

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency****44 CFR Part 206**

RIN: 1660-AA17

**Hazard Mitigation Grant Program; Correction**

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Correcting amendment.

**SUMMARY:** FEMA announces a technical correction to 44 CFR 206.435 which was amended in the **Federal Register** on August 30, 1990, at 55 FR 35532 and again amended on February 26, 2002, at 67 FR 8844. This document corrects a reference made in § 206.435 to the old § 206.434 (b), now paragraph (c).

**DATES:** This document is effective November 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Margaret Lawless, Division Director, FEMA, 500 C Street, SW., Room 417, Washington, DC 20472; 202-646-3027.

**SUPPLEMENTARY INFORMATION:****Background**

FEMA announces a technical correction to 44 CFR 206.435. The final rule entitled Disaster Assistance; Hazard Mitigation Grant Program (Subpart N) was published on August 30, 1990, at 55 FR 35532. Changes to the rule at § 206.434 were subsequently published on February 26, 2002, at 67 FR 8844. These changes resulted in § 206.434 redesignating *Minimum project criteria* from paragraph (b) to (c). This correcting amendment changes a reference to the old paragraph (b), to paragraph (c) at § 206.435(b).

**Need for Correction**

As published, the final regulations contain an error which may prove misleading, and needs to be clarified.

**List of Subjects in 44 CFR Part 206**

Administrative practice and procedure, Disaster assistance, Grant programs, Mitigation planning, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 206 is corrected by making the following correcting amendment:

**PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988**

■ 1. The authority citation for part 206 continues to read as follows:

**Authority:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

■ 2. Revise the inductive text of paragraph (b) of § 206.435 to read as follows:

**§ 206.435 Project identification and selection criteria.**

\* \* \* \* \*

(b) *Selection.* The State will establish procedures and priorities for the selection of mitigation measures. At a minimum, the criteria must be consistent with the criteria stated in § 206.434(c) and include:

\* \* \* \* \*

Dated: October 31, 2003.

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 03-28167 Filed 11-7-03; 8:45 am]

BILLING CODE 9110-13-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

**[Docket No. 021113274-3267-02; I.D. 031501A]**

RIN 0648-A079

**Atlantic Highly Migratory Species; Exempted Fishing Activities**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule in accordance with framework procedures for adjusting management measures of the Final Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), and Amendment 1 to the Atlantic Billfish Fishery Management Plan (Billfish FMP). This final rule modifies existing regulations for Atlantic highly migratory species (HMS) exempted fishing activities, with the

intent of improving monitoring and reporting of exempted fishing activities for Atlantic HMS, primarily those which are collected for public display purposes and those targeted for scientific research.

**DATES:** Effective December 10, 2003.

**ADDRESSES:** Written reports on fishing activities and applications for Exempted Fishing Permits and Scientific Research Permits should be submitted to Sari Kiraly or Heather Stirratt, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Sari Kiraly or Heather Stirratt at 301-713-2347, fax 301-713-1917, e-mail [Sari.Kiraly@noaa.gov](mailto:Sari.Kiraly@noaa.gov) or [Heather.Stirratt@noaa.gov](mailto:Heather.Stirratt@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Under 50 CFR 635.32, and consistent with 50 CFR 600.745, NMFS may authorize, for limited testing, public display, and scientific data collection purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an Exempted Fishing Permit (EFP) or a Scientific Research Permit (SRP) issued by NMFS in accordance with criteria and procedures specified in those sections. As necessary, an EFP or SRP would exempt the named party(ies) from otherwise applicable regulations under 50 CFR part 635. Such exemptions could address fishery closures, possession of prohibited species, commercial permitting requirements, and retention and minimum size limits.

This final rule was developed largely in response to ongoing concerns related to EFPs issued in the past for the purpose of collecting regulated HMS, particularly those collected for public display, and also takes into consideration concerns related to the reporting of permitted HMS scientific research activities. It is intended to strengthen the existing regulations which govern these permit related activities. This final rule is in accordance with framework procedures for adjusting management measures provided in the Final HMS FMP, and Amendment 1 to the Billfish FMP.

**Exempted Fishing Operations**

With respect to exempted fishing activities, NMFS finalizes the following requirements:

(1) Collectors of HMS for public display are required to notify the local NMFS Office for Law Enforcement at

least 24 hours prior to departing on a collection trip as to collection plans and location, and number of animals to be collected. This requirement is included so that the local NMFS Office for Law Enforcement can be aware of and monitor exempted collection activities within its jurisdiction. Additionally, this information can be made available by NMFS to state level enforcement agencies.

(2) Collectors of HMS for public display have the option of using conventional dart tags or microchip Passive Integrated Transponder (PIT) tags. Both types of tags will be supplied by NMFS. Unless PIT tags are specifically requested in the EFP application, conventional dart tags will be issued. Terms and conditions associated with the use of the tags issued will be specified in the EFP on a case-by-case basis.

(3) To minimize mortality of targeted animals as well as incidental bycatch potentially associated with the live capture of HMS, NMFS may specify permit conditions regarding fishing activities, such as gear deployment, monitoring, or soak time, if warranted, on a case-by-case basis.

(4) NMFS may select for at-sea observer coverage any vessel issued an EFP or SRP under this section. Selected vessels must comply with requirements specified under 50 CFR 635.7, 600.725, and 600.746. This requirement will be used to verify reports and monitor the takes of HMS and protected species resulting from fishing activities.

(5) This final rule also modifies EFP requirements for swordfish offloading. For the pelagic longline directed swordfish fishery, as vessel monitoring systems (VMS) are now required to be installed and operating on vessels, EFPs to allow delayed offloading after a closure are no longer required.

### Reporting Requirements

To enhance data collection and reporting, NMFS finalizes the following reporting requirements:

(1) Applications for EFP and SRP renewals are required to include all reports specified in the applicant's previous permit, including the year-end report, all delinquent reports for permits issued in prior years, and all other specified information, in order for the renewal application to be considered complete. An EFP or SRP will not be issued for incomplete applications. This new requirement will reinforce the importance to NMFS of specified reports on the activities conducted under the permit.

(2) Fishing activities and disposition of all HMS either retained, discarded

alive or dead, or tagged and released under an EFP or SRP must be reported within 5 days of the fishing activity, or as specified in the permit, without regard to whether the fishing activity occurs in or outside the Exclusive Economic Zone (EEZ). Dead discards will be counted against appropriate annual quotas. Also, an annual written summary report must be submitted to NMFS within 30 days after the expiration date of the permit. Reporting of such HMS fishing activity will provide important information as to the actual numbers of any animals that are removed from the stocks. If an individual issued a Federal EFP or SRP captures no HMS in any given month, either in or outside the EEZ, that individual must submit a "no-catch" report to NMFS within 5 days of the last day of that month.

(3) Several prohibitions are also added or modified to address: (a) submission of false information on permit applications or activity reports, and (b) violations of any of the terms and conditions of the EFP or SRP. These prohibitions are needed to facilitate enforcement of EFP and SRP application and reporting requirements. Essentially, they extend the permitting, record-keeping, and reporting requirements otherwise applicable to vessels and dealers to those persons issued EFPs and SRPs.

### Comments and Responses

NMFS received a number of comments on the proposed rule during the comment period. In addition to the provisions contained in the proposed rule, comments were requested on several other potential regulatory provisions. Major comments received are summarized here together with responses.

#### Exempted Fishing Operations

*Comment 1:* The 72-hour pre-departure notification for collecting HMS may be problematic. NMFS should consider a more reasonable time frame of 24 - 48 hours.

*Response:* NMFS has modified the final rule to require a notification time of at least 24 hours. This time frame will still allow sufficient time for the local NMFS Office for Law Enforcement to respond and notify local officials as necessary.

*Comment 2:* Commenters generally disagreed with notification to the NMFS Office for Law Enforcement upon completion of a collection trip and 48 hours prior to shipping animals for display as being unreasonable. One commenter supported the provision.

*Response:* While notification upon completion of a trip and prior to shipping animals would serve to better track collection activities, NMFS has not included these provisions in the final rule because commenters objected on the grounds that: 1) it is unnecessary, since catch reports are submitted; and 2) such notification may be logistically difficult because transport times are not always predictable, as they are based on animal acclimation and health, transport staff, and equipment availability.

*Comment 3:* Commenters generally objected to the use of PIT tags on the grounds that there is insufficient information on the use of PIT tags in fishes, particularly sharks, and there are potential problems associated with their use. These commenters noted that given these uncertainties, a requirement at this time that PIT tags be used for HMS collected for display is not warranted. One commenter supported the use of PIT tags.

*Response:* The requirement to use PIT tags was included in the proposed rule in response to commercial collectors who objected to the use of the conventional dart tags because of their experience with infections and scarring in the animals and requested an alternative means of tagging. PIT tags were selected because aquariums and scientific researchers have used them to identify HMS. The final rule reflects the concerns associated with the use of PIT tags by not requiring collectors to use PIT tags, but by specifying that they may be used as an alternative to dart tags. NMFS will provide PIT tags upon request.

*Comment 4:* Commenters generally disagreed with the provision that would allow NMFS to specify fishing practices for collecting HMS for display in order to minimize mortalities. Specifically, commenters felt that NMFS should leave this determination to the collection professionals, as it is in their best interest to minimize or eliminate mortalities by using the most effective and efficient fishing gear and associated practices. One commenter supported the provision.

*Response:* It is in the best interest of collectors to minimize mortalities of the fish they collect. However, it is NMFS' responsibility to manage the HMS fisheries and minimize unnecessary mortalities of the target species and other species, such as sea turtles and seabirds, that may interact with fishing gear. Thus, the language in the final rule has been modified to more accurately reflect NMFS intent that NMFS may specify collection conditions in the permit as necessary.

*Comment 5:* Commenters generally disagreed with NMFS placing at-sea observers on board HMS collection vessels and suggested that NMFS should consider alternatives. Commenters noted that collecting operations are very specific and potentially hazardous, and that only experienced, trained personnel should be on board the vessels. Also, the vessels used are often small and crowded with no place for inexperienced newcomers who may jeopardize collecting operations. One commenter supported the provision to place observers on board collection vessels.

*Response:* At-sea observers are an important means for fishery managers to collect information on fishing activities that are generally considered too burdensome for fishermen to collect, either due to the specific details required or to potential interference with fishing operations. They also provide data that are used to verify other reporting requirements, allowing for more responsive management. In cases of overfished stocks, such as many HMS, or protected species such as sea turtles, observer data can be used to improve stock assessments. Observers are fully trained before being placed on board a vessel and should not interrupt fishing operations. Additionally, observers should be able to help the vessel captain and crew in releasing protected species. As specified in 50 CRF 635.7, 600.725, and 600.746, NMFS will not place an observer on a vessel that is deemed unsafe.

#### *Reporting Requirements*

*Comment 6:* The requirement that year-end reports be a mandatory component of a permit renewal package is appropriate.

*Response:* NMFS agrees and has retained this requirement in the final rule.

*Comment 7:* Commenters generally held that the reporting of dead discards and no-catch reporting is burdensome and not necessary. Because the intention is to collect and maintain live animals, the number of dead discards is very small and does not warrant the paperwork. Similarly, monthly no-catch reporting is questionable because collecting is not a year-round activity. Finally, the requirement to submit catch and no-catch reports within a 5-day time frame is impractical, and a more reasonable time frame should be considered. Conversely, one commenter supported the dead discard and no-catch reporting provisions.

*Response:* Through catch reports, NMFS will be better able to determine if many more animals are authorized for

collection than actually are collected. These reporting requirements will allow for more accurate counting against the public display quota or relevant quotas recommended by the International Commission for the Conservation of Atlantic Tunas. Including dead discards in the counting will further enhance the accuracy of stock assessments and the monitoring of species subject to dead discard allowances. Similarly, NMFS will be able to better evaluate collection trends by confirming those times when no animals are collected. NMFS believes that a 5-day time frame for submitting reports is reasonable, as the report forms take only a few minutes to complete and can be mailed upon the vessel's return to shore. Therefore, the dead discard and no-catch reporting requirements, as well as the 5-day time frame for submitting reports, have been retained in the final rule.

*Comment 8:* Reporting collections in state waters should not be mandatory, as this further complicates an already complicated process. If NMFS wants data on state-permitted collections, the information should be obtained from the states. Also, NMFS should pursue the proposed Federal-state coordination process that has been discussed and which could resolve this issue.

*Response:* NMFS is in favor of developing a coordinated Federal-state permitting program. However, as the states have differing permit and reporting requirements, the most efficient interim solution is for federally permitted collectors to provide information on their collections regardless of where the fishing activity occurs. This will enable NMFS to assess better the total number of HMS being removed from the stocks.

*Comment 9:* Commenters support the prohibitions provisions regarding submission of false information and violations of the terms and conditions of the permit.

*Response:* NMFS retains these provisions in the final rule.

#### *Request for Comments on Potential Regulatory Provisions*

*Comment 10:* There was general agreement that EFP applicants should be required to demonstrate that holding facilities adequate for HMS animal husbandry are maintained. Commenters also suggested that existing accreditation organizations be involved in this process. However, some commenters noted that accreditation does take time, and NMFS should not preclude collection of animals while certification is pending

*Response:* NMFS is considering these types of regulations and may issue a proposed rule in the future.

*Comment 11:* Commenters generally held that denying EFPs for the collection of HMS that are difficult to maintain may be denying the development of technological advances in aquarium science and research. Additionally, commenters expressed concern regarding the data to be used to justify such restrictions. However, one commenter supported the proposal.

*Response:* NMFS agrees that there could be future technological advances in animal husbandry, and would not want to inhibit such advances. However, restricting the collection of certain animals may be necessary to avoid unwarranted mortality in stressed populations. NMFS will continue to consider this type of measure and may issue a proposed rule in the future.

*Comment 12:* Several commenters supported the issuance of EFPs only to display facilities in that this may eliminate commercial collectors collecting HMS in advance of actual purchases. Other commenters disagreed with this proposal, holding that independent commercial collectors should continue to be authorized to collect HMS, some companies having made significant contributions to improving the process.

*Response:* NMFS will continue to consider this approach and may issue a proposed rule in the future.

*Comment 13:* Commenters generally questioned the necessity or disagreed with the proposal regarding the issuance of a NMFS display permit in order to maintain HMS in captivity for display purposes. These commenters noted the existence of other regulatory entities and accreditation organizations which can adequately address the animal welfare concerns regarding public display facilities. Questions were raised as to the procedures and authority for such a display permit. One commenter supported the proposal, but expressed concern regarding how this would be implemented.

*Response:* NMFS will continue to consider this approach and may issue a proposed rule in the future.

#### **Changes From the Proposed Rule**

A number of changes to the regulations were made in response to comments received on the proposed rule:

(1) The proposed requirement that collectors of HMS for public display notify the local NMFS Office for Law Enforcement 72 hours prior to departing on a collection trip has been reduced to a minimum of 24 hours prior

notification. Also, the proposed requirements to notify the NMFS Office for Law Enforcement upon returning from a collection trip and 48 hours prior to shipping HMS to other locations have been eliminated.

(2) The proposed mandatory use of PIT tags in lieu of conventional dart tags for HMS collected for public display has been changed so that collectors will have the option of using either PIT tags or the conventional dart tags that NMFS currently issues. NMFS will supply PIT tags only upon request by EFP applicants, otherwise dart tags will be issued.

(3) The proposed provision that NMFS will specify permit conditions regarding HMS collection activities on a case-by-case-basis has been clarified to state that permit conditions may be specified by NMFS if warranted.

(4) The regulatory text has been reorganized to clarify the regulations and the requirements for SRPs versus EFPs. In addition, NMFS revised § 635.32 to simplify the text to state that the notification and reporting requirements apply to individuals with EFPs or SRPs regardless of where the fishing activity occurs.

#### Classification

This final rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*

For the purposes of NOAA Administrative Order (NAO) 216-6, the Assistant Administrator for Fisheries (AA) has determined that this action would not have a significant effect, individually or cumulatively, on the human environment, that it is consistent with the environmental impact statement for the FMP, and that it involves only minor technical additions, corrections or changes to the regulations. Accordingly, under sections 5.05 and 6.03a3(b) of NAO 216-6, this action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

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

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 Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget Control Number.

This final rule contains a new collection-of-information requirement subject to review and approval by OMB under the PRA. The requirement for exempted fishing activity reporting has been cleared by OMB under Control Number 0648-0471. The public reporting burden for this collection of information is estimated to average 5 minutes per notification phone call at the beginning of a collection trip. The estimated time to prepare a catch report required by an EFP issued for display collection is 5 minutes, and to prepare a "no-catch" report the estimated time is 2 minutes. The estimated application preparation and year-end report preparation times for display EFPs are 30 minutes each. Application of a PIT or dart tag to a HMS collected for public display is estimated to take 2 minutes. These 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. Send comments regarding these burden estimates, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS (see **FOR FURTHER INFORMATION CONTACT**), and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel of Advocacy of the Small Business Administration that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. No comments were received on the economic impact of this rule. Accordingly, neither an initial regulatory flexibility analysis nor a final regulatory flexibility analysis was prepared for this final rule.

The AA has determined that this action will have no impacts on the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states/territories that have approved coastal zone management plans under the Coastal Zone Management Act. NMFS submitted requests for consistency determinations to affected states/territories with the proposed rule. Nine states/territories replied that the proposed action was consistent with their respective coastal zone management programs. Six states/territories did not respond within the allowed time frame; therefore, their concurrence is presumed.

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

Fisheries, Fishing, Fishing Vessels, Foreign Relations, Imports, Penalties,

Reporting and recordkeeping requirements, Treaties.

Dated: November 3, 2003.

**William T. Hogarth,**

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

■ For the reasons set out in the preamble, 50 CFR part 635 is 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 § 635.7, paragraph (a) is revised to read as follows:

#### § 635.7 At-sea observer coverage.

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

\* \* \* \* \*

■ 3. In § 635.28, paragraph (c)(1)(i)(A) is revised to read as follows:

#### § 635.28 Closures.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5 N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a pelagic longline. However, North Atlantic swordfish legally taken prior to the effective date of the closure may be possessed in the Atlantic Ocean north of 5 N. lat. or landed in an Atlantic coastal state on a vessel with a pelagic longline on board, provided the harvesting vessel does no fishing after the closure in the Atlantic Ocean north of 5 N. lat., and reports positions with a vessel monitoring system, as specified in § 635.69. Additionally, legally taken swordfish from the South Atlantic swordfish stock may be possessed or landed north of 5 N. lat. provided the harvesting vessel does no fishing on that trip north of 5 N. lat., and reports positions with a vessel monitoring system as specified in § 635.69. NMFS may adjust the incidental catch retention limit by filing with the Office of the **Federal Register** for publication notification of the change at least 14

days before the effective date. Changes in the incidental catch limits will be based upon the length of the directed fishery closure and the estimated rate of catch by vessels fishing under the incidental catch quota.

\* \* \* \* \*

■ 4. In § 635.32, paragraph (c)(1) is revised, paragraph (c)(4) is removed, and paragraphs (d) and (e) are added to read as follows:

**§ 635.32 Specifically authorized activities.**

\* \* \* \* \*

(c) *Exempted fishing permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, other than scientific research conducted from a scientific research vessel, NMFS may issue exempted fishing permits.

\* \* \* \* \*

(d) *Applications and renewals.* Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the **Federal Register** for publication notification on an annual or, as necessary, more frequent basis to report on previously authorized exempted fishing activities and to solicit public comment on anticipated exempted fishing requests. Applications for EFP and SRP renewals are required to include all reports specified in the applicant's previous EFP or SRP, including the year-end report, all delinquent reports for EFPs or SRPs issued in prior years, and all other specified information, in order for the renewal application to be considered complete. In situations of delinquent reports, renewal applications will be

deemed incomplete and a permit will not be issued under this section.

(e) *Terms and conditions.* (1) Written reports on fishing activities and disposition of catch for all HMS either retained, discarded alive or dead, or tagged and released under a permit issued under this section, must be submitted to NMFS, at an address designated by NMFS, within 5 days of the fishing activity, without regard to whether the fishing activity occurs in or outside the Exclusive Economic Zone (EEZ). Also, an annual written summary report of all fishing activities and disposition of all fish captured under the permit must be submitted to NMFS, at an address designated by NMFS, within 30 days after the expiration date of the permit. NMFS will provide specific conditions and requirements as needed, consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks, in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a "no-catch" report must be submitted to NMFS within 5 days of the last day of that month.

(2)(i) Collectors of HMS for public display must notify the local NMFS Office for Law Enforcement at least 24 hours, excluding weekends and holidays, prior to departing on a collection trip, regardless of whether the fishing activity will occur in or outside the EEZ, as to collection plans and location and the number of animals to be collected. In the event that a NMFS agent is not available, a message may be left.

(ii) All live HMS collected for public display are required to have either a conventional dart tag or a microchip Passive Integrated Transponder (PIT) tag applied by the collector at the time of

the collection. Both types of tags will be supplied by NMFS. Conventional dart tags will be issued unless PIT tags are specifically requested in the permit application and their use approved by NMFS. Terms and conditions of the permit will address requirements associated with the use of the tags supplied on a case-by-case basis.

(3) Permit conditions regarding fishing activities, such as gear deployment, monitoring, or soak time, may be specified by NMFS if warranted, on a case-by-case basis.

(4) NMFS may select for at-sea observer coverage any vessel issued a permit under this section. Selected vessels must comply with the requirements for observer accommodation and safety specified at §§ 635.7, 600.725, and 600.746 of this chapter.

■ 5. In § 635.71, paragraphs (a)(6) and (a)(26) are revised to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in §§ 635.5 and 635.32 or in the terms and conditions of a permit issued under § 635.4 or an exempted fishing permit or scientific research permit issued under § 635.32.

\* \* \* \* \*

(26) Violate the terms and conditions or any provision of a permit issued under § 635.4, or an exempted fishing permit or scientific research permit issued under § 635.32.

\* \* \* \* \*

[FR Doc. 03-28209 Filed 11-7-03; 8:45 am]

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