

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28, and the gear operation and deployment restrictions in § 635.21.

(a) *Sharks.* (1) A person who owns or operates a vessel that has been issued a valid shark research permit under § 635.32(f) and who has a NMFS-approved observer on board may retain, possess, or land LCS, including sandbar sharks, in excess of the retention limits in paragraphs (a)(2) through (6) of this section. The amount of LCS that can be landed by such a person will vary as specified on the shark research permit. Only a person who owns or operates a vessel issued a valid shark research permit with a NMFS-approved observer on board may retain, possess, or land sandbar sharks.

(2) The commercial retention limit for LCS other than sandbar sharks for a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a shark research permit but does not have a NMFS-approved observer on board, may range between zero and 55 LCS other than sandbar sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks. At the start of each fishing year, the default commercial retention limit is 45 LCS other than sandbar sharks per vessel per trip unless NMFS determines otherwise and files with the Office of the Federal Register for publication notification of an inseason adjustment. During the fishing year, NMFS may adjust the retention limit per the inseason trip limit adjustment criteria listed in paragraph (a)(8) of this section.

(3) A person who owns or operates a vessel that has been issued an incidental LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued an incidental LAP for sharks and that has been issued a

valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 3 LCS other than sandbar sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks.

(4) *Additional retention limits for sharks.* (i) Except as provided in § 635.22(c)(7), a person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, land, or sell pelagic sharks if the pelagic shark fishery is open per §§ 635.27 and 635.28. Shortfin mako sharks may be retained by persons aboard vessels using pelagic longline, bottom longline, or gillnet gear only if NMFS has adjusted the commercial retention limit above zero pursuant to paragraph (a)(4)(v) of this section and only if the shark is dead at the time of haulback and consistent with the provisions of §§ 635.21(c)(1), (d)(5), and (g)(6) and 635.22(c)(7).

(ii) A person who owns or operates a vessel that has been issued a shark LAP and is operating south of 34°00' N. lat. in the Atlantic region, as defined at § 635.27(b)(1), may retain, possess, land, or sell blacknose and non-blacknose SCS if the respective blacknose and non-blacknose SCS management groups are open per §§ 635.27 and 635.28. Such persons may retain, possess, land, or sell no more than 8 blacknose sharks per vessel per trip. A person who owns or operates a vessel that has been issued a shark LAP and is operating north of 34°00' N. lat. in the Atlantic region, as defined at § 635.27(b)(1), or a person who owns or operates a vessel that has been issued a shark LAP and is operating in the Gulf of Mexico region, as defined at § 635.27(b)(1), may not retain, possess, land, or sell any blacknose sharks, but may retain, possess, land, or sell non-blacknose SCS if the respective non-blacknose SCS management group is open per §§ 635.27 and 635.28.

(iii) Consistent with paragraph (a)(4)(ii) of this section, a person who owns or operates a vessel that has been issued an incidental shark LAP may retain, possess, land, or sell no more

than 16 SCS and pelagic sharks, combined, per vessel per trip, if the respective fishery is open per §§635.27 and 635.28. Of those 16 SCS and pelagic sharks per vessel per trip, no more than 8 shall be blacknose sharks. Shortfin mako sharks may be retained under the commercial retention limits by persons using pelagic longline, bottom longline, or gillnet gear only if NMFS has adjusted the commercial retention limit above zero pursuant to paragraph (a)(4)(v) of this section and only if the shark is dead at the time of haulback and consistent with the provisions at §635.21(c)(1), (d)(5), and (g)(6). If the vessel has also been issued a permit with a shark endorsement and retains a shortfin mako shark, recreational retention limits apply to all sharks retained and none may be sold, per §635.22(c)(7).

(iv) A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may retain, possess, land, or sell any blacktip, bull, lemon, nurse, spinner, tiger, Atlantic sharpnose, bonnethead, finetooth, and smoothhound shark, subject to the HMS Commercial Caribbean Small Boat permit shark retention limit. A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may not retain, possess, land, or sell any hammerhead, blacknose, silky, sandbar, blue, thresher, oceanic whitetip, shortfin mako, or prohibited shark, including parts or pieces of these sharks. The shark retention limit for a person who owns, operates, or is aboard a vessel issued an HMS Commercial Caribbean Small Boat permit will range from zero to three sharks per vessel per trip. At the start of each fishing year, the default shark trip limit will apply. During the fishing year, NMFS may adjust the default shark trip limit per the inseason trip limit adjustment criteria listed in paragraph (a)(8) of this section. The default shark retention limit for the HMS Commercial Caribbean Small Boat permit is three sharks per vessel per trip.

(v) At the start of each fishing year, the default shortfin mako shark retention limit of zero sharks will apply.

During the fishing year, NMFS may adjust the default shortfin mako shark trip limit per the inseason trip limit adjustment criteria listed in paragraph (a)(8) of this section.

(5) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit may not retain, possess, land, sell, or purchase prohibited sharks, including any parts or pieces of prohibited sharks, which are listed in section D of Table 1 of Appendix A to this part under prohibited sharks.

(6) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark permit, and who decides to retain sharks, must retain, subject to the trip limits, all dead, legal-sized, non-prohibited sharks that are brought onboard the vessel and cannot replace those sharks with sharks of higher quality or size that are caught later in the trip. Any fish that are to be released cannot be brought onboard the vessel and must be released in the water in a manner that maximizes survival.

(7) A person who owns or operates a vessel that has been issued a Federal commercial smoothhound permit may retain, possess, and land smoothhound sharks if the smoothhound fishery is open in accordance with §§635.27 and 635.28. Persons aboard a vessel in a trawl fishery that has been issued a Federal commercial smoothhound permit and are in compliance with all other applicable regulations, may retain, possess, land, or sell incidentally-caught smoothhound sharks, but only up to an amount that does not exceed 25 percent, by weight, of the total catch on board and/or offloaded from the vessel. A vessel is in a trawl fishery when it has no commercial fishing gear other than trawls on board and when smoothhound sharks constitute no more than 25 percent by weight of the total catch on board or offloaded from the vessel.

(8) *Inseason trip limit adjustment criteria.* NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustments to trip limits by region or sub-region. Before making any adjustment, NMFS will consider the following criteria and other relevant factors:

(i) The amount of remaining shark quota in the relevant area, region, or sub-region, to date, based on dealer reports;

(ii) The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports;

(iii) Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates and whether they are projected to reach 100 percent before the end of the fishing season;

(iv) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments;

(v) Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge;

(vi) Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota; and/or

(vii) Any shark retention allowance set by ICCAT, the amount of remaining allowance, and the expected or reported catch rates of the relevant shark species, based on dealer and other harvest reports.

(9) Notwithstanding other provisions in this subsection, possession, retention, transshipment, landing, sale, or storage of silky sharks, oceanic whitetip sharks, and scalloped, smooth, and great hammerhead sharks is prohibited on vessels issued a permit under this part that have pelagic longline gear on board or on vessels issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

(10) Notwithstanding other provisions in this paragraph (a), vessels issued a permit under this part that have pelagic longline gear on board or on vessels issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish, or billfish are on board the vessel, offloaded from the vessel, or being

offloaded from the vessel, are required to release unharmed, to the extent practicable, porbeagle sharks that are alive at the time of haulback.

(b) *Swordfish*. (1) Persons aboard a vessel that has been issued an incidental LAP for swordfish may retain, possess, land, or sell no more than 30 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an Incidental HMS squid trawl permit may retain, possess, land, or sell no more than 15 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel.

(3) A person who owns, operates, or is aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit may retain, possess, land, or sell North Atlantic swordfish, subject to the HMS Commercial Caribbean Small Boat permit swordfish retention limit. The swordfish retention limit for a person who owns, operates, or is aboard a vessel issued an HMS Commercial Caribbean Small Boat permit will range from 0 to 18 swordfish per vessel per trip. At the start of each fishing year, the default retention limit will apply. During the fishing year, NMFS may adjust the default retention limit per the inseason regional retention limit adjustment criteria listed in paragraph (b)(5) of this section. The default retention limit for the HMS Commercial Caribbean Small Boat permit is eighteen swordfish per vessel per trip.

(4) A person who owns, operates, or is aboard a vessel that has been issued a Swordfish General Commercial permit or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip) are subject to the regional swordfish retention limits specified at paragraph (b)(4)(iii) of this section, which may be adjusted during the fishing year based upon the inseason regional retention limit adjustment criteria listed in paragraph (b)(5) of this section.

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(i) *Regions.* Regional retention limits for swordfish apply in four regions. For purposes of this section, these regions are: the Florida Swordfish Management Area as defined in §635.2; the Northwest Atlantic region (federal waters along the entire Atlantic coast of the United States north of 28°17'10" N. latitude); the Gulf of Mexico region (any water located in the EEZ in the entire Gulf of Mexico west of 82° W. longitude); and the Caribbean region (the U.S. territorial waters within the Caribbean as defined in §622.2 of this chapter).

(ii) Vessels that have been issued a Swordfish General Commercial permit or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip), as a condition of these permits, may not possess, retain, or land any more swordfish than is specified for the region in which the vessel is located.

(iii) *Regional retention limits.* The swordfish regional retention limits for each region will range from 0 to 18 swordfish per vessel per trip. At the start of each fishing year, the default regional retention limits will apply. During the fishing year, NMFS may adjust the default retention limits per the inseason regional retention limit adjustment criteria listed in paragraph (b)(5) of this section. The default retention limits for the regions set forth under paragraph (b)(4)(i) of this section are:

(A) Zero swordfish per vessel per trip for the Florida Swordfish Management Area;

(B) Eighteen swordfish per vessel per trip for the Caribbean region;

(C) Eighteen swordfish per vessel per trip for the Northwest Atlantic region; and

(D) Eighteen swordfish per vessel per trip for the Gulf of Mexico region.

(5) NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustments to the default swordfish retention limits specified at paragraphs (b)(3) and (b)(4)(iii) of this section. Before making any inseason adjustments to swordfish retention limits, NMFS will consider the following criteria and other relevant factors:

(i) The usefulness of information obtained from biological sampling and monitoring of the North Atlantic swordfish stock;

(ii) The estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year;

(iii) The estimated amounts by which quotas for other categories of the fishery might be exceeded;

(iv) Effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments;

(v) Variations in seasonal distribution, abundance, or migration patterns of swordfish;

(vi) Effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota; and

(vii) Review of dealer reports, landing trends, and the availability of swordfish on the fishing grounds.

(c) BAYS tunas. Persons aboard a vessel that has been issued an HMS Commercial Caribbean Small Boat permit under §635.4 may retain, possess, land, or sell no more than 10 BAYS tunas per vessel per trip.

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §635.24, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 635.25 Fishing areas.

(a) *General.* Persons on board fishing vessels subject to the jurisdiction of the United States are authorized to fish for, catch, retain, or land species governed by an international catch sharing agreement implemented under this part only in or from those management areas for which the United States has received an allocation.

(b) *Exemptions.* Persons and vessels subject to the jurisdiction of the United States intending to fish for regulated species in fishing areas not otherwise authorized under this part, whether for the purposes of scientific research or commercial fishing under a chartering arrangement, must have a permit from NMFS issued under § 635.32.