

(m) *Cost recovery program.* This program of fees is intended to cover costs of management, data collection and analysis, and enforcement activities directly related to and in support of the IBQ Program. This program applies to vessels issued an Atlantic Tunas Longline category LAP that harvested BFT under the IBQ Program. NMFS will undertake the process described in paragraphs (m)(1) through (5) of this section, on an annual basis.

(1) *Estimation of incremental cost.* NMFS will calculate the estimated incremental cost of the IBQ Program (e.g., oversight, customer service, database/computer maintenance and other costs, electronic monitoring program, data monitoring, preparation of fleet communications, providing status reports to the HMS Advisory Panel, preparation of FEDERAL REGISTER documents, and enforcement related activities), including an estimate of the administrative and operational cost of implementing the cost recovery program.

(2) *Estimation of ex-vessel value of catch share species.* NMFS will calculate the ex-vessel value of BFT harvested under the IBQ Program using dealer data on the estimated average ex-vessel value price per pound (paid by the dealer to the vessel) and the total dressed weight of BFT sold to dealers.

(3) *Determination of fees.* NMFS will compare its incremental cost under paragraph (m)(1) of this section to the estimate of BFT ex-vessel value under paragraph (m)(2) of this section to determine the total amount of fees that may be recovered. Fees shall not exceed 3 percent of the BFT ex-vessel value estimated under paragraph (m)(2) of this section. NMFS will determine the fee associated with each vessel that harvested BFT, based on the total dressed weight of BFT sold to dealers by a vessel, and the total amount of fees that may be recovered (fishery-wide). NMFS will not assess fees, if the amount of fees that may be recovered is similar to or less than the estimated cost of implementing the cost recovery program.

(4) *Notification of fees.* NMFS will file with the Office of the Federal Register for publication a notification of its determination on fees, and notify Atlan-

tic Tunas Longline permit holders, specifying the fee amount owed, and instructions for payment through the Catch Shares Online System or other Federal payment system. Federally permitted vessels (Atlantic Tunas Longline permit holders) that sold BFT that do not pay the fee or are delinquent in payment would be subject to relevant enforcement penalties, including permit revocation.

(5) *Annual report.* NMFS will prepare a brief annual report, made available to the public, which summarizes relevant information including the estimation of recoverable costs, estimation of ex-vessel value of BFT, and determination of the cost recovery fee.

(n) *IBQ shares cap.* An individual, partnership, corporation or other entity (collectively, “entity” for purposes of this paragraph) that holds an Atlantic Tunas Longline category LAP may not hold or acquire more than 25 percent of the total IBQ shares or resultant IBQ allocations annually. The cap applies to the sum of IBQ shares or associated IBQ allocations an entity holds, regardless of whether the entity is associated with a single or multiple Atlantic Tunas Longline category permits.

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§ 635.16 [Reserved]

Subpart C—Management Measures

§ 635.19 Authorized gears.

(a) *General.* No person may fish for, catch, possess, or retain any Atlantic HMS with gears other than the primary gears specifically authorized in this part. Consistent with § 635.21(a), secondary gears may be used at boat side to aid and assist in subduing, or bringing on board a vessel, Atlantic HMS that have first been caught or captured using primary gears. For purposes of this part, secondary gears include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc. Secondary gears may not be used to capture, or attempt to capture, free-swimming or undersized HMS. Except for vessels permitted under § 635.4(o) or as specified in this section, a vessel

using or having onboard in the Atlantic Ocean any unauthorized gear may not possess an Atlantic HMS on board.

(b) *Atlantic tunas*. Primary gears are the gears specifically authorized in this section for fishing for, catching, retaining, or possessing Atlantic BFT and BAYS.

(1) *Atlantic BFT*. A person that fishes for, catches, retains, or possesses an Atlantic BFT may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the specific permit category issued (Atlantic tunas or HMS permit categories) and listed here:

(i) *Angling category*. Rod and reel (including downriggers) and handline.

(ii) *Charter/headboat category*. Rod and reel (including downriggers), bandit gear, handline, and green-stick gear.

(iii) *General category*. Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick gear.

(iv) *Harpoon category*. Harpoon.

(v) *Trap category*. Pound net and fish weir.

(vi) *Longline category*. Longline and green-stick gear.

(2) *BAYS*. Subject to paragraph (b)(1) of this section that applies to possession or retention of BFT or fishing for or catching BFT, a person may otherwise use the primary gears authorized for the Atlantic Tunas or HMS permit categories and listed here to fish for, catch, retain, or possess BAYS:

(i) *Angling category*. Speargun, rod and reel (including downriggers), and handline.

(ii) *Charter/Headboat category*. Rod and reel (including downriggers), bandit gear, handline, and green-stick gear are authorized for all recreational and commercial Atlantic tuna fisheries. Speargun is authorized for recreational Atlantic BAYS tuna fisheries only.

(iii) *General category*. Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick gear.

(iv) *Harpoon category*. Harpoon.

(v) *Longline category*. Longline and green-stick gear.

(3) *HMS Commercial Caribbean Small Boat Permit*. A person issued an HMS Commercial Caribbean Small Boat per-

mit may use handline, harpoon, rod and reel, bandit gear, green-stick gear, and buoy gear to fish for, retain, or possess BAYS tunas in the U.S. Caribbean, as defined at § 622.2.

(c) *Billfish*. (1) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category or Swordfish General Commercial permit and are participating in a tournament as provided in § 635.4(c), may possess a blue marlin, white marlin, or roundscale spearfish in, or take a blue marlin, white marlin, or roundscale spearfish from, its management unit. Blue marlin, white marlin, or roundscale spearfish may only be harvested by rod and reel.

(2) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category or Swordfish General Commercial permit and are participating in a tournament as provided in § 635.4(c), may possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ. Sailfish may only be harvested by rod and reel.

(d) *Sharks*. (1) No person may possess a shark without a permit issued under § 635.4.

(2) No person issued a Federal Atlantic commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet, except that smoothhound sharks may be retained incidentally while fishing with trawl gear subject to the restrictions specified in § 635.24(a)(7).

(3) No person issued an HMS Commercial Caribbean Small Boat permit may possess a shark taken from the U.S. Caribbean, as defined at § 622.2 of this chapter, by any gear other than with rod and reel, handline or bandit gear.

(4) Persons on a vessel issued a permit with a shark endorsement under § 635.4 may possess a shark only if the shark was taken by rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit with a commercial sale endorsement (with or without a

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shark endorsement) and a Federal Atlantic commercial shark permit may possess sharks taken by rod and reel, handline, bandit gear, longline, or gillnet if the vessel is engaged in a non for-hire fishing trip and the commercial shark fishery is open pursuant to § 635.28(b).

(e) *Swordfish*. (1) No person may possess North Atlantic swordfish taken from its management unit by any gear other than handgear, green-stick, or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained by a vessel issued a valid Incidental HMS squid trawl permit, subject to restrictions specified in § 635.24(b)(2). No person may possess South Atlantic swordfish taken from its management unit by any gear other than longline.

(2) An Atlantic swordfish may not be retained or possessed on board a vessel with a gillnet. A swordfish will be deemed to have been harvested by gillnet when it is onboard, or offloaded from, a vessel fishing with or having on board a gillnet.

(3) A person aboard a vessel issued or required to be issued a valid directed handgear LAP for Atlantic swordfish or an HMS Commercial Caribbean Small Boat permit may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel fishing with or having on board longline gear. Only vessels that have been issued a valid directed or handgear swordfish LAP or an HMS Commercial Caribbean Small Boat permit under this part may utilize or possess buoy gear.

(4) Except for persons aboard a vessel that has been issued a directed, incidental, or handgear swordfish LAP, a Swordfish General Commercial permit, an Incidental HMS squid trawl permit, or an HMS Commercial Caribbean Small Boat permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish taken by, any gear other than handline or rod and reel.

(5) A person aboard a vessel issued or required to be issued a valid Swordfish General Commercial permit may only possess North Atlantic swordfish taken

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from its management unit by rod and reel, handline, bandit gear, green-stick, or harpoon gear.

[79 FR 71594, Dec. 2, 2014, as amended at 80 FR 73144, Nov. 24, 2015; 82 FR 16506, Apr. 4, 2017; 82 FR 57549, Dec. 6, 2017; 83 FR 33154, July 17, 2018; 87 FR 11324, Mar. 1, 2022; 87 FR 60003, Oct. 3, 2022]

§ 635.20 Size limits.

(a) *General*. The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas.

(b) *BFT size classes*. If the head of a BFT is no longer attached, the size class of the BFT shall be determined using pectoral fin curved fork length (PFCFL) multiplied by a conversion factor of 1.35. The CFL, as determined by conversion of the PFCFL, will be the sole criterion for determining the size class of a beheaded BFT. The conversion factor may be adjusted after consideration of additional scientific information and fish measurement data, and will be made effective by filing notification of the adjustment with the Office of the Federal Register for publication.

(c) *BFT, bigeye tuna, and yellowfin tuna*. (1) No person shall take, retain, or possess a BFT, bigeye tuna, or yellowfin tuna in the Atlantic Ocean that is less than 27 inches (69 cm) CFL;

(2) Applying the conversion factor from PFCFL to CFL for a beheaded BFT in § 635.20(b) means that no person shall retain or possess a BFT, with the head removed, that is less than 20 inches (51 cm) PFCFL.

(3) No person aboard a vessel shall remove the head of a bigeye tuna or yellowfin tuna if the remaining portion would be less than 27 inches (69 cm) from the fork of the tail to the forward edge of the cut. A bigeye or yellowfin tuna that is damaged through predation by sharks or other marine species may be retained, possessed, or landed only if the length of the remainder of the fish is equal to or greater than 27 inches (69 cm). No person shall cut or otherwise alter the predation-damaged area in any manner.

(d) *Billfish*. (1) No person shall take, retain or possess a blue marlin taken from its management unit that is less than 99 inches (251 cm), LJFL.