

the Virgin Islands. NMFS will undertake a continuing review of State regulations to determine if regulations applicable to Atlantic tunas, swordfish or billfish are at least as restrictive as regulations contained in this part and if such regulations are effectively enforced. In such case, NMFS will file with the Office of the Federal Register for publication notification of the basis for the determination and of the specific regulations that shall or shall not apply in the territorial sea of the identified State.

#### § 635.2 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, ATCA, and § 600.10 of this chapter, the terms used in this part have following meanings. If applicable, the terms used in this part supercede those used in § 600.10:

*Archival tag* means a device that is implanted or affixed to a fish to electronically record scientific information about the migratory behavior of that fish.

*ATCA Certificate of Eligibility (COE)* means the certificate that must accompany any applicable shipment of fish pursuant to a finding under 16 U.S.C. 971d (c)(4) or (c)(5).

*Atlantic HMS* means Atlantic tunas, billfish, sharks, and swordfish.

*Atlantic Ocean*, as used in this part, includes the North and South Atlantic Oceans, the Gulf of Mexico, and the Caribbean Sea.

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

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

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

*Billfish Certificate of Eligibility (COE)* means a certificate that accompanies a shipment of billfish indicating that the billfish or related species, or parts thereof, are not from the respective Atlantic Ocean management units.

*Bottom longline* means a longline that is deployed with enough weights and/or

anchors to maintain contact with the ocean bottom.

*BSD tag* means a numbered tag affixed to a BFT issued by any country in conjunction with a catch statistics information program and recorded on a BSD.

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

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

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

*Charleston Bump closed area* means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 34°00' N. lat. near Wilmington Beach, NC, and proceeding due east to connect by straight lines the following coordinates in the order stated: 34°00' N. lat., 76°00' W. long.; 31°00' N. lat., 76°00' W. long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 31°00' N. lat. near Jekyll Island, GA.

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

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

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

*Conventional tag* means a numbered, flexible ribbon that is implanted or affixed to a fish that is released back

into the ocean that allows for the identification of that fish in the event it is recaptured.

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

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

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

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

*DeSoto Canyon closed area* means the area within the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 30°00' N. lat., 88°00' W. long.; 30°00' N. lat., 86°00' W. long.; 28°00' N. lat., 86°00' W. long.; 28°00' N. lat., 84°00' W. long.; 26°00' N. lat., 84°00' W. long.; 26°00' N. lat., 86°00' W. long.; 28°00' N. lat., 86°00' W. long.; 28°00' N. lat., 88°00' W. long.; 30°00' N. lat., 88°00' W. long.

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

*Division Chief* means the Chief, Highly Migratory Species Management Division, NMFS (F/SF1), 1315 East-West Highway, Silver Spring, MD, 20910; (301) 713-2347.

*Downrigger* means a piece of equipment attached to a vessel and with a weight on a cable that is in turn attached to hook-and-line gear to maintain lures or bait at depth while trolling. The downrigger has a release system to retrieve the weight by rod and reel or by manual, electric, or hydraulic winch after a fish strike on the hook-and-line gear.

*Dress* means to process a fish by removal of head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass.

*Dressed weight (dw)* means the weight of a fish after it has been dressed.

*East Florida Coast closed area* means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a

point intersecting the inner boundary of the U.S. EEZ at 31°00' N. lat. near Jekyll Island, GA, and proceeding due east to connect by straight lines the following coordinates in the order stated: 31°00' N. lat., 78°00' W. long.; 28°17'10" N. lat., 79°11'24" W. long.; then proceeding along the outer boundary of the EEZ to the intersection of the EEZ with 24°00' N. lat.; then proceeding due west to 24°00' N. lat., 81°47' W. long.; and then proceeding due north to intersect the inner boundary of the U.S. EEZ at 81°47' W. long. near Key West, FL.

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

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

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

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

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

*Finlet* means one of the small individual fins on a tuna located behind the second dorsal and anal fins and forward of the tail fin.

*First transaction in the United States* means the time and place at which a fish is filleted, cut into steaks, or processed in any way that physically alters it after being landed in or imported into the United States.

*Fishing record* means all records of navigation and operations of a fishing vessel, as well as all records of catching, harvesting, transporting, landing, purchasing, or selling a fish.

*Fishing vessel* means any vessel engaged in fishing, processing, or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

*Fishing year means—*

(1) For Atlantic tunas and swordfish, before January 1, 2008 — June 1 through May 31. On or after January 1, 2008 — January 1 through December 31.

(2) For Atlantic billfish, On or after January 1, 2007 — January 1 through December 31.

(3) For sharks — January 1 through December 31.

*FL* (fork length) means the straight-line measure of a fish from the tip of the snout to the fork of the tail. The measurement is not made along the curve of the body.

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

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

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

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

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

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

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

*Handline* means fishing gear that is attached to, or in contact with, a vessel; that consists of a mainline to which no more than two hooks or gangions may be attached; and that is

released and retrieved by hand rather than by mechanical means.

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

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

*Import*, for purposes of this subpart, generally means the act of bringing or causing any goods to be brought into the customs territory of a country with the intent to unlade them. For purposes of this subpart, goods brought into the United States from a U.S. insular possession, or vice-versa, are not considered imports.

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

*LAP* means a limited access permit issued pursuant to § 635.4.

*Large coastal shark (LCS)* means one of the species, or a part thereof, listed in paragraph (a) of table 1 in appendix A to this part.

*Large medium BFT* means a BFT measuring at least 73 inches (185 cm) and less than 81 inches (206 cm) CFL.

*Large school BFT* means a BFT measuring at least 47 inches (119 cm) and less than 59 inches (150 cm) CFL.

*LJFL* (lower jaw-fork length) means the straight-line measurement of a fish from the tip of the lower jaw to the fork of the caudal fin. The measurement is not made along the curve of the body.

*Longline* means fishing gear that is set horizontally, either anchored, floating, or attached to a vessel, and that

consists of a mainline or groundline with three or more leaders (gangions) and hooks, whether retrieved by hand or mechanical means.

*Madison-Swanson closed area* means a rectangular-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 29°17' N. lat., 85°50' W. long.; 29°17' N. lat., 85°38' W. long.; 29°06' N. lat., 85°38' W. long.; 29°06' N. lat., 85°50' W. long.; and 29°17' N. lat., 85°50' W. long.

*Management unit* means in this part:

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

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

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

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

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

*Mid-Atlantic Bight* means the area bounded by straight lines connecting the mid-Atlantic states' internal waters and extending to 71° W. long. between 35° N. lat. and 43° N. lat.

*Mid-Atlantic shark closed area* means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 35°41' N. lat. just south of Oregon Inlet, North Carolina, and connecting by straight lines the following coordinates in the order stated: 35°41' N. lat., 75°25' W. long. proceeding due east to 35°41' N. lat., 74°51' W. long.; then proceeding southeast to 35°30' N. lat., 74°46' W. long.; then proceeding southwest, roughly following the 55 fathom mark, to 33°51' N. lat., 76°24' W. long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 33°51' N. lat., 77°53' W. long. near Cape Fear, North Carolina.

*Net check* refers to a visual inspection of a shark gillnet where the vessel operator transits the length of the gear

and inspects it either with a spotlight or by pulling up the gear.

*Non-ridgeback large coastal shark* means one of the species, or a part thereof, listed in paragraph (a)(2) of table 1 in appendix A to this part.

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

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

*Northeastern United States closed area* means the area bounded by straight lines connecting the following coordinates in the order stated: 40°00' N. lat., 74°00' W. long.; 40°00' N. lat., 68°00' W. long.; 39°00' N. lat., 68°00' W. long.; and 39°00' N. lat., 74°00' W. long.

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

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

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

*Pelagic longline* means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom.

*Pelagic shark* means one of the species, or a part thereof, listed in paragraph (c) of table 1 in appendix A to this part.

*PFCFL* (pectoral fin curved fork length) means the length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

*Prohibited shark* means one of the species, or a part thereof, listed in paragraph (d) of table 1 in appendix A to this part.

*Protected species safe handling, release, and identification workshop certificate*

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

*Restricted-fishing day (RFD)* means a day, beginning at 0000 hours and ending at 2400 hours local time, during which a person aboard a vessel for which a General category permit for Atlantic Tunas has been issued may not fish for, possess, or retain a BFT.

*Ridgeback large coastal shark* means one of the species, or a part thereof, listed in paragraph (a)(1) of table 1 in appendix A to this part.

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

*Shark* means one of the oceanic species, or a part thereof, listed in table 1 of appendix A to this part.

*Small coastal shark (SCS)* means one of the species, or a part thereof, listed in paragraph (b) of table 1 in appendix A to this part.

*Small medium BFT* means a BFT measuring at least 59 inches (150 cm) and less than 73 inches (185 cm) CFL.

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

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

*Steamboat Lumps closed area* means a rectangular-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 28°14' N. lat., 84°48' W. long.; 28°14' N. lat., 84°37' W. long.; 28°03' N. lat., 84°37' W. long.; 28°03' N. lat.,

84°48' W. long.; and 28°14' N. lat., 84°48' W. long.

*Tournament* means any fishing competition involving Atlantic HMS in which participants must register or otherwise enter or in which a prize or award is offered for catching or landing such fish.

*Tournament operator* means a person or entity responsible for maintaining records of participants and results used for awarding tournament points or prizes, regardless of whether fish are retained.

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

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

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

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

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### § 635.3 Relation to other laws.

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

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