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Title 50 —Wildlife and Fisheries

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

Part 635 —Atlantic Highly Migratory Species

Subpart A —General

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

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§ 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.