimum estimate based on the number of billfish tournament anglers from Fisher and Ditton, 1992), and vessels engaged solely in recreational shark or swordfish fishing. The number of vessels associated with the 10,000 billfish anglers, as well as the extent of the overlap between billfish vessels, recreational shark and swordfish vessels, and (already permitted) tuna vessels is unknown, but the overlap is likely significant. Thus, the universe of affected vessel owners is likely to be smaller than the sum of the above estimates, as only one permit would be required for participation in any HMS recreational fishery. Annual permit issuance/renewal would not have a significant impact on HMS anglers. The renewal process would be the same automated system currently in effect for Atlantic tunas permits, reducing paperwork and mailing time for forms.

#### **Jurisdictional Issues Related to HMS Permits**

Through prior rulemaking, NMFS has implemented a condition on shark and swordfish permits that requires persons aboard permitted vessels to adhere to Federal regulations without regard to whether fishing activity occurs within or outside the EEZ (see 50 CFR 635.4(a)(1)). Such a condition is deemed necessary to ensure that the management objectives of the HMS FMP are met in recognition of the inherent mobility of the fish species and the fishing vessels. The permit condition was initially applied only to commercial fishing vessels because recreational vessels were not required to be permitted in the swordfish and shark fisheries. Additionally, although recreational tuna permits have been required for some time, tuna regulations were previously determined to be applicable outside the EEZ (i.e., the high seas and waters under State jurisdiction) under the authority of ATCA, thus not requiring a specific permit condition. Given that NMFS has since implemented an Atlantic HMS vessel permit for the Charter/Headboat category, and proposes in this rulemaking document that a permit be required for private recreational vessels fishing for tunas, swordfish, sharks or billfish, NMFS is considering the merits of applying a permit condition to all Atlantic HMS vessel permits, in both commercial and recreational categories. Such a condition would not supersede more restrictive regulations in waters under the jurisdiction of any State, but would help ensure that the activity of

all vessels issued Federal permits would conform to the requirements of the HMS and Billfish FMPs throughout the range of the species in the respective management units. NMFS requests comments from the public on the merits and potential impacts of extending the permit condition across all HMS fisheries.

#### **BFT Fisheries in the Gulf of Mexico**

In 1982, the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommended a ban on directed fishing for bluefin tuna in the Gulf of Mexico to protect the spawning stock. This action primarily impacted Japanese longline fishermen in the area, as U.S. longline gear had already been prohibited from targeting bluefin tuna in the Gulf of Mexico since 1981. NMFS issued additional regulations in 1983 to subdivide the Incidental BFT quota for longline fishermen, and to allow the retention of one giant BFT per year by vessels using rod and reel gear (48 FR 27745, June 17, 1983). No other handgear-caught BFT could be retained in the Gulf of Mexico, and the one giant "incidental" rod and reel-caught BFT could not be sold. The annual limit of one giant (large-medium or giant since 1992) BFT per vessel for handgear vessels in the Gulf of Mexico is still in place, and is now part of the BFT Angling category "trophy" quota.

The 1999 consolidation of the HMS regulations into one CFR part resulted in the BFT Angling category retention limit regulations for the Gulf of Mexico being unclear. NMFS has received comment that the current regulations under § 635.23(b) and (c) could be interpreted to mean that in the Gulf of Mexico, Angling category vessels may retain school, large-school, and small medium BFT subject to the retention limits in place at the time, while CHBs may not. This rule would modify the regulations to clarify that the only BFT that could be retained by Angling category and CHB vessels in the Gulf of Mexico is one large medium or giant BFT per vessel per year, caught incidentally while fishing for other species.

#### **Change of Tuna Permit Category**

Current regulations allow Atlantic tunas permit holders to change their vessel permit category only once per year, and that change must occur before May 15. These regulations are meant to prevent vessels from landing BFT in more than one quota category in a single fishing year. Atlantic tunas and Atlantic HMS CHB permits can now be obtained within minutes, 24 hours a day, 7 days a week, via the Internet. Because of the

instant availability, NMFS proposes to allow the one permit category change to occur until the first day of the fishing year, June 1. In addition, NMFS proposes to allow the one permit category change to occur after June 1, so long as it occurs with the renewal or initial application for the current fishing year. For example, under current regulations, if a person purchased a vessel that had permitted in the General category in previous years, the vessel would have to remain in the General category if the new owner applied for a permit after May 15. Under the proposed regulations, the new owner could choose the appropriate permit or permit category at the time of application, regardless of the time of year and in which category the vessel was permitted the previous fishing year.

#### **Adjustments to BFT Retention Limits by Vessel Type**

Under the current HMS regulations, NMFS has the authority to adjust the BFT retention limits during the fishing season to maximize utilization of the quota for BFT. When vessels permitted in the HMS CHB category are fishing under the Angling category BFT quota, the same retention limits apply whether the vessel is operating as a charter boat with one passenger, or a headboat carrying 30 passengers. With the BFT retention limits generally defined in terms of the number of BFT that can be retained per vessel, the current situation can be inequitable for Coast Guard inspected vessels authorized to carry a larger number of passengers, as their limit is set at the same amount of BFT as a vessel with a charter of two to six anglers. Prior to the 1999 consolidation of the HMS regulations into one CFR part, the Atlantic tunas regulations included explicit provisions for NMFS to set differential retention limits by vessel type (e.g., charter boat vs. headboat), but this explicit authority was (unintentionally) not maintained in the consolidated regulations. This proposed rule would modify the HMS regulation to clarify that NMFS has the authority to set differential BFT retention limits by vessel type, so that NMFS could adjust the retention limits to provide equitable fishing opportunities for all fishing vessels, throughout the fishery.

#### **E-Comments Pilot Project**

NMFS encourages the public to participate in this proposed rulemaking by submitting comments. To this end, NMFS is accepting comments by submitted mail, fax, and the Internet as part of its e-Comments pilot project (see ADDRESSES). The e-Comments pilot

project is designed to introduce electronic rulemaking to NMFS and its constituents. The public is encouraged to use the new web site to compose and submit comments on this proposed rule and the associated supporting documents to help NMFS fully evaluate this new technology. In submitting comments, please include your name and address, indicate if you are commenting on the proposed rule or other rulemaking documents, and give the reason for each comment. If you are commenting on the proposed rule, indicate to which specific section each comment applies. Comments on the burden-hour estimates or other aspects of the collection of information that are part of this rulemaking can be submitted to NMFS but must also be mailed to OMB (see **ADDRESSES**). NMFS also invites public comments on the e-Comments program that allows you to submit your comments on line. Copies of the supporting documents including the HMS FMP, the final regulations to implement the HMS FMP (64 FR 29090, May 28, 1999), the technical amendment to the final regulations (64 FR 37700, July 13, 1999), and the latest Stock Assessment and Fishery Evaluation Report are available by request (see **ADDRESSES**) or on-line at <http://www.nmfs.noaa.gov>. NMFS will consider all comments received during the comment period, regardless of how they were submitted, and NMFS may make changes in the final rule in consideration of them. Please submit your comments by only one means. Comments received from the public will become part of the public record and will be posted on the e-Comments web site after the comment period closes.

### Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* The Assistant Administrator (AA) for Fisheries, NOAA, has preliminarily determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic HMS fisheries.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed regulations, if implemented, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed action would amend the HMS regulations to clarify regulations regarding the sale of fish and applicability of daily catch limits on board vessels permitted in the HMS charter/Headboat (CHB) permit category. This proposed rule would also implement an Atlantic HMS recreational vessel permit, adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarify the regulations regarding the retention of Atlantic bluefin tuna (BFT) in the Gulf of Mexico by recreational and HMS CHB vessels and allow NMFS to adjust BFT retention limits by vessel type. NMFS conducted a preliminary economic evaluation of the proposed measures, and, because the proposed measures would allow increased landings of YFT, revenues for the commercial handgear yellowfin tuna (YFT) fishery would increase slightly (3.6 percent). The proposed measures would not negatively affect the revenues of any small entities in the fishery, and the measures would not alter current fishing practices. Additionally, NMFS is requesting comments on, but not proposing at this time, an extension of the existing condition on commercial swordfish and shark permits to include other Atlantic HMS permits. The condition requires that permit holders abide by more restrictive Federal regulations regardless of whether fishing occurs within or beyond the EEZ. NMFS requests comment primarily to gauge the potential impacts on fishing activity in waters under State jurisdiction where regulated Atlantic HMS occasionally do occur. As NMFS is only requesting comment at this time, there is no direct impact on fishery participants. Comments will assist NMFS in assessing impacts under the Regulatory Flexibility Act when and if such a permit condition is proposed.

Because of this certification, an Initial Regulatory Flexibility Analysis was not prepared.

NMFS prepared a draft Environmental Assessment (EA) for this proposed rule, and the AA has preliminarily concluded that there would be no significant impact on the human environment. The EA presents analyses of the anticipated impacts of these proposed regulations and the other alternatives considered. A copy of the EA and other analytical documents prepared for this proposed rule are available from NMFS (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. NMFS is currently implementing the reasonable and

prudent alternative required by the BiOp. None of the actions in this proposed rule would have any additional impact on sea turtles as these actions would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No irreversible or irretrievable commitments of resources are expected from this proposed action that would have the effect of foreclosing the implementation of the requirements of the BiOp.

This proposed rule contains two new collection-of-information requirements and restates several existing reporting requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The new requirements have been submitted to OMB for approval.

The new requirement that has been submitted to OMB for approval is an extension of the Atlantic tunas recreational Angling category permit requirement to include fishermen who fish for all Atlantic HMS, including swordfish, sharks, and billfish, with an estimated public reporting burden of 30 minutes per response for initial permit applications, and 5 minutes per response for renewing the permit. Persons acquiring this permit who were not previously subject to a permit requirement may also be subject to existing gear-marking requirements. The extension of this requirement, estimated to take 15 minutes per float marked, has also been submitted to OMB for approval. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. This proposed rule also restates a number of collection-of-information requirements that have been approved by OMB. These requirements and their OMB control numbers and estimated response times are: vessel permits for Atlantic tunas and Atlantic HMS Charter/headboats, initial (30 minutes; 0648-0327) and renewal (6 minutes; 0648-327); vessel permits for Atlantic shark and swordfish (20 minutes; 0648-0205); dealer permits for Atlantic sharks and swordfish (5 minutes; 0648-0205); call in recreational landing reports for Atlantic bluefin tuna (5 minutes; 0648-0328); dealer permits for Atlantic tunas (5 minutes; 0648-0202); gear marking (15 minutes; 0648-0373); and vessel marking (45 minutes; 0648-0373).

All estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: (1) the need for the proposed collection of information for the proper performance of the functions of the agency, including the practical utility of the information; (2) the accuracy of the burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

#### List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: April 23, 2002.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 635, is proposed to be amended as follows:

#### **PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

1. The authority citation for part 635 continues to read as follows:

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

2. In § 635.2, the definition for “For-hire trip” is added, in alphabetical order, to read as follows:

#### **§ 635.2 Definitions.**

\* \* \* \* \*

*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, during which there are more than three persons on board, 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, during which there are more persons aboard than the number of crew specified on the vessel's Certificate of Inspection.

\* \* \* \* \*

3. In § 635.4, paragraphs (a)(2), (a)(5), (b), (d) heading, (d)(1) through (d)(3),

(h)(1) heading, and (m)(1) are revised to read as follows:

#### **§ 635.4 Permits and fees.**

\* \* \* \* \*

(a) \* \* \*

(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 a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection, all valid vessel permits.

\* \* \* \* \*

(5) *Display upon offloading.* Upon transfer of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's Atlantic HMS Charter/Headboat permit, or Atlantic tunas, shark, or swordfish permit to the receiving dealer. The permit must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2) and (b)(2)(i).

\* \* \* \* \*

(b) *HMS Angling Category and Charter/Headboat Permits—*(1) *HMS Angling Category permits.* The owner of each vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed, must obtain, in addition to any other required permits, an HMS Angling permit. Atlantic HMS caught, retained, possessed, or landed by persons on board vessels with an Atlantic HMS Angling permit may not be sold or transferred to any person for a commercial purpose. A vessel issued an Atlantic HMS Angling permit, during such permit's period of validity, shall not be issued an Atlantic tunas permit in any other category.

(2) *HMS Charter/Headboat Category permits.* (i) The owner of a charter boat or headboat used to fish for, take, retain, or possess any Atlantic HMS must obtain an HMS Charter/Headboat permit. A vessel issued an Atlantic HMS Charter/Headboat permit, during such permit's period of validity, shall not be issued an Atlantic tunas permit in any category.

(ii) 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.

\* \* \* \* \*

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

(2) Persons aboard a vessel with a valid Atlantic tunas, HMS Angling, or HMS Charter/Headboat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, Purse Seine, or Trap category of the Atlantic tunas permit or a valid HMS Charter/Headboat permit. Persons may not sell Atlantic tunas caught on board a vessel issued an Atlantic HMS Angling permit.

(3) Except for vessels with an Atlantic tunas purse seine category permit, a vessel owner may change the category of the vessel's Atlantic tunas permit, change between an Atlantic HMS Angling or HMS Charter/Headboat permit, or change between an Atlantic tunas permit and an Atlantic HMS Angling or HMS Charter/Headboat permit no more than once each year and only from April 1 to May 31. At all other times, the vessel's permit or permit category may not be changed, regardless of a change in the vessel's ownership. A vessel's permit or permit category change will be allowed outside of April 1 to May 31 if it occurs in conjunction with the permit renewal.

\* \* \* \* \*

(h) \* \* \*

(1) *Atlantic tunas, Atlantic HMS Angling, and Atlantic HMS Charter/Headboat vessel permits.* \* \* \*

\* \* \* \* \*

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

\* \* \* \* \*

4. In § 635.5, the first sentence of paragraph (c) is revised to read as follows:

**§ 635.5 Recordkeeping and reporting.**

\* \* \* \* \*

(c) *Anglers.* The owner of a vessel permitted in the Atlantic HMS Angling or Charter/Headboat category must report all BFT landed under the Angling category quota to NMFS through the automated catch reporting system by calling 1-888-USA-TUNA within 24 hours of the landing. \* \* \*

\* \* \* \* \*

5. In § 635.6, paragraph (b)(1) introductory text, and paragraph (c)(1) are revised to read as follows:

**§ 635.6 Vessel and gear identification.**

\* \* \* \* \*

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

\* \* \* \* \*

(c) *Gear identification.* (1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses a handline, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic tunas, HMS Angling, or HMS Charter/Headboat permit number on each float attached to a handline or harpoon and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel.

\* \* \* \* \*

6. In § 635.22, paragraphs (a), (c), and (d) are revised to read as follows:

**§ 635.22 Recreational retention limits.**

(a) *General.* Atlantic HMS caught, possessed, retained, or landed under these recreational retention limits may not 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 EEZ, and to a yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

\* \* \* \* \*

(c) *Sharks.* One shark from either the large coastal, small coastal or pelagic group may be retained per vessel per trip, subject to the size limits described in § 635.20(e), and, in addition, one Atlantic sharpnose shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark per person may be possessed on board a vessel. No prohibited sharks listed in Table 1(d) of Appendix A to this part may be retained. The recreational retention limit for sharks applies to a person who fishes in any manner, except to a person aboard a vessel who has been issued an Atlantic shark permit under § 635.4. If an Atlantic shark quota is closed, the recreational retention limit for sharks also applies to persons aboard a vessel issued an Atlantic shark permit under § 635.4, if that vessel also possesses an Atlantic HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire trip.

(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 that has been issued an Atlantic tunas vessel permit under § 635.4. The recreational retention limit for yellowfin tuna applies to persons aboard a vessel that has been issued an Atlantic HMS Charter/Headboat permit only when the vessel is engaged in a for-hire trip.

\* \* \* \* \*

7. In § 635.23, paragraphs (b) introductory text, (b)(2), (b)(3), (c) introductory text, and (c)(3) are revised to read as follows:

**§ 635.23 Retention limits for BFT.**

\* \* \* \* \*

(b) *Angling category.* BFT may be retained and landed under the daily limits and quotas applicable to the

Angling category by persons aboard vessels with Atlantic HMS Angling permits as follows:

\* \* \* \* \*

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

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

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

(c) *HMS Charter/Headboat.* Persons aboard a vessels with an Atlantic 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:

\* \* \* \* \*

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

\* \* \* \* \*

8. In § 635.27, the first three sentences of paragraph (a) introductory text, the

first two sentences of paragraph (a)(1)(i), and the first sentence of paragraph (a)(2) are revised to read as follows:

**§ 635.27 Quotas.**

(a) *BFT*. Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic tunas permits, HMS Angling permits, or HMS Charter/Headboat permits. \* \* \*

(1) \* \* \*

(i) Catches from vessels for which General category Atlantic tunas 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 landings quota. See § 635.23 (c)(3) regarding landings by vessels with an HMS Charter/Headboat permit that are counted against the General category landings quota. \* \* \*

(2) *Angling category landings quota*. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent of the overall annual U.S. BFT landings quota. \* \* \*

\* \* \*

9. In § 635.28, paragraph (b)(3) is revised to read as follows:

**§ 635.28 Closures.**

\* \* \*

(b) \* \* \*

(3) When the fishery for a shark species group is closed, a fishing vessel issued a shark LAP pursuant to § 635.4 may not possess or sell a shark of that species group, except under the conditions in § 635.22 (a) and (c), and a permitted shark dealer may not purchase or receive a shark of that species group from a vessel issued a shark LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage.

\* \* \*

10. In § 635.31, paragraph (a)(1) is revised to read as follows:

**§ 635.31 Restrictions on sale and purchase.**

(a) *Atlantic tunas*. (1) Persons that own or operate a vessel from which an Atlantic tuna is landed may sell such Atlantic tuna only if that vessel has a valid Atlantic HMS Charter/Headboat permit, or a General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas issued under this part. Persons may not sell a BFT smaller than the large medium size class. However, a large medium or giant BFT taken by a person on a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may not be sold (see § 635.23(c)). Persons may sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part.

\* \* \*

11. In § 635.71, paragraphs (b)(1), (b)(3), (b)(14), and (b)(15), are revised to read as follows:

**§ 635.71 Prohibitions.**

\* \* \*

(b) \* \* \*

(1) Engage in fishing with a vessel that has a permit to fish for Atlantic tunas 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, if the case, 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.

\* \* \*

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

\* \* \*

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

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

\* \* \*

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