Areas 7 and 7A Purse Seine: Open to fishing from 5 a.m. until 9 p.m., both July 28 and July 29, 2004.

Areas 7 and 7A Reef Net: Open to fishing from 5 a.m. until 9 p.m., both July 28 and July 29, 2004.

Order No. 2004–04: **Issued 5 p.m., July 27, 2004.**

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m. (noon) Wednesday, July 28, 2004, to 12 p.m. (noon), Saturday, July 31, 2004.

Areas 6, 7, and 7A: Open to net fishing from 4 a.m., Thursday, July 29, 2004, to 8 a.m., Saturday, July 31, 2004.

All Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 8 a.m. until 11:59 p.m. (midnight), July 30, 2004.

Areas 7 and 7A Purse Seine: Open to fishing from 5 a.m. until 9 p.m., July 30, 2004.

Areas 7 and 7A Reef Net: Open to fishing from 5 a.m. until 9 p.m., both July 30 and August 1, 2004.

Order No. 2004–05: **Issued 5 p.m., July 30, 2004.**

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m. (noon) Saturday, July 31, 2004, to 12 p.m. (noon), Saturday, August 7, 2004.

Areas 6, 7, and 7A: Open to net fishing from 4 a.m., Sunday, August 1, 2004, to 11:59 p.m., Friday, August 6, 2004.

All Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 8 a.m. until 11:59 p.m. on the following dates: August 3 through August 6, 2004.

Areas 7 and 7A Purse Seine: Open to fishing from 5 a.m. until 9 p.m. on the following dates: August 3 through August 6, 2004.

Areas 7 and 7A Reef Net: Open to fishing from 5 a.m. until 9 p.m. on the following dates: July 31, and August 3 through August 6, 2004.

Order No. 2004–06: Issued 3 p.m., August 6, 2004.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m. (noon) Saturday, August 7, 2004, to 12 p.m. (noon), Saturday, August 14, 2004.

Areas 6, 7, and 7A: Open to net fishing from 12:01 a.m., Saturday, August 7, 2004 to 11:59 p.m., Friday, August 13, 2004.

All Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 8 a.m. until 11:59 p.m. on the following dates: August 10 through August 13, 2004.

Areas 7 and 7A Purse Seine: Open to fishing from 5 a.m. until 9 p.m. on the following dates: August 10 through August 13, 2004.

Areas 7 and 7A Reef Net: Open to fishing from 5 a.m. until 9 p.m. on the following dates: August 10 through August 13, 2004.

Order No. 2004–07: **Issued 2 p.m., August 13, 2004.**

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m. (noon) Saturday, August 14, 2004, to 11:59 p.m., Saturday, August 14, 2004.

Areas 6, 7, and 7A: Open to net fishing from 12:01 a.m., Saturday, August 14, 2004, to 11:59 p.m., Saturday, August 14, 2004.

The Assistant Administrator for Fisheries NOAA (AA), finds that good cause exists for the inseason orders to be issued without affording the public prior notice and opportunity for comment under 5 U.S.C. 553(b)(B) as such prior notice and opportunity for comments is impracticable and contrary to the public interest. Prior notice and opportunity for public comment is impracticable because NMFS has insufficient time to allow for prior notice and opportunity for public comment between the time the stock abundance information is available to determine how much fishing can be allowed and the time the fishery must open and close in order to harvest the appropriate amount of fish while they are available.

Moreover, such prior notice and opportunity for public comment is impracticable because not closing the fishery upon attainment of the quota would allow the quota to be exceeded and thus compromise the conservation objectives established preseason, and it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA also finds good cause to waive the 30–day delay in the effective date, required under 5 U.S.C. 553(d)(3), of the inseason orders. A delay in the effective date of the inseason orders would not allow fishers appropriately controlled access to the available fish at that time they are available.

This action is authorized by 50 CFR 300.97, and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 3636(b).

Dated: November 10, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–25524 Filed 11–16–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 635

[Docket No. 040316092–4312–02; I.D.103003A]

RIN 0648–AQ37

International Fisheries; Atlantic Highly Migratory Species

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

ACTION: Final rule.

SUMMARY: This final rule implements international trade tracking recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Inter-American Tropical Tuna Commission (IATTC) for bluefin tuna, swordfish, and frozen bigeye tuna, regardless of ocean area of origin. Trade monitoring requirements for species covered under the recommendations and for southern bluefin tuna are established by this rule, including: a highly migratory species (HMS) international trade permit; statistical documents and re-export certificates; and recordkeeping, reporting, and inspection requirements.

DATES: Effective July 1, 2005.

ADDRESSES: Copies of the supporting documents, including the regulatory impact review/final Regulatory Flexibility Act analysis (RIR/FRFA) and the original ICCAT and IATTC recommendations, are available by sending your request to Dianne Stephan, Highly Migratory Species Management Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.

Bluefin tuna, southern bluefin tuna, bigeye tuna, and swordfish statistical documents, re-export certificates, and biweekly trade reports may be obtained from:

Atlantic coast: NMFS, HMS, ATTN: Kathy Goldsmith, 1 Blackburn Drive, Gloucester, MA 01930–2298;

Gulf coast: NMFS, National Seafood Inspection Laboratory, ATTN: Lori Robinson, 705 Convent St, Pascagoula, MS 39568–1207;

West coast: NMFS, Southwest Region, Sustainable Fisheries Division, ATTN:

Pat Donley, 501 West Ocean Blvd. Suite 4200, Long Beach, CA 90802–4213; and,

Western Pacific: NMFS, Pacific Islands Regional Office, ATTN: Raymond Clarke, 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

FOR FURTHER INFORMATION CONTACT: Dianne Stephan (Atlantic coast), 978–281–9397; Raymond Clarke (Western Pacific), 808–973–2935; Lori Robinson (Gulf coast), 228–769–8964; or Patricia J. Donley (West coast), 562–980–4033.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule for this action (69 FR 16211, March 29, 2004) provided substantial background information which has been summarized as follows.

The United States is authorized under the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971(d)(3)) to promulgate regulations as necessary and appropriate to implement conservation and management recommendations that have been adopted by the International Commission for the Conservation of Atlantic Tuna (ICCAT). Likewise, the Tuna Conventions Act (TCA; 16 U.S.C. 955) authorizes rulemaking to carry out recommendations of the Inter-American Tropical Tuna Commission (IATTC).

ICCAT has determined that Atlantic stocks of bigeye tuna (*Thunnus obesus*), bluefin tuna (*Thunnus thynnus*), and swordfish (*Xiphias gladius*) are overfished in the Atlantic Ocean. Large scale longline vessels from ICCAT member and non-member nations alike have been reported to operate in a manner that diminishes the effectiveness of previously-implemented ICCAT measures designed, in part, to prevent overfishing and rebuild stocks of these species. At its 2000 meeting, ICCAT recommended the implementation of trade monitoring programs which would address illegal, unreported and unregulated (IUU) catches in the Convention Area. During 2001, programs for bigeye tuna (frozen) and swordfish statistical documents and re-export certificates were officially adopted. In addition, a recommendation to add a re-export certificate to the bluefin tuna program was adopted by ICCAT in 1997.

ICCAT member nations are now required to implement these recommendations. As with ICCAT's previously-required bluefin tuna statistical document program, Pacific stocks are also included in order to establish an enforceable program. In addition, IATTC member nations are implementing a Pacific area program based on a 2003 IATTC resolution for a frozen Pacific bigeye tuna statistical document program. The Commission for the Conservation and Management of HMS stocks in the Western and Central Pacific Ocean (WCPFC) may consider a similar measure for frozen bigeye tuna.

NMFS is creating an international trade monitoring program for bigeye tuna (frozen) and swordfish to comply with recommendations from ICCAT and IATTC. A statistical document program for southern bluefin tuna is also being established to improve compliance with the previously implemented ICCAT bluefin tuna statistical document program. Southern bluefin tuna (*Thunnus maccoyii*) are virtually indistinguishable from bluefin tuna and Pacific bluefin tuna (*Thunnus orientalis*). Currently, it is possible for bluefin tuna or Pacific bluefin tuna to be mislabeled as southern bluefin to circumvent statistical document reporting requirements. This confounds the established trade tracking program. Moreover, the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) has requested that the United States take part in its statistical document program to further conservation efforts for this species.

Provisions of the Final Rule

This rule requires that importers and exporters of bluefin tuna, southern bluefin tuna, swordfish and frozen bigeye tuna obtain a HMS International Trade Permit (ITP) on an annual basis. Only those importers who are entering product for consumption need to have an ITP.

Permit holders are required to comply with documentation, reporting, recordkeeping, and inspection requirements including the preparation of a species-specific statistical document or re-export certificate to accompany export or re-export shipments of southern bluefin tuna, frozen bigeye tuna, and swordfish. Re-export certificates are also required for re-exports of bluefin tuna. Statistical documents for exports and re-export certificates must be validated by NMFS or a NMFS-authorized official, and a copy of each document must be provided to NMFS. Likewise, all imports of swordfish, southern bluefin tuna, and frozen bigeye tuna must be accompanied by a validated statistical document or re-export certificate. For those imports entered for consumption, the original statistical document for each shipment must be submitted to NMFS once the shipment reaches its final destination. Each permit holder must prepare and submit a biweekly activity report to NMFS.

The final rule provides for certain exemptions to its requirements. First, trade documentation in this rule does not apply to frozen bigeye tuna caught by purse seiners or baitboats and destined principally for canneries of the United States or a U.S. insular possession. Second, re-export certificates are not required for re-export shipments that have not been consolidated or subdivided, and for which the shipment contents remain true to the information on the original statistical document. In addition, validation is not required for re-exports that do not require a re-export certificate. Third, importers of entries other than entries for consumption (e.g., shipments on a through bill of lading, destined from one foreign country to another) are not required to obtain the HMS ITP and are not subject to the reporting requirements. However, these shipments are subject to the documentation requirements, and must be accompanied by a correctly completed, validated statistical document. Fourth, trade-tracking documentation is not required for shipments between the United States and U.S. insular possessions.

Documentation, reporting, recordkeeping, and inspection requirements that were previously in effect for import and export of bluefin tuna remain in effect; however, NMFS has moved the relevant regulatory text from 50 CFR. 635.41 through 635.43 to 50 CFR 300.183 through 300.189 and consolidated it with regulatory text implementing trade tracking requirements for the other species covered by this rule. In addition, the statistical document for swordfish implemented by this rule will replace the swordfish certificate of eligibility. Upon implementation of this rule, the certificate of eligibility will no longer be required. This final rule also corrects several cross-references in 50 CFR parts 300 and 635.

Implementation Date

NMFS recognizes that the implementation of a new permit program must be accompanied by a period of outreach to affected constituents. In addition, NMFS is initiating an electronic permitting and reporting system for the HMS ITP. Therefore, to provide for sufficient time for implementation and outreach, this final rule will go into effect on July 1, 2005.

Changes from the Proposed Rule

As reflected in the Comments and Responses below, several commenters raised concerns regarding the burden and costs of this trade tracking program. In response to public comments, NMFS

has made clarifications to the final rule to minimize its potential impact to the extent practicable, consistent with regional fishery management organization (RFMO) recommendations. With regard to imports, the final rule provides that not all imports are subject to reporting requirements, and limits reporting requirements to those shipments that are entered for consumption. To make this narrower requirement clear, the final rule adds definitions for ''entry for consumption,'' ''entered for consumption,'' ''entry number,'' and ''exportation,'' and refines the definitions of ''import'' and ''export'' to be more consistent with U.S. Customs and Border Protection (CBP; 19 CFR parts 101, 141, 144, and 146) and U.S. Census Bureau (15 CFR part 30) regulations. As in the proposed rule, the final rule continues to require documentation for all imports of products identified in § 300.184 into the Customs territory of the United States. Such imports must be accompanied by validated statistical documents and are subject to inspection by authorized NMFS personnel. The final rule excludes this requirement for insular possessions with customs territories separate from the Customs territory of the United States. Such entities may make individual determinations regarding the need for documentation of entries other than entries for consumption. A definition for ''separate customs territory of a U.S. insular possession'' was added to improve the clarity of these provisions.

The final rule clarifies the definitions of ''importer'' and ''exporter'' to specify that the party responsible for obtaining the HMS ITP and fulfilling the reporting requirements is the consignee for imports and the U.S. principal party in interest (USPPI) for exports. Currently, for importers in the United States, the consignee is identified on CBP Forms 7512, 3461, and 7501 or on the electronic Automated Commercial System (ACS). Exporters are identified as the USPPI on the Shippers Export Declaration (SED) and in the Automated Export System (AES), and as the ''exporter'' on the Canada Customs Invoice. Documentation and reporting requirements of this rule apply to all exports described in § 300.185(b), regardless of whether those shipments are exempt from SED and AES documentation and reporting requirements. Additionally, customs brokers or freight forwarders may obtain a HMS ITP or submit documentation for the consignee or USPPI; however, the individual identified as the importer or exporter, as defined in the rule, are the parties legally responsible for the permitting, documentation, reporting, and recordkeeping requirements of this rule.

While the proposed rule required the HMS ITP for all importers, the final rule clarifies that the permit is only required for importers who enter for consumption products regulated by this rule. Although not all importers are required to have a HMS ITP, section 300.185(e) clarifies that anyone responsible for importing, exporting, storing, packing, or selling fish or fish products regulated under this subpart, in addition to HMS ITP holders, is subject to the inspection provisions at ' 300.183(d).

The final rule clarifies the documentation requirements for re-exports (i.e., product that is entered for consumption then subsequently exported). If a shipment entered for consumption remains true to the contents listed on the original statistical document, then, upon re-export, the importers certification on the statistical document is completed in lieu of a re-export certificate. If the shipment is subdivided or consolidated, then a re-export certificate identifying the complete contents of the shipment must be completed and validated for each re-export shipment. The original or a copy of the original statistical document must be attached to each re-export certificate.

The final rule adds a new paragraph under ' 300.185(b) which clarifies that the export documentation and reporting requirements of that paragraph apply to exports of fish or fish products that were harvested by U.S. vessels and first landed in the United States, or harvested by vessels of a U.S. insular possession. Thus, these export provisions would not be required for tuna transshipments in the customs territory of Guam.

The final rule clarifies the applicability of the trade monitoring program to products of an American fishery landed overseas. When such products are shipped from a foreign port and entered into the United States under heading 9815 of the Harmonized Tariff Schedule of the United States (HTS), the trade monitoring requirements in this rule for imports into the United States do not apply. However, if such products are so entered into the United States and then exported, trade monitoring requirements would apply for the export of the product from the United States. Likewise, if products from an American fishery landed overseas were exported directly from a foreign nation to another foreign nation, the trade monitoring program requirements would apply. For such transactions, NMFS should be contacted for assistance with documentation and validation requirements.

To improve clarity, the final rule removes the definition of ''foreign trade dealer'' and adds additional clarification regarding the use of statistical documents and re-export certificates by foreign businesses at § 300.186(h). Further, minor revisions to improve clarity and consistency in the regulatory text include replacing the term ''dealer'' with ''permit holder,'' ''dealer permit'' with ''trade permit,'' and ''international commission'' with ''regional fishery management organization (RFMO).'' The final rule clarifies that other government agencies may be authorized to provide validation services. The final rule also corrects cross-references in §§ 635.20 and 635.31; adjusts the definitions of ''import,'' ''export,'' ''importer,'' and ''exporter'' in § 635.2 to be consistent with § 300.182 and CBP and Census Bureau regulations, adds a definition for ''exportation,'' and removes the definition of ''Swordfish Certificate of Eligibility (COE)'' from § 635.2.

Comments and Responses

Scope

Comment 1: Supporting and opposing comments were received for the proposal to include fresh bigeye tuna in the statistical document program. Commenters that opposed including fresh bigeye tuna in the program stated the following: that they primarily deal in fresh bigeye tuna; that a fresh bigeye tuna program should be delayed until the statistical document program for frozen bigeye tuna has been implemented and evaluated to determine whether including fresh bigeye tuna is necessary; and that including fresh bigeye tuna would be more expensive than a program solely for frozen bigeye tuna. Commenters that supported including fresh bigeye tuna in the program stated that it would be less confusing to implement a comprehensive bigeye tuna trade program from the onset. Another commenter suggested including fresh bigeye tuna after a defined time period. One commenter requested that all fresh products be exempted, and another commenter noted that the rationale for including bigeye tuna in the proposed rule was unclear.

Response: The trade monitoring program in the final rule does not include fresh bigeye tuna. Current ICCAT and IATTC recommendations apply only to frozen bigeye tuna, because both organizations recognize that numerous implementation issues

require resolution prior to the establishment of a statistical document program for fresh bigeye tuna. For the sake of comprehensiveness, NMFS requested comment on the inclusion of fresh bigeye tuna to inform the public of potential future actions by ICCAT, IATTC, or other RFMO, and to identify public concerns. A similar approach was taken in the 1993 ICCAT recommendation for a bluefin tuna statistical document program. After implementation issues regarding the trade of fresh bluefin tuna had been further discussed and resolved, ICCAT adopted a recommendation extending the program to include fresh product the following year. Since NMFS implemented a certificate of eligibility (COE) for fresh and frozen swordfish imports in 1999, and U.S. export of swordfish and trade of southern bluefin tuna is limited, NMFS does not anticipate implementation issues for fresh products other than bigeye tuna. The new statistical document program applies to fresh and frozen swordfish and southern bluefin tuna and frozen bigeye tuna, and will replace the swordfish COE.

Comment 2: Several commenters supported implementing statistical document programs for all the species identified in the proposed rule, and one noted that the proposed approach of including similar species from all ocean areas is a critical factor in providing complete and comprehensive data for this program.

Response: The final rule establishes a trade monitoring program for fresh and frozen swordfish, southern bluefin tuna, and frozen bigeye tuna from all ocean areas. Swordfish and frozen bigeye tuna are included in the program in direct response to ICCAT and IATTC recommendations. Southern bluefin tuna is included to ensure the effectiveness of the program by eliminating potential mislabeling and to support the Commission for the Conservation of Southern Bluefin Tuna's (CCSBT) statistical document program. These fish from all ocean areas are included to ensure effective implementation of the RFMO recommendations since each species is geographically indistinguishable and similar species can be difficult to discern based on external examination.

Comment 3: One commenter congratulated NMFS for developing a comprehensive approach to enhance the tracking of HMS from all ocean areas and to promote the international objective of eliminating illegal, unregulated, and unreported (IUU) fishing.

Response: International statistical document programs have been effectively employed to reduce IUU fishing, which is an important goal of RFMOs such as ICCAT and IATTC. Although these programs place an administrative burden on U.S. businesses, the success of these programs will benefit the future of the impacted stocks as well as the businesses that rely on those resources. NMFS appreciates the cooperation of all U.S. businesses affected by this final rule, and will continue to work to minimize the impact of reporting requirements while implementing an effective trade monitoring program.

Comment 4: A commenter expressed concern that some of these requirements might be passed on to vessel owners, and asked how this rule might impact vessel owners. The commenter also asked whether the statistical document program could negatively affect future quota allocations.

Response: The permitting and reporting requirements apply in general to businesses involved in international trade of HMS species. Vessel owners who also export or import HMS species would need to comply with requirements specified in the rule. Quota allocations are determined after extensive deliberations using numerous sources of data and public input. It is premature to speculate what impact, if any, a statistical document program could have on future quota allocations. None the less, experience has shown that more data and information proves to be of greater benefit in determining the equitable size and allocation of quotas as opposed to less or limited data.

Economic Impacts and Reporting Burden

Comment 5: Several commenters expressed concern over the potential impact of validation on product quality and export opportunities. Commenters noted that travelling to reach a government office for validation could be time consuming, and that export and re-export shipments could be delayed since government validation has not been available on a 24 hour/7 days per week basis for similar programs. In particular, numerous commenters expressed concern about the effect of the validation requirement on airfreight exports, which is of special concern for island businesses that rely upon limited air transportation schedules. Commenters stated that validation should be expedient and efficient so as not to interfere with meeting limited and inflexible airfreight schedules, and that it should be inexpensive or free. Several commenters suggested options for meeting the proposed validation requirements, including: validation of exports after they are shipped; on-line validation; use of a HACCP (hazard analysis and critical control point) type of program where exporters validate their own shipments; annual issuance of dealer validation authority similar to the process for shellfish validation with monthly renewal unless the validating official failed a spot-check inspection; use of a domestic smart tag program that could include barcodes and computer radio tags with processing and temperature data; and having a government officer stationed at each U.S. Customs and Border Patrol (CBP) port 7 days per week to provide validation services. A commenter stated that there is a need to balance the need for third-party validation and the credibility of the program data carefully, and that a continuous review of compliance and data accuracy would strengthen program credibility.

Response: Government or government-authorized validation is required to ensure that the trade of covered species includes explicit government involvement, so that nations are able to accurately report trade activity to RFMOs. In order to address validation time and dollar cost concerns, statistical documents and re-export certificates may be validated by either NMFS or another entity authorized by NMFS. A non-government organization (e.g., industry group) or other government agency may obtain authorization to validate documents, at no cost, from NMFS by submitting a written description of the procedures to be used for verification of information to be validated, a list of names addresses, and telephone/fax numbers of individuals to perform validation, and an example of the stamp or seal to be used. NMFS must respond within 30 days, and if approved by NMFS, the authorization would take effect after the relevant RFMOs are notified. NMFS appreciates and fully considered the comments that were provided in efforts to produce a validation system that is both cost-efficient and effective. In this rule, NMFS has attempted to minimize costs to the industry and government associated with validation while fulfilling the requirements of the RFMOs' recommendations. Implementation of the regulatory requirements in this final rule will provide further opportunities for collaboration with interested parties to develop a program that is both efficient for all parties involved and provides the required trade data.

Comment 6: A number of commenters stated that the proposed reporting

requirements would negatively impact their businesses. One commenter stated that he had discontinued shipments of frozen bigeye tuna to Japan because of the reporting burden that had recently been required by Japan and is being proposed in this rule. Another commenter stated that it will be infeasible for his business to export swordfish for the same reason. A commenter stated that additional staff would be required for his business to fulfill the proposed reporting requirements. A commenter noted that the current fiscal climate within the industry made this a particularly bad time to impose costly reporting requirements. A commenter stated that any financial burden associated with this rule should be on the Federal government. Several commenters stated that the proposed reporting requirements were inevitable and not of concern.

Response: NMFS' intent with this final rule is to meet the mandated requirements while providing continued opportunities for trade of the covered species with the minimum required reporting burden. The use of statistical documents and re-export certificates (including document validation) for international trade of bluefin tuna, bigeye tuna, and swordfish are explicitly required by RFMOs such as ICCAT and IATTC. This final rule is intended to facilitate trade of the covered species, particularly to other RFMO member nations. Without this program, U.S. trade could be severely limited, which would negatively impact U.S. businesses.

NMFS made a number of clarifications to the final rule with the intent, in part, to reduce reporting burden in response to public comments. Permitting, documentation, reporting and recordkeeping requirements for bigeye tuna are limited to frozen products in the final rule rather than fresh and frozen products as indicated in the proposed rule. Permitting, reporting, and recordkeeping requirements for imports are reduced to apply only to entries for consumption rather than all imports. In addition, re-export certificates and subsequent validation in the final rule are only required for re-exports of products that have either been split or consolidated for re-export. NMFS also recognizes that during the initial start-up period, dollar and time costs for industry implementation of the rule will be slightly higher, and NMFS included a protracted implementation date for effectiveness of the final rule in part to help address this issue. The extended implementation date will provide time for authorization of entities to provide validation and for all affected businesses to adjust their business processes and incorporate the documentation, reporting, and recordkeeping requirements in the most efficient manner. NMFS also intends to design the implementation program to minimize associated reporting costs.

Comment 7: A commenter stated that the IRFA understates time and cost burdens associated with the action, and that the impact of the reporting requirements on some participants has not been analyzed. The commenter stated that the supporting documentation fails to assess the cost of private vendors for validation, or the impact of a lack of timely validations on Pacific exporters, and that the use of biweekly reports is contrary to the Paperwork Reduction Act.

Response: NMFS estimated the time and cost burden associated with the rule based on costs associated with similar programs including the bluefin tuna statistical document program and the swordfish import monitoring program. Both of these programs require dealer permits and reporting similar to those included in this program. For example, the cost of the options available for validation are assessed relative to the programs that are currently in place, which do not include a fee for use of an authorized validation service. Exact estimates of numbers of transactions (particularly exports) are difficult to ascertain prior to implementation of this rule, although existing Census Bureau export data and U.S. Customs and Border Protection import data help provide estimates of magnitude for and number of shipments over recent years. Overall burden estimates associated with these regulations are expected to be an overestimate, given that the calculations included fresh bigeye tuna which has been excluded in the final rule. In addition, the reduction of reporting requirements to apply only to consumption entries, and limiting of re-export documentation requirements as indicated in the previous response, are also expected to reduce reporting burden. Each reporting requirement implemented by this rule was assessed by the U.S. Office of Management and Budget (OMB) for compliance with the Paperwork Reduction Act. A 60-day public comment period was provided (February 12, 2003, 68 FR 7107; March 12, 2003, 68 FR 11809) and the impact of the reporting burden was analyzed and provided in the supporting documents for the proposed rule (March 29, 2004, 69 FR 16211). OMB approved implementation of the permitting and reporting requirements on July 1, 2004, and June 25, 2004, respectively. In addition, as discussed under a previous response, this final rule allows for the authorization of non-government or other government entities to provide validation services in order to provide flexibility for industry operations. These potential impacts are expected to be minimal once businesses have incorporated the requirements into their business processes, and slightly higher during the start-up phase of implementation.

Program Implementation

Comment 8: Commenters asked several questions relative to the proposed HMS ITP, including when the permit would go into effect, how much it would cost, whether the permit would need to be purchased annually, and under which circumstances it would be required. Several commenters noted that it is unclear who the responsible party would be for preparing and submitting the proposed reporting documentation. A commenter asked whether customs brokers could sign statistical documents. Several commenters requested that electronic reporting be available, and that documents and instructions be provided on an internet website. A commenter requested that an appropriate level of outreach to Caribbean fish dealers be implemented regarding the proposed permitting and reporting requirements, and that a calendar renewal date for the proposed permit be implemented in order to help facilitate reminder notices from the agency and trade associations.

Response: The final rule provides for an extended implementation period for the permitting, documentation, reporting, and recordkeeping requirements which will go into effect on July 1, 2005. The preferred approach, currently in the design phase, is to use electronic permitting and reporting processes on the internet, as much as possible, to minimize the reporting burden. Some specific details, including how much a permit will cost, how a permit can be obtained, and where reports will be submitted will be determined during development of the implementation plan (note that the estimate of a permit cost used in calculations of public reporting burden under the Paperwork Reduction Act was $100 based on similar NMFS programs). The HMS ITP must be obtained by individuals or businesses that are classified as the consignee as identified on documentation required by CBP for entries for consumption, or the U.S. principal party in interest for shipment export. An agent such as a customs broker or freight forwarder may obtain

an HMS ITP and submit required documentation. Alternatively, an agent may act on behalf of a permit holder; however, the importer or exporter, as defined in the rule, is the party legally responsible for the documentation, reporting, and recordkeeping requirements of this rule.

NMFS will provide educational information to dealers currently permitted by NMFS for purchase or trade of tunas and swordfish, and will work with states, commonwealths, and governments of insular possessions to provide information to other interested parties regarding implementation requirements and procedures. It is intended that the HMS ITP be obtained annually on a calendar year basis, and expire each year on December 31.

Comment 9: Several commenters noted that some of the information proposed to be collected under this rule is already collected by other agencies including NMFS, FDA, CBP, U.S. Census Bureau, and the government of Guam. Commenters requested that NMFS coordinate both interagency and intra-agency and that the reporting burden on impacted businesses be reduced.

Response: NMFS continues to coordinate both internally and with other government agencies to eliminate unnecessary duplication of reporting by individuals affected by this final rule. The use of statistical documents and re-export certificates (including document validation) for international trade of bluefin tuna, bigeye tuna, and swordfish is explicitly required by ICCAT and IATTC. Without the requirements implemented under this final rule, international trade of these species, particularly exports to other RFMO member nations, could be negatively impacted. NMFS' intent with this final rule is to provide continuing opportunities for trade of the covered species with the minimum required reporting burden. As noted in the response to Comment 7, NMFS modified the final rule to reduce the reporting burden as much as possible.

Comment 10: Several commenters requested that biweekly reports only be required during reporting periods with activity while one commenter requested that negative reporting be implemented. A commenter suggested that the average weight of individual fish be used for reporting bulk shipments of bigeye tuna on the biweekly reporting form, and another commenter requested that individual weights be used for swordfish.

Response: NMFS will not require negative biweekly reporting. In several NMFS programs, negative reporting is used to verify whether the absence of information for a reporting period is the result of a missing report or inactivity. However, in this program, NMFS has several options for verifying reporting data, including comparison of CBP's entry data and comparison of statistical document data from other member nations. Based on responses from dealers that have participated in the swordfish import program and in an effort to minimize reporting burden, NMFS determined that negative reporting was not necessary for satisfactory implementation of this program. Some specific details, including how to record the weight of fish on individual forms, will be determined during the development of the implementation plan.

Comment 11: A commenter noted that each member country of IATTC and ICCAT is implementing a statistical document program, and asked whether the United States might be able to learn from the way other countries were implementing their programs.

Response: Sharing of ideas and approaches to fishery management challenges among member nations is an essential underpinning of the RFMO process. The United States has met with other nations to discuss implementation issues such as harmonizing different reporting forms and providing data in consistent electronic formats, and continues to welcome the opportunity to discuss program objectives and implementation strategies at annual RFMO meetings as well as interim meetings with delegates of other nations.

Comment 12: Several commenters suggested that the statistical documents be modified so that one form addressed all species.

Response: ICCAT convened an international meeting of technical experts in 2001 to consider and resolve technical issues related to the implementation of the recommended swordfish and bigeye tuna statistical document programs. At that meeting, the United States proposed a single, harmonized document to track bluefin tuna, bigeye tuna, and swordfish trade. Although this proposal was consistent with ICCAT's directive to endeavor to harmonize all statistical documents under its purview, it was rejected by the technical experts due to differences in trade patterns and practices relative to the three species, and potential impacts to the effectiveness of the current bluefin tuna statistical document program if it was altered to include additional species. As a result, ICCAT developed separate species-specific forms for bigeye tuna and swordfish. Harmonizing these individual forms is a long-term goal of NMFS.

Comment 13: A commenter asked how shipments of more than one species would be addressed. Another commenter asked whether statistical documents would be required at entry into the customs territory of the United States.

Response: The final rule requires that species-specific statistical documents accompany imports into the United States of fresh or frozen swordfish, frozen bigeye tuna, and fresh or frozen Southern bluefin tuna shipments and that documentation be available at the time of entry. If a shipment contains more than one species, then a species specific statistical document would be required for each covered species in the shipment.

Comment 14: A commenter stated that dealers should be required to keep records for seven years rather than two years.

Response: Dealers are required to keep submitted and supporting records for a period of two years. This information must be made available to authorized personnel upon request. The two year timeframe establishes a balance between the burden on dealers and the recordkeeping, reporting, and the data collection needs of the agency.

Comment 15: A commenter noted that non-participating nations could have trouble exporting covered species into the United States. For example, shipments from nations with unstable or disorganized governments could be delayed because of the government validation clause in the proposed rule. A commenter requested that statistical documents and instructions be easily accessible for exporters from other nations.

Response: Nations that are members of ICCAT, IATTC, IOTC, and/or the CCSBT will be familiar with statistical document programs, and are expected to have the infrastructure to support the necessary reporting requirements. Nations or businesses of nations that are not members of an RFMO can contact the appropriate RFMO for approved statistical documents and validation requirements. The required statistical documents are currently accessible on the websites of the RFMOs (iccat.es; iattc.org; ccsbt.org; iotc.org).

Guam Transshipments

Comment 16: Numerous commenters questioned the applicability of the proposed statistical document programs to Guam's transshipment industry in which foreign flag longline vessels land fresh product on Guam that is graded, packaged and shipped by air to that

vessels' country of origin or a foreign nation. A commenter stated that Guam has few opportunities for economic development and that the transshipment industry has helped the local economy. A commenter noted that it is important to be certain that Guam shipments are ultimately accepted in Japan, and another commenter stated that Guam agents should not be responsible for submitting the proposed documentation.

Response: The trade monitoring program established by the final rule will not apply to HMS transshipped through Guam from one foreign nation to another, including transshipments landed on Guam by foreign vessels. However, any covered HMS landed in Guam by foreign vessels and entered into the customs territory of Guam for consumption (e.g., sold in Guam's domestic market) would be subject to these regulations. As defined in the final rule, a transshipment is not considered an entry for consumption into the customs territory of Guam and does not require a U.S. statistical document or re-export certificate. However, any importing nation, such as Japan, may require that transshipments be accompanied by statistical documents from the appropriate nation. As indicated in the RFMO recommendations, statistical documents must be validated by the country of the vessel that landed the fish, therefore, the statistical document would originate and be validated by the flag nation of the vessel landing the fish in Guam. Guam is a separate customs territory from the customs territory of the United States with its own customs regulations. NMFS will continue to work with the Government of Guam to determine appropriate implementation of the requirements of this rule.

Regulatory Process

Comment 17: Several commenters expressed concern about the completeness of the regulatory measures in the proposed rule, noting a need for clarification in the process to be used for validation and the definition of a dealer. A commenter stated that the public should be able to comment again once these measures were further clarified.

Response: In response to public comments, NMFS made several clarifications to the final rule, including a number of changes which reduced the reporting burden (see previous responses regarding reporting burden). Since many of the changes provide clarification of terms and concepts used in the original rulemaking rather than new rule provisions, it is not necessary to again solicit public comment. Specific details of program implementation, for example, the addresses to which reports must be submitted and the cost of the permit (which will be based on the overall cost of the program) will be determined during the implementation period and are not required to be codified in regulatory text. The extended period of implementation will allow adjustments as specific details and processes of the program are developed.

Comment 18: A commenter stated that the IRFA should have included the following: management objective and underlying rationale; alternatives such as using the council process, exempting fresh fish, reducing redundant requirements, or including catches from purse seine vessels. A commenter requested that the supporting documentation be expanded to address the offloading of IUU frozen fish in Japan. Another commenter asked whether an analysis of alternatives to this rule was prepared.

Response: A combined RIR/ IRFA was prepared for this rulemaking, which analyzed a number of alternatives to the proposed rule and supported these analyses with a description of the management objective, statement of the problem, and description of the fisheries in addition to other information. One of the requirements of an IRFA is to describe any alternatives to the final rule which accomplish the stated objectives and which minimize any significant economic impacts. The alternatives suggested by the commenter either did not meet the objectives of the rulemaking or did not minimize impacts on affected constituents. Since the purpose of the rulemaking is to establish programs under international agreement, NMFS coordinated with regional fishery management councils and provided opportunities for public comment. NMFS carefully analyzed the alternatives and the potential impact of each alternative when selecting the preferred alternative and final action. The selected alternative is the alternative that reduced the complexity of the reporting requirements without compromising the effectiveness of the trade monitoring program. The final action does not include permitting or reporting requirements for fresh bigeye tuna.

Ports of Entry

Comment 19: Many commenters stated that limiting trade to certain ports of entry could have a tremendous economic impact on local industries. A number of commenters requested that all Hawaii ports remain open. A commenter stated that ports of entry should be chosen through a proposed rule process rather than being designated by the Assistant Administrator for Fisheries. Another commenter suggested that ports of entry be considered separately through the fishery management council process.

Response: This rule does not limit trade to any ports. Should designation of entry ports be necessary to further facilitate enforcement or administrative procedures, NMFS intends to use a rulemaking process in order to facilitate public participation consistent with the Administrative Procedures Act.

Enforcement

Comment 20: A number of commenters raised enforcement issues, and noted that a fee structure and an appeal process for violations were not included in the proposed rule. One commenter stated that NMFS enforcement has been inconsistent in what it chooses to enforce. Another commenter requested that more funding be provided for enforcement. A commenter requested that a 90-day trial period be instituted before regulations are enforced.

Response: NOAA's Civil Procedure regulations, which can be found at 15 CFR part 904, include the procedures for contesting Notices of Violation and Assessment (NOVAs). Maximum civil penalty amounts are established by statute; the penalty in any particular case is assessed at the discretion of the prosecuting attorney from the Office of General Counsel for Enforcement and Litigation, after consulting NOAA's civil administrative penalty schedule. Consideration is given to many factors including, but not limited to, respondent's ability to pay, the severity of the violation based on its impact on the resource, and whether or not the respondent has prior violations. While enforcement priorities exist, and may vary by region, National Marine Fisheries Service Office for Law Enforcement is committed to a comprehensive program of enforcing all of the statutes administered by NOAA. Funding for enforcement of these, and any regulations, is by statutory appropriation. All regulations are enforceable as of their effective date.

Other Comments

Comment 21: Several commenters stated that purse seiners should not be exempt from the proposed rule, noting that the rationale for exemption in the proposed rule was unclear and that the United States should oppose the exemptions identified in the ICCAT recommendation, unless mandatory

observer coverage is implemented to determine the amount of tuna harvested by these fisheries.

Response: Both the ICCAT and IATTC recommendations provide exemptions for purse seine and baitboat catches bound for canneries. The RFMOs have determined that the tuna landings and catch data collected by canneries is adequate for the purposes of these recommendations.

Comment 22: Several commenters perceived that U.S. fishermen were subject to greater restrictions and reporting requirements than fishermen from other nations.

Response: NMFS recognizes that reporting of HMS by fishing nations has been variable throughout the world's oceans and that the standards applied to U.S. fishermen are often considered to be a benchmark for responsible fishing. The United States continues to work actively with respective RFMOs to provide leadership and support to conserve and manage HMS in the Atlantic, Pacific, and Indian Oceans.

Comment 23: A commenter asked whether bluefin tuna that are caught off the United States and sent to Mexico for cage culture were affected by this proposed rule. Another commenter asked whether the proposed rule applies to farmed bluefin tuna.

Response: This final rule includes a provision for a bluefin tuna re-export certificate which must accompany re-exported shipments of bluefin tuna regardless of whether they have been farmed or raised in cage culture. In addition, the previously implemented ICCAT bluefin tuna statistical document program would also apply to farmed bluefin tuna.

Comment 24: One commenter requested that commercial fishing vessels of fishermen that violate quotas be seized.

Response: This rule regulates the trade of swordfish, bigeye tuna, southern bluefin tuna and bluefin tuna and addresses HMS dealers, not vessels.

Comment 25: A commenter requested that the final regulations stress application to all products ''in any form'' rather than relying on harmonized tariff schedule (HTS) codes.

Response: The final rule applies to all products of the covered species (including chunks, fillets, and airtight containers) except fish parts other than meat (e.g., heads, eyes, roe, guts, and tails). The rule also identifies products by description in conjunction with currently available HTS codes.

Classification

This final rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.*, the Magnuson-Stevens Fishery Management and Conservation Act (16 U.S.C. 1801 *et seq.*) and the TCA (16 U.S.C. 955 *et seq.*). The AA has determined that this final rule is necessary to implement the recommendations of ICCAT and IATTC and is necessary for the management of bluefin tuna, bigeye tuna and swordfish.

NMFS has prepared a RIR/FRFA that examines the impacts of the alternatives for implementing the ICCAT and IATTC recommendations for international trade monitoring programs. The objectives of the final rule, its legal basis, and reasons for its implementation are summarized in this preamble and are also set forth in the Summary and Supplementary Information sections of the preamble to the proposed rule. The final rule would affect approximately 1,890 (930 foreign and 960 domestic) seafood businesses that participate in international trade of swordfish, bluefin tuna, southern bluefin tuna and bigeye tuna, all of which are considered small entities. Impacts to businesses would occur in two areas - permitting and reporting (reporting includes documentation and recordkeeping). NMFS expects only minor negative economic impacts from the final rule because the regulatory measures only involve adjusting permitting and reporting requirements. The following paragraphs describe the alternatives considered, compare the potential permitting and reporting impacts of each alternative, and explain why NMFS selected the final action and rejected the other alternatives.

The no action/status quo alternative (alternative 2) would make no changes to current programs. The remaining three alternatives would implement the recommended trade programs for swordfish, bigeye tuna, and bluefin tuna. The final action (alternative 1) and alternative 4 would implement the recordkeeping requirements by linking them to the HMS international dealer trade permit. The final action differs from alternative 4 by requiring trade monitoring for southern bluefin tuna in addition to the other species, in order to facilitate program effectiveness, whereas alternative 4 would not require the use of southern bluefin tuna statistical documents or require a trade permit for trading in southern bluefin tuna. Alternative 3 would implement the trade program by building onto existing dealer permits (e.g., expanding the Atlantic tunas dealer permit to include trade of frozen bigeye tuna) and associated recordkeeping requirements rather than implementing a new, separate permit for international trade. Overall, the immediate costs associated with the final action and alternatives 3 and 4 are expected to be greater than for alternative 2 (no action); however, access to international markets could be reduced under the status quo, which is expected to have much greater negative economic impacts in the long term.

The initial cost of obtaining the permit for each U.S. business under the final action and alternative 4 is expected to be $100 plus the time to fill out the form and the cost of postage, which would be approximately $2. NMFS expects this amount to be a minor negative impact for the affected businesses. The permit-associated cost for the final action and alternative 4 differs from building onto existing systems (alternative 3) in an amount between $0 to $100 per business, depending upon the other permits held by the business. Under alternative 3, if the business were required to have an Atlantic or Pacific tuna permit to trade in bigeye tuna or southern bluefin tuna, there would be no associated cost since these permits are issued free of charge. However, if the business were required to have a swordfish permit for importing or exporting swordfish, the cost could be either $25 or $100, depending upon whether the business has another permit issued by the Southeast Region of NMFS. NMFS estimates that approximately 960 businesses would be impacted by the final action and alternative 3. Alternative 4 would entail similar costs per business as alternative 1; however, slightly fewer businesses would be impacted since businesses trading in southern bluefin tuna without trade in any of the other covered species would not be required to purchase a permit.

Impacts of reporting for the final action and alternatives 3 and 4 are expected to be approximately the same since all businesses must submit the required reports, regardless of whether the permitting is accomplished through the HMS ITP or by adding on to other permitting programs. The professional skills necessary to complete the reporting requirements are equivalent to an educational level of high school completion. The annual economic impacts of the reporting requirements, in addition to the potential costs of the HMS ITP discussed in the previous paragraph, would be approximately $386 per permit holder, including statistical document and re-export certificate opportunity costs ($285) and mailing ($2), biweekly opportunity cost ($90) and mailing ($9). This amount will vary depending on the volume of HMS imported or exported or the number of forms submitted. Alternative 4 would eliminate the need for reporting southern bluefin tuna trade, so costs

would be slightly reduced. Finally, permit holders could be negatively impacted if the time burden interferes with how they conduct their business; however, NMFS does not expect the direct or indirect costs or associated time burden of additional reporting to be more than a minor negative impact for the affected constituents.

NMFS chose alternative one as the final action for implementation because it was the most effective alternative for satisfying the RFMO recommendations while minimizing the reporting burden on the public and providing NMFS with a manageable permitting and reporting infrastructure. Alternative two was rejected because it would not have implemented the RFMO recommendations. Alternative three was not chosen because it would have increased the complexity associated with monitoring imports and exports for both NMFS and businesses involved in trade, and would have increased the number of permits required for many businesses. Alternative four was rejected because it would have compromised the effectiveness of the United States' implementation of the statistical document program for bluefin tuna.

NMFS received one comment specifically addressing the IRFA and several comments addressing economic concerns. The primary economic concern identified by the public was the potential impact of the validation requirement, including the potential dollar cost of validation and the time cost of validation procedures. Of particular concern to island businesses on Guam and Hawaii was the potential that validation procedures could delay shipments significantly enough to impact shipment schedules. Other economic concerns expressed by the public included general concern about the costs of the reporting requirements.

NMFS has determined that the provisions for validation by non-government organizations (including industry organizations) or other government agencies in the final rule will provide the industry with sufficient flexibility to establish validation programs which will both satisfy documentation requirements and minimize industry costs. This conclusion is based in part on NMFS' experience with other trade monitoring programs. In addition, the final rule reduces the validation burden associated with re-exports so that re-exported shipments which are not subdivided or consolidated with other shipments require neither re-export certificates nor validation. The final rule also clarifies that re-export certificates would only be required for re-exports that first entered the United States (or insular possession) as an entry for consumption, which may reduce the reporting burden associated with re-exports. NMFS recognizes that there will be an initial start-up period during which dollar and time costs will be slightly higher, and has included a protracted implementation date for the final rule in part to help address this issue. The extended implementation date will provide time for authorization of entities to provide validation and for all affected businesses to adjust their business processes and incorporate the documentation, reporting, and recordkeeping requirements in the most efficient manner. The final rule has also eliminated the permitting, documentation, reporting, and recordkeeping requirements associated with fresh bigeye tuna. Overall cost estimates will be lower than estimated for the proposed rule since fresh bigeye tuna is excluded from these requirements. Please see comments 5 through 7 and comment 18 for specific public comments on the IRFA and economic concerns.

NMFS does not believe that this action will conflict with any relevant regulations, Federal or otherwise. To avoid duplication with the requirements of this trade monitoring program, the rule removes the international components of the existing swordfish and Atlantic tuna dealer permits, and eliminates the swordfish certificate of eligibility.

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

NMFS has determined that the final rule would be implemented in a manner consistent to the maximum extent practicable with the enforceable provisions of the coastal zone management programs of those Atlantic, Gulf of Mexico, Pacific and Caribbean coastal states that have approved coastal zone management programs. The proposed rule was submitted in April 2004 to the responsible state agencies for their review under Section 307 of the CZMA. As of October 17, 2004, NMFS has received 5 responses, all concurring with NMFS' consistency determination. Because no responses were received from other states, their concurrence is presumed.

This rule contains new and revised collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act. The permitting requirements were available for an initial 60 day public comment period beginning February 12, 2003 (68 FR 7107) and were approved by the U.S. Office of Management and Budget (OMB) on July 1, 2004 under collection 0648–0327. The reporting requirements were available for an initial 60 day public comment period on March 12, 2003 (68 FR 11809) and were approved by OMB on June 25, 2004, under collection 0648–0040. During the public comment period for the proposed rule, one specific comment was received regarding the reporting burden (see comment 7). The commenter stated that the time and cost burdens were underestimated, and that the cost of private vendors for validation was not included. NMFS estimated the time and cost burden associated with the rule based on costs associated with similar programs including the bluefin tuna statistical document program and the swordfish import monitoring program. Both of these programs require dealer permits and reporting similar to those included in this program. For example, the cost of the options available for validation are assessed relative to the programs that are currently in place, which do not include a fee for use of an authorized validation service. Overall burden estimates associated with these regulations are expected to be an overestimate since the calculations included fresh bigeye tuna which has been excluded in the final rule. Each reporting requirement implemented by this rule was assessed by OMB for compliance with the Paperwork Reduction Act.

The public reporting burden for completing an application for the HMS ITP is estimated at 0.08 hours (5 minutes) per response. The public reporting burden for permit holders for collection-of-information on required reports is estimated at 0.08 hours (5 minutes) each for statistical documents and re-export certificates; 2 hours for validation; 2 hours for authorization for non-governmental validation; 0.25 hours (15 minutes) for international trade biweekly report; 0.02 hours (1 minute) for tagging. The rule also addresses previously approved requirements for domestic dealer permits as follows: a swordfish dealer permit and shark dealer permit have been approved under collection 0648–0205 and an Atlantic tuna dealer permit has been approved under collection 0648–0202. The response time for each of these domestic permits is 5 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.

List of Subjects

50 CFR Part 300

Fisheries, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 635

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: November 10, 2004.

Rebecca J. Lent

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 300 and 635 are amended to read as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Pacific Tuna Fisheries

■ 1. The authority citation for subpart C is revised to read as follows:

Authority: 16 U.S.C. 951–961 *et seq.*

■ 2. Revise § 300.20 to read as follows:

§ 300.20 Purpose and scope.

The regulations in this subpart are issued under the authority of the Tuna Conventions Act of 1950 (Act). The regulations implement recommendations of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean so far as they affect vessels and persons subject to the jurisdiction of the United States.

■ 3. In § 300.21, remove the definitions for ''Bluefin tuna,'' ''Pacific bluefin tuna,'' and ''Tag,'' and revise the introductory paragraph to read as follows:

§ 300.21 Definitions.

In addition to the terms defined in § 300.2, in the Act, and in the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, in the Act, or in the Convention, the definition in this section shall apply.

* * * * *

§§ 300.24 and 300.25 [Removed]

■ 4. Remove §§ 300.24 and 300.25.

§§ 300.28 and 300.29 [Redesignated as §§ 300.24 and 300.25]

■ 5. Redesignate §§ 300.28 and 300.29 as §§ 300.24 and 300.25, respectively.

■ 6. In newly redesignated § 300.24, remove paragraphs (e) through (g); redesignate paragraphs (h) through (l) as paragraphs (e) through (i), respectively; and revise paragraph (b) and newly redesignated paragraphs (h) and (i) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(b) Fish on floating objects in the Convention Area using any gear type specified by the Regional Administrator's notification of closure issued under § 300.25;

* * * * *

(h) Fail to use the sea turtle handling, release, and resuscitation procedures in § 300.25(e); or

(i) Fail to report information when requested by the Regional Administrator under § 300.22.

§§ 300.26 and 300.27 [Removed]

■ 7. Remove §§ 300.26 and 300.27.

■ 8. Subpart M is added to read as follows:

Subpart M—International Trade Documentation and Tracking Programs for Highly Migratory Species

Sec.

300.180 Purpose and scope.
300.181 Definitions.
300.182 HMS international trade permit.
300.183 Permit holder reporting and recordkeeping requirements.
300.184 Species subject to documentation requirements.
300.185 Documentation, reporting and recordkeeping requirements for statistical documents and re-export certificates.
300.186 Contents of documentation.
300.187 Validation requirements.
300.188 Ports of entry.
300.189 Prohibitions.

Subpart M—International Trade Documentation and Tracking Programs for Highly Migratory Species

Authority: 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

§ 300.180 Purpose and scope.

The regulations in this subpart are issued under the authority of the Atlantic Tunas Convention Act of 1975 (ATCA), Tuna Conventions Act of 1950, and Magnuson-Stevens Act. The regulations implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) for the conservation and management of tuna and tuna-like species in the Atlantic Ocean and of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean, so far as they affect vessels and persons subject to the jurisdiction of the United States.

§ 300.181 Definitions.

Atlantic bluefin tuna means the species *Thunnus thynnus* found in the Atlantic Ocean.

Bigeye tuna means the species *Thunnus obesus* found in any ocean area.

Bluefin tuna, for purposes of this subpart, means Atlantic and Pacific bluefin tuna, as defined in this section.

BSD tag means a numbered tag affixed to a bluefin tuna issued by any country in conjunction with a catch statistics information program and recorded on a bluefin tuna statistical document (BSD).

CBP means the U.S. Customs and Border Protection.

CCSBT means the Commission for the Conservation of Southern Bluefin Tuna established pursuant to the Convention for the Conservation of Southern Bluefin Tuna.

Customs territory of the United States has the same meaning as in 19 CFR 101.1 and includes only the States, the District of Columbia, and Puerto Rico.

Dealer tag means the numbered, flexible, self-locking ribbon issued by NMFS for the identification of Atlantic bluefin tuna sold to a dealer permitted under § 635.4 of this title as required under § 635.5(b) of this title.

Entered for consumption has the same meaning as in 19 CFR 141.0a(f) and generally refers to the filing of an entry summary for consumption with customs authorities, in proper form, with estimated duties attached.

Entry for consumption, for purposes of this subpart, has the same meaning as entry for consumption, withdrawal from warehouse for consumption, or entry for consumption of merchandise from a foreign trade zone, as provided under 19 CFR parts 101.1, 141, 144, and 146. For purposes of this subpart, ''entry for consumption'' generally means an import into the Customs territory of the United States or the separate customs territory of a U.S. insular possession, for domestic use, that is classified for customs purposes in the ''consumption'' category (entry type codes 00–08) or withdrawal from warehouse or foreign trade zone for consumption category (entry type codes 30–34 and 38). For purposes of this subpart, HMS destined from one foreign country to another, which transits the Customs territory of the United States or the separate customs territory of a U.S. insular possession, and is not classified as an entry for consumption upon release from CBP or other customs custody, is not an entry for consumption under this definition.

Entry number, for purposes of this subpart, means the unique number/identifier assigned by customs

authorities for each entry into a customs territory. For CBP, the entry number is assigned at the time of filing an entry summary (CBP Form 7501 or equivalent electronic filing) for entries into the Customs territory of the United States.

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.

Fish or fish products regulated under this subpart means bluefin tuna, frozen bigeye tuna, southern bluefin tuna and swordfish and all such products of these species except parts other than meat (e.g., heads, eyes, roe, guts, and tails).

IATTC means the Inter-American Tropical Tuna Commission, established pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

ICCAT means the International Commission for the Conservation of Atlantic Tunas established pursuant to the International Convention for the Conservation of Atlantic Tunas.

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 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.

Insular possession of the United States or U.S. insular possession, for purposes of this subpart, means the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and other possessions listed under 19 CFR 7.2, that are outside the customs territory of the United States.

Intermediate country means a country that exports to another country HMS previously imported as an entry for consumption by that nation. A shipment of HMS through a country on a through bill of lading, or in another manner that does not enter the shipment into that country as an entry for consumption, does not make that country an intermediate country under this definition.

IOTC means the Indian Ocean Tuna Commission established pursuant to the Agreement for the Establishment of the Indian Ocean Tuna Commission approved by the Food and Agriculture Organization (FAO) Council of the United Nations.

Pacific bluefin tuna means the species *Thunnus orientalis* found in the Pacific Ocean.

Permit holder, for purposes of this subpart, means, unless otherwise specified, a person who obtains a trade permit under § 300.182.

Re-export, for purposes of this subpart, means the export of goods that were previously entered for consumption into the customs territory of a country.

RFMO, as defined under this subpart, means regional fishery management organization, including CCSBT, IATTC, ICCAT, or IOTC.

Separate customs territory of a U.S. insular possession means the customs territory of a U.S. insular possession when that possession's customs territory is not a part of the Customs territory of the United States.

Southern bluefin tuna means the species *Thunnus maccoyii* found in any ocean area.

Swordfish means the species *Xiphias gladius* that is found in any ocean area.

Tag means either a dealer tag or a BSD tag.

Trade permit means the HMS international trade permit under § 300.182.

§ 300.182 HMS international trade permit.

(a) *General.* A person entering for consumption, exporting, or re-exporting fish or fish products regulated under this subpart from any ocean area must possess a valid trade permit issued under this section. Importation of fish or fish products regulated under this subpart by nonresident corporations is restricted to those entities authorized under 19 CFR 141.18.

(b) *Application.* A person must apply for a permit in writing on an appropriate form obtained from NMFS. The application must be completed, signed by the applicant, and submitted with required supporting documents, at least 30 days before the date upon which the permit is made effective. Application forms and instructions for their completion are available from NMFS.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, NMFS will issue a permit within 30 days of receipt of a completed application.

(2) NMFS will notify the applicant of any deficiency in the application, including failure to provide information or reports required under this subpart. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section is valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit that is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* NMFS may issue replacement permits. An application for a replacement permit is not considered a new application. An appropriate fee, consistent with paragraph (j) of this section, may be charged for issuance of a replacement permit.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the permit holder to whom it is issued.

(h) *Inspection.* The permit holder must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by NMFS for such purpose.

(i) *Sanctions.* The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* NMFS may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining administrative costs of each special product or service. The fee may not

exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 30 days after any change in the information contained in an application submitted under this section, the permit holder must report the change to NMFS in writing. If a change in permit information is not reported within 30 days, the permit is void as of the 31st day after such change.

(l) *Renewal.* Persons must apply annually for a trade permit issued under this section. A renewal application must be submitted to NMFS, at an address designated by NMFS, at least 30 days before the permit expiration date to avoid a lapse of permitted status. NMFS will renew a permit provided that: the application for the requested permit is complete; all reports required under the Magnuson-Stevens Act, ATCA, and the Tuna Conventions Act of 1950 have been submitted, including those required under §§ 300.183, 300.185, 300.186, and 300.187 and § 635.5 of this title; and the applicant is not subject to a permit sanction or denial under paragraph (i) of this section.

§ 300.183 Permit holder reporting and recordkeeping requirements.

(a) *Biweekly reports.* Any person issued a trade permit under § 300.182 must submit to NMFS, on forms supplied by NMFS, a biweekly report of imports entered for consumption, exports, and re-exports of fish or fish products regulated under this subpart.

(1) The report required to be submitted under paragraph (a) of this section must be postmarked within 10 days after the end of each biweekly reporting period in which fish or fish products regulated under this subpart were entered for consumption, exported, or re-exported. The bi-weekly reporting periods are defined as the first day to the 15th day of each month and the 16th day to the last day of each month.

(2) Each report must specify accurately and completely the requested information for each shipment of fish or fish products regulated under this subpart that is entered for consumption, exported, or re-exported.

(b) *Recordkeeping.* Any person issued a trade permit under § 300.182 must retain at his/her principal place of business a copy of each biweekly report and supporting records for a period of 2 years from the date on which each report was submitted to NMFS.

(c) *Other reporting and recordkeeping requirements.* Any person issued a trade permit is also subject to the reporting and recordkeeping requirements identified in § 300.185.

(d) *Inspection.* Any person authorized to carry out the enforcement activities under the regulations in this subpart has the authority, without warrant or other process, to inspect, at any reasonable time: fish or fish products regulated under this subpart, biweekly reports, statistical documents, re-export certificates, relevant sales receipts, import and export documentation, or other records and reports required by this subpart to be made, retained, or submitted. A permit holder must allow NMFS or an authorized person to inspect and copy, for any fish or fish products regulated under this subpart, any import and export documentation and any reports required under this subpart, and the records, in any form, on which the completed reports are based, wherever they exist. Any agent of a person issued a trade permit under this part, or anyone responsible for importing, exporting, storing, packing, or selling fish or fish products regulated under this subpart, shall be subject to the inspection provisions of this section.

§ 300.184 Species subject to documentation requirements.

The following fish or fish products are subject to the documentation requirements of this subpart regardless of ocean area of catch.

(a) *Bluefin tuna.* (1) Documentation is required for bluefin tuna products including those identified by the following subheading numbers from the Harmonized Tariff Schedule of the United States (HTS):

(i) Fresh or chilled bluefin tuna (No. 0302.35.00.00) excluding fillets and other fish meat of HTS heading 0304.

(ii) Frozen bluefin tuna (No. 0303.45.00.00), excluding fillets and other fish meat of HTS heading 0304.

(2) In addition, bluefin tuna products in other forms (e.g., chunks, fillets, and products in airtight containers) that may be classified under any other HTS heading/subheading numbers are subject to the documentation requirements of this subpart, except that fish parts other than meat (e.g., heads, eyes, roe, guts, and tails) may be imported without said documentation.

(b) *Southern bluefin tuna.* (1) Documentation is required for southern bluefin tuna products including those identified by the following subheading numbers from the HTS:

(i) Fresh or chilled southern bluefin tuna (No. 0302.36.00.00), excluding fillets and other fish meat of HTS heading 0304.

(ii) Frozen southern bluefin tuna (No. 0303.46.00.00), excluding fillets and other fish meat of HTS heading 0304.

(2) In addition, southern bluefin tuna products in other forms (e.g., chunks, fillets, products in airtight containers) that may be classified under any other HTS heading/subheading numbers are subject to the documentation requirements of this subpart, except that fish parts other than meat (e.g., heads, eyes, roe, guts, and tails) may be imported without said documentation.

(c) *Bigeye tuna.* (1) Documentation is required for frozen bigeye tuna products including those identified by the following subheading numbers from the HTS:

(i) Frozen bigeye tuna (No. 0303.44.00.00), excluding fillets and other fish meat of HTS heading 0304.

(ii) [Reserved]

(2) In addition, frozen bigeye tuna products in other forms (e.g., chunks and fillets) that may be classified under any other HTS heading/subheading numbers are subject to the documentation requirements of this subpart, except that frozen fish parts other than meat (e.g., heads, eyes, roe, guts, and tails), may be imported without said documentation.

(3) Bigeye tuna caught by purse seiners and pole and line (bait) vessels and destined for canneries within the United States, including all U.S. commonwealths, territories, and possessions, may be imported without the documentation required under this subpart.

(d) *Swordfish.* (1) Documentation is required for swordfish products including those identified by the following subheading numbers from the HTS:

(i) Fresh or chilled swordfish, steaks (No. 0302.69.20.41).

(ii) Fresh or chilled swordfish, excluding fish fillets, steaks, and other fish meat (No. 0302.69.20.49).

(iii) Frozen swordfish, steaks (No. 0303.79.20.41).

(iv) Frozen swordfish, excluding fillets, steaks and other fish meat (No. 0303.79.20.49).

(v) Fresh, chilled or frozen swordfish, fillets and other fish meat (No. 0304.20.60.92).

(2) In addition, swordfish products in other forms (e.g., chunks, fillets, and products in airtight containers) that may be classified under any other HTS heading/subheading numbers, are subject to the documentation requirements of this subpart, except that

fish parts other than meat (e.g., heads, eyes, roe, guts, tails) may be allowed entry without said statistical documentation.

§ 300.185 Documentation, reporting and recordkeeping requirements for statistical documents and re-export certificates.

(a) *Imports*—(1) *Applicability of requirements.* The documentation requirements in paragraph (a)(2) of this section apply to all imports of fish or fish products regulated under this subpart into the Customs territory of the United States, except when entered as a product of an American fishery landed overseas (HTS heading 9815). For insular possessions with customs territories separate from the Customs territory of the United States, documentation requirements in paragraph (a)(2) of this section apply only to entries for consumption. The reporting requirements of paragraph (a)(3) of this section do not apply to fish products destined from one foreign country to another which transit the United States or a U.S. insular possession and are designated as an entry type other than entry for consumption as defined in § 300.181.

(2) *Documentation requirements.* (i) All fish or fish products regulated under this subpart, imported into the customs territory of the United States or entered for consumption into a separate customs territory of a U.S. insular possession, must, at the time of presenting entry documentation for clearance by customs authorities (e.g., CBP Forms 7533 or 3461 or other documentation required by the port director) be accompanied by an original, completed, approved, validated, species-specific statistical document with the required information and exporter's certification completed as specified in § 300.186. Customs forms can be obtained by contacting the local CBP port office; contact information is available at *www.cbp.gov*. For a U.S. insular possession, contact the local customs office for any forms required for entry.

(ii) The statistical document must be validated as specified in § 300.187 by a responsible government official of the country whose flag vessel caught the fish (regardless of where the fish are first landed).

(iii) For fish products entered for consumption, the permit holder must provide on the original statistical document that accompanied the import shipment the correct information and importer's certification specified in § 300.186, and must note on the top of the statistical document the entry number assigned at the time of filing an entry summary (e.g., CBP Form 7501 or electronic equivalent) with customs authorities.

(iv) Bluefin tuna, imported into the Customs territory of the United States or entered for consumption into the separate customs territory of a U.S. insular possession, from a country requiring a BSD tag on all such bluefin tuna available for sale, must be accompanied by the appropriate BSD tag issued by that country, and said BSD tag must remain on any bluefin tuna until it reaches its final destination. If the final import destination is the United States, which includes U.S. insular possessions, the BSD tag must remain on the bluefin tuna until it is cut into portions. If the bluefin tuna portions are subsequently packaged for domestic commercial use or re-export, the BSD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(3) *Reporting requirements.* For fish or fish products regulated under this subpart that are entered for consumption and whose final destination is within the United States, which includes a U.S. insular possessions, a permit holder must submit to NMFS the original statistical document that accompanied the fish product as completed under § 300.186 and paragraph (a)(2) of this section. A copy of the original completed statistical document must be postmarked and mailed, or faxed, by said permit holder to NMFS at an address designated by NMFS within 24 hours of the time the fish product was entered for consumption into the Customs territory of the United States or the separate customs territory of a U.S. insular possession.

(b) *Exports*—(1) *Applicability of requirements.* The documentation and reporting requirements of this paragraph apply to exports of fish or fish products regulated under this subpart that were harvested by U.S. vessels and first landed in the United States, or harvested by vessels of a U.S. insular possession and first landed in that possession. This paragraph also applies to products of American fisheries landed overseas.

(2) *Documentation requirements.* A permit holder must complete an original, numbered, species-specific statistical document issued to that permit holder by NMFS for each export referenced under paragraph (b)(1) of this section. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific export shipment. A permit holder must provide on the statistical document the correct information and exporter certification specified in § 300.186. The statistical document must be validated, as specified in § 300.187, by NMFS, or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting U.S. validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export shipment.

(3) *Reporting requirements.* A permit holder must ensure that the original statistical document as completed under paragraph (b)(2) of this section accompanies the export of such products to their export destination. A copy of the statistical document must be postmarked and mailed by said permit holder to NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was exported from the United States or a U.S. insular possession.

(c) *Re-exports*—(1) *Applicability of requirements.* The documentation and reporting requirements of this paragraph apply to exports of fish or fish products regulated under this subpart that were previously entered for consumption into the customs territory of the United States or the separate customs territory of a U.S. insular possession through filing the documentation specified in paragraph (a) of this section. The requirements of this paragraph do not apply to fish products destined from one foreign country to another which transit the United States or a U.S. insular possession and which are designated as an entry type other than entry for consumption as defined in § 300.181.

(2) *Documentation requirements.* (i) If a permit holder subdivides or consolidates a shipment that was previously entered for consumption as described in paragraph (c)(1) of this section, the permit holder must complete an original, individually numbered, species-specific re-export certificate issued to that permit holder by NMFS for each such re-export shipment. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific re-export shipment. A permit holder must provide on the re-export certificate the correct information and re-exporter certification specified in § 300.186. The permit holder must also attach the original statistical document that accompanied the import shipment or a copy, and provide the correct information and intermediate importer's certification specified in § 300.186, and must note on the top of both the

statistical documents and the re-export certificates the entry number assigned by customs authorities at the time of filing the entry summary.

(ii) If a shipment that was previously entered for consumption as described in paragraph (c)(1) of this section is not subdivided into sub-shipments or consolidated, for each re-export shipment, a permit holder must complete the intermediate importer's certification on the original statistical document and note the entry number on the top of the statistical document. Such re-exports do not need a re-export certificate and the re-export does not require validation.

(iii) Re-export certificates must be validated, as specified in § 300.187, by NMFS or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting validation for re-exports should notify NMFS as soon as possible to avoid delays in inspection and validation of the re-export shipment.

(3) *Reporting requirements.* For each re-export, a permit holder must submit the original of the completed re-export certificate (when required) and the original or a copy of the original statistical document completed as specified under paragraph (c)(2) of this section, to accompany the shipment of such products to their re-export destination. A copy of the completed statistical document and re-export certificate (when required) must be postmarked and mailed by said permit holder to NMFS, at an address designated by NMFS, within 24 hours of the time the shipment was re-exported from the United States.

(d) *Recordkeeping.* A permit holder must retain at his or her principal place of business, a copy of each statistical document and re-export certificate required to be submitted to NMFS pursuant to this section, and supporting records for a period of 2 years from the date on which it was submitted to NMFS.

(e) *Inspection.* Any person responsible for importing, exporting, storing, packing, or selling fish or fish products regulated under this subpart, including permit holders, consignees, customs brokers, freight forwarders, and importers of record, shall be subject to the inspection provisions at § 300.183(d).

§ 300.186 Contents of documentation.

(a) *Statistical documents.* To be deemed complete, all statistical documents must state:

(1) The document number assigned by the country issuing the document.

(2) The name of the country issuing the document, which must be the country whose flag vessel harvested the fish, regardless of where it is first landed.

(3) The name of the vessel that caught the fish, the vessel's length (in meters), the vessel's registration number, and the ICCAT record number, if applicable.

(4) The point of export, which is the city, state or province, and country from which the fish is first exported.

(5) The product type (fresh or frozen), time of harvest (month/year), and product form (round, gilled and gutted, dressed, fillet, or other).

(6) The method of fishing used to harvest the fish (e.g., purse seine, trap, rod and reel).

(7) The ocean area from which the fish was harvested.

(8) The weight of each fish (in kilograms for the same product form previously specified) or the net weight of each product type, as applicable.

(9) The name and license number of, and be signed and dated in the exporter's certification block by, the exporter.

(10) If applicable, the name and title of, and be signed and dated in the validation block by, a responsible government official of the country whose flag vessel caught the fish (regardless of where the fish are first landed) or by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the statistical document.

(11) If applicable, the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by, each intermediate and the final importer.

(b) *Bluefin tuna statistical documents.* Bluefin tuna statistical documents, to be deemed complete, in addition to the elements in paragraph (a) of this section, must also state:

(1) Whether the fish was farmed or captured.

(2) The name and address of the owner of the trap that caught the fish, or the farm from which the fish was taken, if applicable.

(3) The identifying tag number, if landed by vessels from countries with BSD tagging programs, or tagged pursuant to § 300.187(d) or § 635.5(b) of this title.

(c) *Southern bluefin tuna statistical documents.* To be complete, southern bluefin tuna statistical documents must, in addition to the elements in § 300.186(a), also state:

(1) The name and address of the processing establishment, if applicable.

(2) [Reserved]

(d) *Bigeye tuna statistical documents.* To be deemed complete, bigeye tuna statistical documents must, in addition to the elements in paragraph (a) of this section, also state:

(1) The name of the owner of the trap that caught the fish, if applicable.

(2) The net weight of product for each product type (in kilograms for the same product form previously specified).

(e) *Swordfish statistical documents.* To be deemed complete, swordfish statistical documents must, in addition to the elements in paragraph (a) of this section, also state:

(1) Certification by the exporter that, for swordfish harvested from the Atlantic Ocean, each individual Atlantic swordfish included in the shipment weighs at least 15 kilograms (33 lb) dressed weight, or if pieces, that the pieces were derived from a swordfish that weighed at least 15 kilograms (33 lb) dressed weight. Import provisions pertaining to swordfish minimum size are provided at § 635.20(f) of this title.

(2) [Reserved]

(f) *Re-export certificates.* To be deemed complete, all re-export certificates, must state:

(1) The document number assigned by the country issuing the document.

(2) The name of the country issuing the document, which must be the country through which the product is being re-exported.

(3) The point of re-export, which is the city, state, or province, and country from which the product was re-exported.

(4) The description of the fish product as imported, including the product type (fresh or frozen), product form (round, gilled and gutted, dressed, fillet, or other), the net weight, flag country of the vessel that harvested the fish in the shipment, and the date of import to the country from which it is being re-exported.

(5) The description of the fish product as re-exported, including the product type (fresh or frozen), product form (round, gilled and gutted, dressed, fillet, or other) and the net weight.

(6) The name and license number (if applicable) of, and be signed and dated in the re-exporter's certification block by, the re-exporter.

(7) If applicable, the name and title of, and be signed and dated in the validation block by, a responsible government official of the re-exporting country appearing on the certificate, or

by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the re-export certificate.

(8) If applicable, the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by each intermediate and the final importer.

(g) *Bluefin tuna re-export certificates.* To be deemed complete, Bluefin tuna re-export certificates must, in addition to the elements in paragraph (f) of this section, also state:

(1) Whether the fish for re-export was farmed.

(2) The name and address of the farm from which the fish was taken.

(h) *Approved statistical documents and re-export certificates.* (1) An approved statistical document or re-export certificate may be obtained from NMFS to accompany exports of fish or fish products regulated under this subpart from the customs territory of the United States or the separate customs territory of a U.S. insular possession.

(2) A nationally approved form from another country may be used for exports to the United States if that document strictly conforms to the information requirements and format of the applicable RFMO documents. An approved statistical document or re-export certificate for use in countries without a nationally approved form may be obtained from the following websites, as appropriate: *www.iccat.org*, *www.iattc.org*, *www.ccsbt.org*, or *www.iotc.org* to accompany exports to the United States.

§ 300.187 Validation requirements.

(a) *Imports.* The approved statistical document accompanying any import of any fish or fish product regulated under this subpart must be validated by a government official from the issuing country, unless NMFS waives this requirement pursuant to an applicable RFMO recommendation. NMFS will furnish a list of countries for which government validation requirements are waived to the appropriate customs officials. Such list will indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate statistical documents and re-export certificates for that country.

(b) *Exports.* The approved statistical document accompanying any export of fish or fish products regulated under this subpart must be validated, except pursuant to a waiver described in paragraph (d) of this section. Validation must be made by NMFS or another official authorized by NMFS.

(c) *Re-exports.* The approved re-export certificate accompanying any re-export of fish or fish products regulated under this subpart, as required under § 300.185(c), must be validated, except pursuant to a waiver described in paragraph (d) of this section. Validation must be made by NMFS or another official authorized by NMFS.

(d) *Validation waiver.* Any waiver of government validation will be consistent with applicable RFMO recommendations concerning validation of statistical documents and re-export certificates. If authorized, such waiver of government validation may include exemptions from government validation for Pacific bluefin tuna with individual BSD tags affixed pursuant to paragraph (f) of this section or for Atlantic bluefin tuna with tags affixed pursuant to § 635.5(b) of this title. Waivers will be specified on statistical documents and re-export certificates or accompanying instructions, or in a letter to permit holders from NMFS.

(e) *Authorization for non-NMFS validation.* An official from an organization or government agency seeking authorization to validate statistical documents or re-export certificates accompanying exports or re-exports from the United States, which includes U.S. commonwealths, territories, and possessions, must apply in writing, to NMFS, at an address designated by NMFS for such authorization. The application must indicate the procedures to be used for verification of information to be validated; list the names, addresses, and telephone/fax numbers of individuals to perform validation; procedures to be used to notify NMFS of validations; and an example of the stamp or seal to be applied to the statistical document or re-export certificate. NMFS, upon finding the applicant capable of verifying the information required on the statistical document or re-export certificate, will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate statistical documents or re-export certificates accompanying exports or re-exports from the United States. The effectiveness of such authorization will be delayed as necessary for NMFS to notify the appropriate RFMO of other officials authorized to validate statistical document or re-export certificates. Non-government organizations given authorization to validate statistical documents or re-export certificates must renew such authorization on a yearly basis.

(f) *BSD tags*—(1) *Issuance.* NMFS will issue numbered BSD tags for use on Pacific bluefin tuna upon request to each permit holder.

(2) *Transfer.* BSD tags issued under this section are not transferable and are usable only by the permit holder to whom they are issued.

(3) *Affixing BSD tags.* At the discretion of permit holders, a tag issued under this section may be affixed to each Pacific bluefin tuna purchased or received by the permit holder. If so tagged, the tag must be affixed to the tuna between the fifth dorsal finlet and the keel.

(4) *Removal of tags.* A tag, as defined in this subpart and affixed to any bluefin tuna, must remain on the tuna until it is cut into portions. If the bluefin tuna or bluefin tuna parts are subsequently packaged for transport for domestic commercial use or for export, the number of each dealer tag or BSD tag must be written legibly and indelibly on the outside of any package containing the bluefin tuna or bluefin tuna parts. Such tag number also must be recorded on any document accompanying the shipment of bluefin tuna or bluefin tuna parts for commercial use or export.

(5) *Labeling.* The tag number of a BSD tag affixed to each Pacific bluefin tuna under this section must be recorded on NMFS reports required by § 300.183, on any documents accompanying the shipment of Pacific bluefin tuna for domestic commercial use or export as indicated in §§ 300.185 and 300.186, and on any additional documents that accompany the shipment (e.g., bill of lading, customs manifest, etc.) of the tuna for commercial use or for export.

(6) *Reuse.* BSD tags issued under this section are separately numbered and may be used only once, one tail tag per Pacific bluefin tuna, to distinguish the purchase of one Pacific bluefin tuna. Once affixed to a tuna or recorded on any package, container or report, a BSD tag and associated number may not be reused.

§ 300.188 Ports of entry.

NMFS shall monitor the importation of fish or fish products regulated under this subpart into the United States. If NMFS determines that the diversity of handling practices at certain ports at which fish or fish products regulated under this subpart are being imported into the United States allows for circumvention of the statistical document requirement, NMFS may undertake a rulemaking to designate, after consultation with the CBP, those

ports at which fish or fish products regulated under this subpart from any ocean area may be imported into the United States.

§ 300.189 Prohibitions.

In addition to the prohibitions specified in § 300.4, and §§ 600.725 and 635.71 of this title, it is unlawful for any person subject to the jurisdiction of the United States to violate any provision of this part, the Atlantic Tunas Convention Act, the Magnuson-Stevens Act, the Tuna Conventions Act of 1950, or any other rules promulgated under those Acts. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Falsify information required on an application for a permit submitted under § 300.182.

(b) Import as an entry for consumption, purchase, receive for export, export, or re-export any fish or fish product regulated under this subpart without a valid trade permit issued under § 300.182.

(c) Fail to possess, and make available for inspection, a trade permit at the permit holder's place of business, or alter any such permit as specified in § 300.182.

(d) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in § 300.183 or § 300.185.

(e) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 300.183 or § 300.185.

(f) Fail to comply with the documentation requirements as specified in § 300.185, § 300.186 or § 300.187, for fish or fish products regulated under this subpart that are imported, entered for consumption, exported, or re-exported.

(g) Fail to comply with the documentation requirements as specified in § 300.186, for the importation, entry for consumption, exportation, or re-exportation of an Atlantic swordfish, or part thereof, that is less than the minimum size.

(h) Validate statistical documents or re-export certificates without authorization as specified in § 300.187.

(i) Validate statistical documents or re-export certificates as provided for in § 300.187 with false information.

(j) Remove any NMFS-issued numbered tag affixed to any Pacific bluefin tuna or any tag affixed to a bluefin tuna imported from a country with a BSD tag program before removal is allowed under § 300.187; fail to write the tag number on the shipping package or container as specified in § 300.187; or reuse any NMFS-issued numbered tag affixed to any Pacific bluefin tuna, or any tag affixed to a bluefin tuna imported from a country with a BSD tag program, or any tag number previously written on a shipping package or container as prescribed by § 300.187.

(k) Import, or attempt to import, any fish or fish product regulated under this subpart in a manner inconsistent with any ports of entry designated by NMFS as authorized by § 300.188.

(l) Ship, transport, purchase, sell, offer for sale, import, enter for consumption, export, re-export, or have in custody, possession, or control any fish or fish product regulated under this subpart that was imported, entered for consumption, exported, or re-exported contrary to this subpart.

(m) Fail to provide a validated statistical document for imports at time of entry into the customs territory of the United States of fish or fish products regulated under this subpart, regardless of whether the importer, exporter, or re-exporter holds a valid trade permit issued pursuant to § 300.182 or whether the fish products are imported as an entry for consumption.

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 9. The authority citation for 50 CFR part 635, continues to read as follows:

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

■ 10. In 635.2, remove the definition for ''Intermediate country'' and ''Swordfish Certificate of Eligibility (COE);'' add a definition for ''Exportation'' in alphabetical order; and revise the definitions for ''Export,'' ''Exporter,'' ''Import,'' and ''Importer'' as follows:

§ 635.2 Definitions.

* * * * *

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.

* * * * *

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.

* * * * *

■ 11. In § 635.4 revise paragraph (g) to read as follows:

§ 635.4 Permits and fees.

* * * * *

(g) *Dealer permits*—(1) *Atlantic tunas.* A person that receives, purchases, trades for, or barters for Atlantic tunas from a fishing vessel of the United States, as defined under § 600.10 of this chapter, must possess a valid dealer permit.

(2) *Shark.* A person that receives, purchases, trades for, or barters for Atlantic sharks from a fishing vessel of the United States, as defined under § 600.10 of this chapter, must possess a valid dealer permit.

(3) *Swordfish.* A person that receives, purchases, trades for, or barters for Atlantic swordfish from a fishing vessel of the United States, as defined under § 600.10 of this chapter, must possess a valid dealer permit.

* * * * *

■ 12. In § 635.5, remove paragraph (b)(1)(ii); redesignate paragraphs (b)(1)(iii) through (b)(1)(v) as (b)(1)(ii) through (b)(1)(iv), respectively; and revise newly redesignated paragraph (b)(1)(ii) and paragraph (b)(2)(i)(B) to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(1) * * *

(ii) Reports of Atlantic tunas, Atlantic swordfish, and/or Atlantic sharks

received by dealers from U.S. vessels, as defined under § 600.10 of this chapter, on the first through the 15th of each month, must be postmarked not later than the 25th of that month. Reports of such fish received on the 16th through the last day of each month must be postmarked not later than the 10th of the following month. If a dealer issued an Atlantic tunas, swordfish or sharks dealer permit under § 635.4 has not received any Atlantic HMS from U.S. vessels during a reporting period as specified in this section, he or she must still submit the report required under paragraph (b)(1)(i) of this section stating that no Atlantic HMS were received. This negative report must be postmarked for the applicable reporting period as specified in this section. This negative reporting requirement does not apply for bluefin tuna.

* * * * *

(2) * * *

(i) * * *

(B) *Bi-weekly reports.* Each dealer issued an Atlantic tunas permit under § 635.4 must submit a bi-weekly report on forms supplied by NMFS for BFT received from U.S. vessels. For BFT received from U.S. vessels on the first through the 15th of each month, the dealer must submit the bi-weekly report form to NMFS postmarked not later than the 25th of that month. Reports of BFT received on the 16th through the last day of each month must be postmarked not later than the 10th of the following month.

* * * * *

■ 13. In § 635.20, paragraph (f)(2) is revised to read as follows:

§ 635.20 Size limits.

* * * * *

(f) * * *

(2) Except for a swordfish landed in a Pacific state and remaining in the state of landing, a swordfish, or part thereof, weighing less than 33 lb (15 kg) dressed weight will be deemed to be an Atlantic swordfish harvested by a vessel of the United States and to be in violation of the minimum size requirement of this section unless such swordfish, or part thereof, is accompanied by a swordfish statistical document attesting that the swordfish was lawfully imported. Refer to § 300.186 of this title for the requirements related to the swordfish statistical document.

* * * * *

■ 14. In § 635.31 paragraphs (a)(3) and (a)(4)(ii) are revised to read as follows:

§ 635.31 Restrictions on sale and purchase.

* * * * *

(a) * * *

(3) Dealers or seafood processors may not purchase or sell a BFT smaller than the large medium size class unless it is lawfully imported and is accompanied by a bluefin tuna statistical document, as specified in § 300.185(a) of this title.

(4) * * *

(ii) It is accompanied by a bluefin tuna statistical document, as specified in § 300.185(a) of this title.

* * * * *

§ 635.41 [Removed]

■ 15. Section 635.41 is removed.

§ 635.45 [Redesignated as § 635.41]

■ 16. Section 635.45 is redesignated as § 635.41.

§§ 635.42, 635.43, 635.44, 635.46, and 635.47 [Removed]

■ 17. Sections 635.42, 635.43, 635.44, 635.46, and 635.47 are removed.

■ 18. In § 635.71, paragraphs (b)(2), (b)(25), (e)(10) and (e)(12) are removed and reserved and paragraphs (a)(24), (b)(26) and (e)(1) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(24) Import, or attempt to import, any fish or fish products regulated under this part in a manner contrary to any import requirements or import restrictions specified at § 635.40 or § 635.41.

* * * * *

(b) * * *

(26) Import a bluefin tuna or bluefin tuna product into the United States from Belize, Panama, or Honduras other than as authorized in § 635.41.

* * * * *

(e) * * *

(1) Purchase, barter for, or trade for a swordfish from the north or south Atlantic swordfish stock without a dealer permit as specified in § 635.4(g).

* * * * *

[FR Doc. 04–25523 Filed 11–16–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021101264–3016–02; I.D. 111004D]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Period 2 Management Area 1A

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

ACTION: Closure of directed fishery for Management Area 1A.

SUMMARY: NMFS announces that 95 percent of the Atlantic herring total allowable catch (TAC) allocated to Management Area 1A (Area 1A) for 2004 is projected to be harvested by November 19, 2004. Therefore, effective 0001 hours, November 19, 2004, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Area 1A per trip or calendar day until January1, 2005, when the 2005 period TAC becomes available, except for transiting purposes as described in this notice. Regulations governing the Atlantic herring fishery require publication of this notification to advise vessel and dealer permit holders that no TAC is available for the directed fishery for Atlantic herring harvested from Area 1A.

DATES: Effective 0001 hrs local time, November 19, 2004, through 2400 hrs local time, December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fisheries Management Specialist, at (978) 281–9221.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of optimum yield, domestic and foreign fishing, domestic and joint venture processing, and management area TACs. The 2004 TAC allocated to Area 1A (69 FR 17980, April 6, 2004) is 60,000 mt (132,277,621 lb).

The regulations at 50 CFR 648.202 require the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the Atlantic herring fishery in each of the four management areas designated in the Fishery Management Plan for the Atlantic Herring Fishery and, based upon dealer reports, state data, and other available information, to