

## Fishery Conservation and Management

## § 635.71

NMFS-approved VMS unit, a vessel owner or operator must follow procedures indicated on an installation and activation checklist obtained from NMFS. Re-installation shall require the same checklist. Upon completion of installation, the vessel owner must sign a statement certifying compliance with the installation procedures of the checklist and submit such certification to NMFS as indicated on the checklist. Vessels fishing prior to submission of the certification will be in violation of the VMS requirement.

(e) *Operation.* Owners or operators of vessels permitted, or required to be permitted, to fish for HMS that have pelagic longline gear on board, must activate the VMS to submit automatic position reports beginning 2 hours prior to leaving port and not ending until the vessel returns to port. While at sea, the unit must operate without interruption and no person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, 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.

(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 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 checklist provided by NMFS and require the same certification.

(h) *Access.* As a condition to obtaining a limited access permit for Atlantic swordfish, sharks or tunas, all ves-

sel owners or operators using pelagic longline 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]

EFFECTIVE DATE NOTE: At 66 FR 1907, Jan. 10, 2001, § 635.69 was stayed indefinitely, effective Oct. 1, 2000.

### § 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 § 635.16.

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without the appropriate valid vessel permit, LAP, or EFP 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, any Atlantic HMS 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, any Atlantic HMS without the appropriate valid

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dealer permit issued under § 635.4, except that this does not apply 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 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 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.

(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.

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(f).

(8) Fail to make available for inspection an Atlantic HMS or its area of custody, as specified in § 635.5(g).

(9) Fail to report the catching of any Atlantic HMS to which a conventional tag has been affixed under a tag and release program.

(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 vessel monitoring system

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prior to leaving port with pelagic longline gear on board the vessel 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 for or possess Atlantic tunas or swordfish on board a vessel with a gillnet on board, as specified in § 635.21 (b), (d)(1), and (d)(4)(ii).

(18) Fail to retrieve fishing gear and move after an interaction with a marine mammal or sea turtle, as specified in § 635.21(c)(3).

(19) Fail to release an Atlantic HMS in the manner specified in § 635.21(a).

(20) Fail to report the retention of an Atlantic HMS that has an archival tag, as specified in § 635.33.

(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 a pelagic longline or shark gillnet as specified in § 635.21 (c) and (d)(3)(ii) and (iii).

(24) Import any bluefin tuna or swordfish in a manner inconsistent with any ports of entry designated by NMFS as authorized by § 635.47.

(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 an exempted fishing permit or scientific research permit issued under the authority of § 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.

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(29) Fail to comply with the restrictions on importing HMS as specified at §§ 635.40, 635.41 and 635.46.

(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 closed area as specified at § 635.21.

(31) Deploy or fish with any fishing gear from a vessel with a pelagic longline on board in any closed area during the time periods specified at § 635.21(c)(2).

(32) In the Gulf of Mexico, 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)(4).

(33) Deploy or fish with any fishing gear from a vessel with pelagic longline gear on board without carrying a dipnet and line clipper as specified at § 635.21(c)(5)(i).

(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)(5)(ii).

(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 50 CFR 635.21.

(37) Fail to report to NOAA Fisheries, at the number designated by NOAA Fisheries, the incidental capture of listed whales with shark gillnet gear and sea turtle mortalities associated with pelagic longline gear as required by 50 CFR 635.5.

(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 a permit for Atlantic tuna 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 or 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) Import or export bluefin tuna without a dealer permit, as specified in § 635.4(a)(4) and (g)(1).

(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 Angling category Atlantic tunas permit, an HMS or Atlantic Tunas Charter/Headboat permit, or a Purse Seine category Atlantic tunas permit as authorized under § 635.23 (b), (c), and (e)(2).

(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 BFT that is not sold, as specified in § 635.5(a)(3).

(6) As an angler, fail to report a BFT, as specified in § 635.5(c).

(7) Fish for, catch, retain, or possess a BFT with gear not authorized for the category permit issued to the vessel or to have on board such gear when in possession of a BFT, as specified in § 635.21(d)(1).

(8) Fail to request an inspection of a purse seine vessel, as specified in § 635.21(d)(1)(vi)(B).

(9) Fish for or catch BFT in a directed fishery with purse seine nets without an allocation made under § 635.27(a)(4).

(10) Fish for or catch any Atlantic tunas in a directed fishery with purse seine nets from August 15 through December 31 if there is no remaining BFT allocation made under § 635.27 (a)(4).

(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 a General category Atlantic tuna permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT on a commercial fishing day, as specified in § 635.23(a)(3).

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(14) As a vessel with an Angling category Atlantic tunas permit or an HMS or Atlantic Tunas 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 Angling category Atlantic tunas permit or an HMS or Atlantic Tunas 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).

(16) Retain a BFT caught under the catch and release program specified in § 635.26.

(17) As a vessel with a Purse Seine category Atlantic tuna permit, catch, possess, retain, or land BFT in excess of its allocation of the Purse Seine category quota, or fish for BFT under that allocation prior to August 15, as specified in § 635.27(a)(4).

(18) As a vessel with a Purse Seine category Atlantic tunas permit, land BFT smaller than the large medium size class except as specified under § 635.23(e)(2).

(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) Approach to within 100 yd (91.5 m) of the cork line of a purse seine net used by a vessel fishing for Atlantic tuna, or for a purse seine vessel to approach to within 100 yd (91.5 m) of a vessel actively fishing for Atlantic tuna, except that two vessels that have Purse Seine category Atlantic tuna permits may approach closer to each other.

(21) Transfer at sea an Atlantic tuna, except as may be authorized for the transfer of BFT between purse seine vessels, as specified in § 635.29(a).

(22) As the owner or operator of a purse seine vessel, fail to comply with the requirements for weighing, measuring, and information collection specified in § 635.30(a)(2).

(23) Fish for, catch, possess, or retain a BFT from the Gulf of Mexico except as specified under § 635.23(f)(1), or if

taken incidental to recreational fishing for other species and retained in accordance with § 635.23(b) and (c).

(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) Fail to comply with the documentation requirements for imported or exported bluefin tuna or bluefin tuna products, as specified in § 635.42.

(26) Import a bluefin tuna or bluefin tuna product into the United States from Belize, Panama, or Honduras other than as authorized in § 635.45.

(27) 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.

(28) 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).

(c) *Billfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Retain a billfish on board a vessel with a pelagic longline on board or harvested by gear other than rod and reel, as specified in § 635.21(d)(2).

(2) Transfer a billfish 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 on board a vessel a longbill spearfish, or a blue marlin, white marlin or sailfish that is less than the minimum size specified in § 635.20(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 group when the fishery for that species group is closed, as specified in § 635.28(b)(1) and (b)(2).

(4) Sell or purchase a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b)(3).

(5) Transfer a shark at sea, as specified in § 635.29(b).

(6) Fail to maintain a shark in its proper form, as specified in § 635.30(c)(4).

(7) Sell or purchase shark fins that are disproportionate to the weight of shark carcasses, as specified in § 635.30(c)(2) and (c)(3) and § 600.1023 (e) and (1) of this chapter.

(8) Fail to have shark fins and carcasses weighed and recorded, as specified in § 635.30(c)(3).

(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.

(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support of an application for an ILAP or an appeal of NMFS's denial of an ILAP for shark.

(12) Fish for Atlantic sharks with unauthorized gear or possess Atlantic sharks on board a vessel with unauthorized gear on board as specified in § 635.21(d)(3).

(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(d)(3).

(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 or import a swordfish harvested from any ocean area without a dealer permit, as specified in § 635.4(g)(3).

(2) Fail to comply with the restrictions on use of a pelagic longline specified in § 635.21(b) and (c).

(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 at sea a swordfish, 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 or handgear.

(9) Fish for swordfish from the South Atlantic swordfish stock using any gear other than pelagic longline.

(10) Fail to comply with the documentation requirements for the importation of a swordfish, or part thereof, that is less than the minimum size, as specified in § 635.46.

(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support of an application for an ILAP or an appeal of NMFS's denial of an initial limited access permit for swordfish.

(12) Falsify information submitted under § 635.46(b) in support of entry of imported swordfish.

(13) Exceed the incidental catch retention limits specified at § 635.24(b).

[64 FR 29135, May 28, 1999, as amended at 64 FR 37705, July 13, 1999; 65 FR 42887, July 12, 2000; 65 FR 47238, Aug. 1, 2000; 66 FR 17373, Mar. 30, 2001; 66 FR 30653, June 7, 2001; 66 FR 42805, Aug. 15, 2001; 67 FR 6201, Feb. 11, 2002; 67 FR 45401, July 9, 2002; 67 FR 47469, July 19, 2002]

APPENDIX A TO PART 635—SPECIES TABLES

TABLE 1 OF APPENDIX A TO PART 635—OCEANIC SHARKS

A. Large coastal sharks:

1. Ridgeback sharks:

Sandbar, *Carcharhinus plumbeus*  
 Silky, *Carcharhinus falciformis*  
 Tiger, *Galeocerdo cuvieri*

2. Non-ridgeback sharks:

Blacktip, *Carcharhinus limbatus*  
 Bull, *Carcharhinus leucas*  
 Great hammerhead, *Sphyrna mokarran*  
 Lemon, *Negaprion brevirostris*  
 Nurse, *Ginglymostoma cirratum*  
 Scalloped hammerhead, *Sphyrna lewini*  
 Smooth hammerhead, *Sphyrna zygaena*  
 Spinner, *Carcharhinus brevipinna*

B. Small coastal sharks:

Atlantic sharpnose, *Rhizoprionodon terraenovae*  
 Blacknose, *Carcharhinus acronotus*

Bonnethead, *Sphyrna tiburo*  
Finetooth, *Carcharhinus isodon*

*C. Pelagic sharks:*

Blue, *Prionace glauca*  
Oceanic whitetip, *Carcharhinus longimanus*  
Porbeagle, *Lamna nasus*  
Shortfin mako, *Isurus oxyrinchus*  
Thresher, *Alopias vulpinus*.

*D. Prohibited sharks:*

Atlantic angel, *Squatina dumerili*  
Basking, *Cetorhinus maximus*  
Bigeye sand tiger, *Odontaspis noronhai*  
Bigeye sixgill, *Hexanchus vitulus*  
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*  
Sand tiger, *Odontaspis taurus*  
Sevengill, *Heptranchias perlo*  
Sixgill, *Hexanchus griseus*  
Smalltail, *Carcharhinus porosus*  
Whale, *Rhincodon typus*  
White, *Carcharodon carcharias*

TABLE 2 OF APPENDIX A TO PART 635–  
DEEPWATER/OTHER SHARK SPECIES

Blotched catshark, *Scyliorhinus meadi*  
Broadgill catshark, *Apristurus riveri*  
Chain dogfish, *Scyliorhinus retifer*  
Deepwater catshark, *Apristurus profundorum*  
Dwarf catshark, *Scyliorhinus torrei*  
Iceland catshark, *Apristurus laurussoni*  
Marbled catshark, *Galeus arae*  
Smallfin catshark, *Apristurus parvipinnis*  
Bigtooth cookiecutter, *Isistius plutodus*  
Blainville's dogfish, *Squalus blainvillei*  
Bramble shark, *Echinorhinus brucus*  
Broadband dogfish, *Etmopterus gracilispinnis*  
Caribbean lanternshark, *Etmopterus hillianus*  
Cookiecutter shark, *Isistius brasiliensis*  
Cuban dogfish, *Squalus cubensis*  
Flatnose gulper shark, *Deania profundorum*  
Fringefin lanternshark, *Etmopterus schultzi*  
Great lanternshark, *Etmopterus princeps*  
Green lanternshark, *Etmopterus virens*  
Greenland shark, *Somniosus microcephalus*  
Gulper shark, *Centrophorus granulosus*  
Japanese gulper shark, *Centrophorus acuus*  
Kitefin shark, *Dalatias licha*  
Lined lanternshark, *Etmopterus bullisi*  
Little gulper shark, *Centrophorus uyato*  
Portuguese shark, *Cetoscymnus coelolepis*  
Pygmy shark, *Squaliolus laticaudus*  
Roughskin spiny dogfish, *Squalus asper*  
Smallmouth velvet dogfish, *Scymnodon obscurus*  
Smooth lanternshark, *Etmopterus pusillus*  
American sawshark, *Pristiophorus schroederi*  
Florida smoothhound, *Mustelus norrisi*

Smooth dogfish, *Mustelus canis*

**PART 640—SPINY LOBSTER FISHERY  
OF THE GULF OF MEXICO AND  
SOUTH ATLANTIC**

**Subpart A—General Provisions**

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FIGURE 1 TO PART 640

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

**Subpart A—General Provisions**

**§ 640.1 Purpose and scope.**

(a) The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic prepared by the South Atlantic and Gulf of Mexico Fishery Management Councils under the Magnuson Act.

(b) This part governs conservation and management of spiny lobster and slipper (Spanish) lobster in the EEZ in the Atlantic Ocean and Gulf of Mexico off the Atlantic and Gulf of Mexico states from the Virginia/North Carolina border south and through the Gulf of Mexico.

(c) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobsters, or separated tails, in the EEZ incidental to such foreign harvesting is exempt from