

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

[Docket No. 040421127-4322-02; I.D. 051403A]

RIN 0648-AR10

**Atlantic Highly Migratory Species; Atlantic Trade Restrictive Measures**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is adjusting the regulations governing the trade of species regulated by the International Commission for the Conservation of Atlantic Tunas (ICCAT) in the North and South Atlantic Ocean to implement recommendations adopted at the 2002 and 2003 meetings of ICCAT. This final rule lifts or implements import prohibitions for bigeye tuna, bluefin tuna, and swordfish on Honduras, St. Vincent and the Grenadines, Belize, Sierra Leone, Bolivia, and Georgia. This rule also prohibits imports from vessels on the ICCAT illegal, unreported, and unregulated fishing list and from vessels that are not listed on ICCAT's record of vessels that are authorized to fish in the Convention Area. Additionally, this rule requires issuance of a chartering permit before a vessel begins fishing under a chartering arrangement.

**DATES:** This final rule will be effective on January 5, 2005.

**ADDRESSES:** Copies of the Final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) may be obtained from Christopher Rogers, Chief, Highly Migratory Species Management Division F/SF1, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the EA/RIR/FRFA are also available from the Highly Migratory Species Management Division website at [www.nmfs.noaa.gov/sfa/hms](http://www.nmfs.noaa.gov/sfa/hms).

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz or Michael Clark by phone: 301-713-2347 or by fax: 301-713-1917.

**SUPPLEMENTARY INFORMATION:** The U.S. Atlantic swordfish and tuna fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C.

1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA authorizes the promulgation of regulations as necessary and appropriate to carry out ICCAT recommendations. The trade-related ICCAT recommendations for calendar years 2002 and 2003 that are implemented by this final rule include, but are not limited to: 02-16, 02-17, 02-18, 02-19, 02-20, 02-21, 02-22, 02-23, 03-16, 03-17, and 03-18.

**Trade Measures**

In order to conserve and better manage bigeye tuna (BET), bluefin tuna (BFT), and swordfish (SWO) in the Atlantic Ocean, ICCAT adopted several recommendations at its 2002 and 2003 meetings regarding prohibitions or the lifting of prohibitions on the import of these species. Based on available information, ICCAT concluded that Sierra Leone, Bolivia, and Georgia were engaged in fishing activities that diminish the effectiveness of ICCAT conservation and management measures. Thus, ICCAT recommended that Contracting Parties (i.e., any member of the United Nations or any specialized agency of the United Nations that has signed on to the International Convention for the Conservation of Atlantic Tunas) prohibit the import of Atlantic BET, BFT, and SWO from Sierra Leone and Atlantic BET from Bolivia and Georgia. In this action, NMFS prohibits such imports from Sierra Leone, Bolivia, and Georgia. Upon determination by ICCAT that Sierra Leone, Bolivia, or Georgia has brought its fishing practices into consistency with ICCAT conservation and management measures, NMFS will take action to remove the appropriate import restrictions.

At its 2002 meeting, ICCAT also recommended that several import prohibitions be lifted. One of these recommendations included removing the import prohibition of Atlantic BET, BFT, and SWO from Honduras. NMFS did not finalize the 2000 ICCAT recommendation regarding BET imports from Honduras because ICCAT did not reach consensus in 2001 regarding whether Honduras had brought its fishing practices into conformity with ICCAT conservation and management measures (67 FR 70023, November 20, 2002). Another 2002 recommendation would lift the import prohibitions regarding Atlantic BET, BFT, and SWO from Belize and Atlantic BET from St. Vincent and the Grenadines. Consistent with these recommendations, and as stated in the proposed rule on May 6, 2004 (69 FR 25357), this final rule relieves the restrictions imposed on

November 20, 2002 (67 FR 70023), for BET from Belize and St. Vincent and the Grenadines; August 21, 1997 (62 FR 44422), for BFT from Belize and Honduras; and December 12, 2000 (65 FR 77523), for SWO from Belize and Honduras. Additionally, this final rule does not impose restrictions on Honduras regarding BET imports.

**Vessel Chartering**

At its 2002 meeting, ICCAT addressed the practice of charter or chartering arrangements, which are defined as an agreement between a vessel and a foreign entity (e.g., country, business, government, person) to fish in foreign waters without reflagging the vessel. ICCAT recommended that chartering and flag Contracting Parties adopt several requirements to ensure their compliance with relevant ICCAT conservation and management measures. The recommendation states that at the time of the chartering arrangement, the chartering and flag Contracting Parties shall provide specific information concerning the charter to the ICCAT Executive Secretary, including vessel details, target species, duration, and consent of the flag Contracting Party or Cooperating non-Contracting Party, Entity or Fishing Entity. A Cooperating non-Contracting Party, Entity or Fishing Entity is a special status that ICCAT created; Chinese Taipei participates in ICCAT under this status. The ICCAT Executive Secretary should also be notified upon termination of the charter. The recommendation also states that, unless specifically provided in the chartering arrangement and consistent with relevant domestic law and regulation, catches taken pursuant to the arrangement shall be unloaded exclusively in the ports of the chartering Contracting Party/foreign entity or under its direct supervision. NMFS uses the term "offload" in its regulations to refer to the activity of unloading or removing fish from a vessel. Such catches should be counted against the quota of the chartering Contracting Party but both the chartering and flag countries shall record the catch amounts separately from catches taken by other vessels.

In order to implement the chartering recommendations of ICCAT, NMFS requires that U.S. vessel owners with HMS permits apply for and obtain a chartering permit before fishing under a chartering arrangement. Under this final rule and consistent with the ICCAT recommendations, vessels issued a chartering permit shall not be authorized to use the quota or entitlement of the United States until

the chartering permit expires or is terminated. Having a chartering permit will not obviate the need to obtain a fishing license, permits, or other authorizations issued by the chartering nation in order to fish in foreign waters, or obtain other authorizations such as a High Seas Fishing Compliance Act Permit, 50 CFR 300.10 *et seq.* Additionally, incidental takes of, or interactions with, protected resources will be included against the authorized take levels specified in any relevant Biological Opinions. A U.S. vessel shall not be authorized to fish under more than one chartering arrangement at the same time. NMFS will issue chartering permits only if it determines that the chartering arrangement is in conformance with ICCAT's conservation and management programs.

ICCAT also recommended that observers be aboard at least 10 percent of the chartered vessels or during 10 percent of the fishing time. NMFS has the authority to place observers onboard a chartered vessel pursuant to 50 CFR 635.7. Vessels participating in chartering arrangements may be required to use vessel monitoring systems (VMS) for the duration of the arrangement, including when vessels are traveling to and from the locale of fishing, dependent on the terms and conditions of the chartering permit.

#### **Illegal, Unreported, and Unregulated (IUU) Fishing**

In an effort to prevent and deter IUU fishing, ICCAT adopted three recommendations (02-23, 02-22, and 03-16). Recommendations 02-23 and 02-22 outline processes for identifying vessel lists, ICCAT adoption of the lists, and revisions via the submission of provisional lists to ICCAT for further consideration. Recommendation 02-23 establishes a list of vessels presumed to have carried out IUU fishing activities in the ICCAT convention area (also referred to as "negative list"). Each year, Contracting Parties shall transmit to the ICCAT Executive Secretary a list of vessels suspected of IUU fishing, accompanied by supporting evidence. Upon adoption of the list of IUU vessels, Contracting Parties shall enact measures to prevent vessels flying their flag from transshipping with a vessel on the negative list, prevent vessels on the negative list from landing or transshipping in their ports, prohibit the chartering of an IUU vessel, refuse to grant their flag to an IUU vessel, and prohibit imports, landing, or transshipment of ICCAT regulated species from IUU vessels.

Recommendation 02-22 establishes a record of vessels larger than 24 meters

in length that are authorized to fish for ICCAT regulated species in the Convention Area (also referred to as "positive list"). To create this record, Contracting Parties shall submit a list to the ICCAT Executive Secretary containing information relating to its approved vessels. ICCAT recommended that the Contracting Parties take measures to prohibit the fishing for, retaining on board, transshipment, and landing of ICCAT regulated species by vessels which are not listed on the positive list.

This final rule implements the measures associated with both these lists. The United States submitted a positive list to ICCAT on June 23, 2004, and plans to update this list annually, or as requested by ICCAT. Because the United States does not know of any domestic vessels that participate in IUU fishing, the United States did not submit a negative list to ICCAT but will in the future, as appropriate.

ICCAT also recommended at its 2003 meeting that Contracting Parties prohibit landings from fishing vessels, placing in cages for farming and/or the transshipment within their jurisdiction of tunas or tuna-like species caught by IUU fishing activities (Recommendation 03-16). This final rule also implements this additional measure to prevent and deter IUU fishing.

#### **Response to Comments**

NMFS received several public comments from two individuals prior to the closing date of the comment period for the proposed rulemaking which ended on June 21, 2004. The individuals expressed concern about numerous aspects of Highly Migratory Species management, both directly and indirectly related to this rulemaking. These comments are summarized below with the responses.

*Comment 1:* Object to lifting country specific tuna import prohibitions.

*Response:* ICCAT adopted the recommendations to lift certain import restrictions because these countries had come into compliance with the conservation and management goals of the commission. Concurrently, ICCAT adopted other recommendations that ban imports from certain countries that are not complying with the goals of the convention. Thus, this final rule implements all the ICCAT recommendations from 2002 and 2003 that lift or ban imports of ICCAT species.

*Comment 2:* NMFS excludes citizens that are not directly involved with fisheries from their public hearings.

*Response:* Public hearings conducted by NMFS are open to any and all

interested members of the public, including those with physical disabilities and the hearing impaired, not just those directly involved in the fishery.

*Comment 3:* The penalties for violation of chartering permits should be severe, including permit sanctions, and be detailed in the regulatory text.

*Response:* NMFS agrees that submitting false charter permit information should be met with stiff penalties. Penalties are often based, among other things, on past convictions, severity of offense, and propensity to commit the offense again.

*Comment 4:* The terms and conditions of chartering permits should include specifics about when the VMS should be turned off and on if they are required to use an equivalent system while fishing in foreign waters. In addition, in situations where the chartering countries quota has been exceeded and a no dead discard provision is in place, the United States should stipulate that permit holders will be required to seek an exemption from the chartering country before entering into a chartering arrangement.

*Response:* The terms and conditions of chartering permits will describe the specific requirements and allowances of individual chartering permits, including: use of VMS, reporting requirements, target species and size, quantity of fish landed, gear employed, protected species interactions, and so forth. Restrictions in place by both flag and chartering nations must be adhered to for the entire duration of the agreement and would be considered before permit issuance.

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

This rule modifies the regulatory text of the proposed rule that published on May 6, 2004, (69 FR 25357) to clarify the reporting requirements (submission dates, etc.) for chartering permits.

#### **Classification**

This final rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

Based on the management measures in several proposed rules, including the proposed rule for these regulations, a new Biological Opinion (BiOp) on the Atlantic pelagic longline (PLL) fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely

to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified Reasonable and Prudent Alternatives (RPAs) necessary to avoid jeopardizing leatherbacks, and listed the Reasonable and Prudent Measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with PLL gear onboard. NMFS is implementing the other RPMs in compliance with the BiOp. On August 12, 2004, NMFS published an Advance Notice of Proposed Rulemaking (69 FR 49858) to request comments on potential regulatory changes to further reduce bycatch and bycatch mortality of sea turtles, as well as comments on the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur. NMFS will undertake additional rulemaking and non-regulatory actions, as required, to implement any management measures that are required under the 2004 BiOp. The actions in this final rule are not expected to change the takes of, or interactions with, protected species. Incidental takes of, or interactions with, protected species that are listed as threatened or endangered under the Endangered Species Act taking place under the auspices of a chartering permit arrangement will be included against the authorized take levels specified in relevant Biological Opinions.

NMFS has determined that the regulations selected in this final rule will be implemented in a manner consistent, to the maximum extent practicable, with the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs. The proposed regulations were submitted to the responsible state agencies for their review under Section 307 of the Coastal Zone Management Act. All of the states that responded found NMFS' proposed actions to be consistent with their coastal zone management programs. Concurrence is presumed for those states that did not respond.

NMFS has prepared a final regulatory flexibility analysis that examined the economic impacts of this action on small entities. The purpose of this rulemaking is to implement the 2002

and 2003 ICCAT recommendations regarding trade measures consistent with the HMS FMP, the Magnuson-Stevens Act, ATCA, and other domestic regulations. NMFS is authorized to implement ICCAT recommendations under ATCA. ICCAT recommendations are part of an international cooperative effort to rebuild, conserve, and manage tuna and tuna-like species. The preferred alternative outlined in this final rule would satisfy the purpose of this rule, to implement the United States' obligation to implement the binding conservation and management measures that have been adopted by ICCAT. The preferred alternative is consistent with the ICCAT trade related recommendations, the ATCA, the Magnuson-Stevens Act, and the HMS FMP. A summary of the public comments received and NMFS' responses thereto is included in the preamble. No comments were received regarding the economic impact of this rule or the initial regulatory flexibility analysis.

As this final rule impacts the trade and importation of HMS (e.g., ICCAT regulated species) in the United States and chartering arrangements with foreign entities, the regulations will not directly impact a specific domestic fishery. However, these measures could impact HMS dealers and vessels that participate in chartering arrangements, all of which NMFS considers to be small entities. In December 2003, there were approximately 516 and 302 dealer permits issued for tuna and SWO, respectively. NMFS estimates that less than 10 domestic vessels may participate in chartering arrangements in any given calendar year.

To address the 2002 and 2003 ICCAT recommendations regarding trade measures, two alternatives were prepared: a preferred alternative to implement the ICCAT recommendations regarding trade measures and a no action alternative that would not implement the recommendations. The no action alternative of not implementing the ICCAT trade recommendations was not selected because it is not consistent with ATCA. As with the preferred alternative the no action alternative would have few, if any, economic impacts on small entities.

The preferred alternative in this final rule (imposing or lifting trade restrictions, establishing chartering notification and permit requirements, and implementing measures designed to prevent IUU fishing and fishing by unauthorized large scale fishing vessels) is not expected to have significant economic or social impacts. By

prohibiting the import of BET, BFT, and SWO from Sierra Leone and BET from Bolivia and Georgia, NMFS could reduce the economic benefits to importers and dealers. Conversely, by lifting the trade restrictions on imports of BFT and SWO from Honduras and lifting the prohibition of imports of BET from Belize and St. Vincent and the Grenadines and BFT and SWO from Belize, NMFS could provide economic benefits to importers and dealers. However, because current and past import levels of these fish species from these countries are either low or nonexistent, NMFS does not anticipate major positive or negative economic impacts as a result of implementing this measure.

The chartering permit is not expected to significantly increase the administrative burden to the vessel owners or result in significant economic impacts. The application process requires the provision, through mail or facsimile, of information, including, but not limited to: name and registration number of the vessel, name and address of the owner, description of the vessel, targeted species, quota allocated to the chartering party, and the duration of the chartering arrangement. Additional information such as copies of fishing licenses, permits, other authorizations (e.g., High Seas Fishing Compliance Act Permit, 50 CFR 300.10), and documentation regarding the legal establishment of the chartering company will be requested. A vessel shall not be authorized to fish under more than one chartering arrangement at the same time and all interactions with protected species outside the United States EEZ will be included against the authorized take levels of the relevant BiOps. NMFS will issue permits only if it is determined that the chartering arrangement is in conformance with ICCAT's conservation and management programs. NMFS does not anticipate major economic impacts to domestic vessels as a result of a permit denial, given that these vessels will continue to be able to fish in domestic waters for HMS and may decide to sell HMS domestically or export product to other countries depending upon which market has the higher product price. Given that only one exempted fishing permit exempting vessels from U.S. regulations for chartering arrangements has been issued under current requirements in the fishery, NMFS does not anticipate any significant economic impacts to a substantial number of domestic vessels as a result of taking this action.

NMFS does not anticipate any significant impacts to U.S. entities by

prohibiting the import of ICCAT regulated species from vessels known to be IUU fishing or from unauthorized large scale fishing vessels. Currently, NMFS does not have specific information concerning the amount of HMS imported from such vessels. However, NMFS believes that the amount of HMS imported from these types of vessels is insignificant, and therefore does not expect any major economic impacts associated with implementation of the management measure or with no action.

NMFS considers all HMS vessel and dealer permit holders to be small entities, and thus, in order to meet the objectives of this final rule and address the management concerns at hand, NMFS cannot exempt small entities or change the reporting requirements for small entities. NMFS is implementing these measures to comply with ICCAT recommendations which are negotiated between many countries and are therefore not easily adjusted or modified. As such, the use of performance rather than design standards and the simplification of compliance and reporting requirements under this rule are not practicable. Furthermore, this action does not duplicate, overlap, or conflict with any other relevant Federal rules.

This final rule contains new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The chartering application and notification requirements for vessels entering a chartering arrangement has been cleared by OMB under control number 0648-0495. Public reporting burden for this collection of information is estimated to average 40 minutes per application and 5 minutes per notification upon termination of the chartering arrangement. This burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

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

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

Fisheries, Fishing, Fishing Vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: November 23, 2004.

**John Oliver,**

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

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

#### **PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2. In § 635.2 the definition of “Tuna or tuna-like” is added in alphabetical order to read as follows:

##### **§ 635.2 Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

■ 3. In § 635.5, paragraph (a)(6) is added to read as follows:

##### **§ 635.5 Recordkeeping and reporting.**

\* \* \* \* \*

(a) \* \* \*

(6) *Chartering Arrangements.* (i) For the purposes of this section, a chartering arrangement means any contract, agreement, or commitment between a U.S. vessel owner and a foreign entity (e.g., government, company, person) by which the control, use, possession, or services of a vessel are secured, for a period of time for fishing targeting Atlantic HMS. Chartering arrangements under this part do not include bareboat charters under which a vessel enters into a fishing agreement with a foreign entity, changes registration to fish under another country's registration then, once the agreed-upon fishing is completed, reverts back to the vessel's original registration.

(ii) Before fishing under a chartering arrangement, the owner of a fishing vessel subject to U.S. jurisdiction must apply for, and obtain, a chartering permit as specified in § 635.32 (e) and (f). If a chartering permit is obtained, the vessel owner must submit catch information as specified in the terms and conditions of that permit. All catches will be recorded and counted against the applicable quota of the

Contracting Party to which the chartering foreign entity is a member and, unless otherwise provided in the chartering permit, must be offloaded in the ports of the chartering foreign entity or offloaded under the direct supervision of the chartering foreign entity.

(iii) If the chartering arrangement terminates before the expiration of the charter permit, the vessel owner must notify NMFS immediately and in writing, upon termination of the chartering arrangement. Such notification requirements shall also apply to situations where the chartering arrangement is temporarily suspended and during intermittent periods where the vessel may be fishing under U.S. quotas for Atlantic HMS.

\* \* \* \* \*

■ 4. In § 635.32, paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively, and revised; paragraph (a) is revised; and a new paragraph (e) is added to read as follows:

##### **§ 635.32 Specifically authorized activities.**

(a) *General.* (1) Consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, NMFS may authorize activities otherwise prohibited by the regulations contained in this part for the conduct of scientific research, the acquisition of information and data, the enhancement of safety at sea, the purpose of collecting animals for public education or display, the investigation of bycatch, economic discard and regulatory discard, or for chartering arrangements.

(2) Activities subject to the provisions of this section include, but are not limited to, scientific research resulting in, or likely to result in, the take, harvest or incidental mortality of Atlantic HMS; exempted fishing and educational activities; programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks; or chartering arrangements. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, exempted fishing permit, scientific research permit, display permit, or chartering permit issued in response to requests for authorization under this section.

(3) For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be counted against the quota category as specified in the written authorization.

(4) Inspection requirements specified in § 635.5(e) apply to the owner or operator of a fishing vessel that has been issued a exempted fishing permit, scientific research permit, display permit, or chartering permit.

\* \* \* \* \*

(e) *Chartering permits.* (1) For activities consistent with the purposes of this section, § 635.5(a), and § 600.745(b)(1) of this chapter, NMFS may issue chartering permits for record keeping and reporting purposes. An application for a chartering permit must include all information required under § 600.745(b)(2) of this chapter and, in addition, written notification of: the species of fish covered by the chartering arrangement and quota allocated to the Contracting Party of which the chartering foreign entity is a member; duration of the arrangement; measures adopted by the chartering Contracting Party of which the foreign entity is a member to implement ICCAT chartering provisions; copies of fishing licenses, permits, and/or other authorizations issued by the chartering Contracting Party of which the foreign entity is a member for the vessel to fish under the arrangement; a copy of the High Seas Fishing Compliance Act Permit pursuant to 50 CFR 300.10; documentation regarding interactions with protected resources; and documentation regarding the legal establishment of the chartering company. To be considered complete, an application for a chartering permit for a vessel must include all information specified in § 600.745(b)(2) of this chapter and in § 635.32(e) and (f).

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid chartering permit is required to fish for, take, retain, or possess ICCAT-regulated species under chartering arrangements as specified in § 635.5(a)(6). A valid chartering permit must be on board the harvesting vessel, must be available when ICCAT-regulated species are landed, and must be presented for inspection upon request of an authorized officer. A chartering permit is valid for the duration of the chartering arrangement or until the expiration date specified on the permit, whichever comes first. Vessels issued a chartering permit shall not be authorized to fish under applicable Atlantic Highly Migratory Species quotas or entitlements of the United States until the chartering permit expires or is terminated.

(3) Charter permit holders must submit logbooks and comply with reporting requirements as specified in

§ 635.5. NMFS will provide specific conditions and requirements in the chartering permit, so as to ensure consistency, to the extent possible, with laws of foreign countries, the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, as well as ICCAT recommendations.

(4) Observers may be placed on board vessels issued chartering permits as specified under § 635.7.

(5) NMFS will issue a chartering permit only if it determines that the chartering arrangement is in conformance with ICCAT's conservation and management programs.

(6) A vessel shall be authorized to fish under only one chartering arrangement at a time.

(7) All chartering permits are subject to sanctions and denials as indicated under § 635.4(a)(6).

(f) *Applications and renewals.* Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the Federal Register, on an annual or more frequent basis as necessary, notification of previously authorized exempted fishing, scientific research, public display, or chartering activities and to solicit public comment on anticipated EFP, SRP, LOA, public display, or chartering permit requests. Applications for EFP, SRP, public display, or chartering permit renewals are required to include all reports specified in the applicant's previous permit including the year-end report, all delinquent reports for permits issued in prior years, and all other specified information. In situations of delinquent reports, renewal applications will be deemed incomplete and a permit will not be issued under this section.

(g) *Terms and conditions.* (1) For EFPs, SRPs, and public display permits: Written reports on fishing activities and disposition released under a permit issued under this section, must be submitted to NMFS, within 5 days of return to port. NMFS will provide specific conditions and requirements as needed, consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks, in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a "no-catch" report must be submitted to NMFS within 5 days of the last day of that month.

(2) For chartering permits, written reports of fishing activities must be submitted to NMFS by a date specified, and to an address designated, in the

terms and conditions of each chartering permit.

(3) An annual written summary report of all fishing activities and disposition of all fish captured under the permit must be submitted to NMFS for all the permits (EFP, SRP, Display, and Chartering Permits) listed in this section within 30 days after the expiration date of the permit.

■ 5. Section 635.45 is revised to read as follows:

**§ 635.45 Products denied entry.**

(a) All shipments of Atlantic swordfish, or its products, in any form, harvested by a vessel under the jurisdiction of Sierra Leone will be denied entry into the United States.

(b) All shipments of Atlantic bluefin tuna, or its products, in any form, harvested by a vessel under the jurisdiction of Equatorial Guinea or Sierra Leone will be denied entry into the United States.

(c) All shipments of Atlantic bigeye tuna, or its products, in any form, harvested by a vessel under the jurisdiction of Bolivia, Cambodia, Equatorial Guinea, Sierra Leone, or Georgia will be denied entry into the United States.

(d) All shipments of tuna or tuna-like species, or their products, in any form, harvested in the ICCAT convention area by a fishing vessel that is required to be listed, but not listed on the ICCAT record of authorized vessels will be denied entry into the United States.

(e) All shipments of tuna or tuna-like species, or their products, in any form, harvested in the ICCAT convention area by a fishing vessel listed on the ICCAT record as engaged in illegal, unreported, and unregulated fishing will be denied entry into the United States.

(f) All shipments of tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing will be denied entry into the United States.

(g) For the purposes of this section, it is a rebuttable presumption that any shipment containing swordfish, bluefin tuna, bigeye tuna, or their products offered for entry into the United States has been harvested by a vessel or vessels of the exporting nation.

■ 6. In § 635.71, paragraphs (a)(2), (a)(6), and (b)(26) are revised; and paragraphs (a)(41) through (a)(47) and paragraphs (b)(30) and (e)(16) are added to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without the appropriate valid vessel permit, LAP, EFP, SRP, display permit, or chartering permit on board the vessel, as specified in §§ 635.4 and 635.32.

\* \* \* \* \*

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

\* \* \* \* \*

(41) Fail to immediately notify NMFS upon the termination of a chartering arrangement as specified in § 635.5(a)(6).

(42) Count chartering arrangement catches against quotas other than those

defined as the Contracting Party of which the chartering foreign entity is a member as specified in § 635.5(a)(6).

(43) Fail to submit catch information regarding fishing activities conducted under a chartering arrangement with a foreign entity, as specified in § 635.5(a)(6).

(44) Offload chartering arrangement catch in ports other than ports of the chartering Contracting Party of which the foreign entity is a member or offload catch without the direct supervision of the chartering foreign entity as specified in § 635.5(a)(6).

(45) Import or attempt to import tuna or tuna-like species harvested from the ICCAT convention area by a fishing vessel that is not listed in the ICCAT record of authorized vessels as specified in § 635.45(d).

(46) Import or attempt to import tuna or tuna-like species harvested by a fishing vessel on the ICCAT illegal, unreported, and unregulated fishing list as specified in § 635.45(e).

(47) Import or attempt to import tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing as specified in § 635.45(f).

(b) \* \* \*

(26) Import a bluefin tuna or bluefin tuna product into the United States from Equatorial Guinea or Sierra Leone as specified in § 635.45.

\* \* \* \* \*

(30) Import a bigeye tuna or bigeye tuna product into the United States from Bolivia, Cambodia, Equatorial Guinea, Sierra Leone, or Georgia as specified in § 635.45.

\* \* \* \* \*

(e) \* \* \*

(16) Import a swordfish or swordfish product into the United States from Sierra Leone as specified in § 635.45.

[FR Doc. 04-26719 Filed 12-3-04; 8:45 am]

**BILLING CODE 3510-22-S**