

### § 635.3

and the genus *Scomber*) and such other species of fishes that are regulated by ICCAT in the Atlantic Ocean.

*Vessel monitoring plan (VMP)* means an on-board, EM system reference document required by § 635.9(e)(1).

*Weighout slip* means a document provided to the owner or operator of the vessel by a person who weighs fish or parts thereof that are landed from a fishing vessel. A document, such as a "tally sheet," "trip ticket," or "sales receipt," that contains such information is considered a weighout slip.

*Young school BFT* means an Atlantic BFT measuring less than 27 inches (69 cm) CFL.

[64 FR 29135, May 28, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 635.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 635.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and in paragraphs (b) and (c) of this section.

(b) In accordance with regulations issued under the Marine Mammal Protection Act of 1972, as amended, it is unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in fisheries for HMS in the Atlantic Ocean, unless the vessel owner or authorized representative has complied with specified requirements including, but not limited to, registration, exemption certificates, decals, and reports, as contained in part 229 of this title.

(c) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§ 600.730, 600.735, and § 600.740 of this chapter, respectively.

(d) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing or exempted educational activity, or for public display, as specified in § 635.32.

[64 FR 29135, May 28, 1999, as amended at 68 FR 74784, Dec. 24, 2003]

### 50 CFR Ch. VI (10–1–23 Edition)

### § 635.4 Permits and fees.

Information on permits and permit requirements may be obtained from the Division Chief or where otherwise stated in this part.

(a) *General*—(1) *Authorized activities*. Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities without the appropriate permit, unless otherwise authorized by NMFS in accordance with this part. In certain cases, additional permits may be required to authorize these same or related activities under federal, state or local jurisdictions.

(2) *Vessel permit inspection*. The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess Atlantic HMS when engaged in recreational fishing and to fish for, take, retain or possess Atlantic tunas, swordfish, or sharks when engaged in commercial fishing. The vessel operator must make such permit available for inspection upon request by NMFS or by a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection all required vessel permits.

(3) *Property rights*. LAPs or any other permit issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the takings provision of the Fifth Amendment of the U.S. Constitution. Rather, LAPs represent only a harvesting privilege that may be revoked, suspended, or amended subject to the requirements of the Magnuson-Stevens Act or other applicable law.

(4) *Dealer permit inspection*. A dealer permit issued under this section, or a copy thereof, must be available at each of the dealer's places of business. A dealer must present the permit or a copy for inspection upon the request of a NMFS-authorized officer.

(5) *Display upon offloading*. Upon offloading of Atlantic HMS for sale, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit with a commercial sale endorsement;

Atlantic tunas, shark, or swordfish permit; Incidental HMS squid trawl; HMS Commercial Caribbean Small Boat permit; and/or the shark research permit to the first receiver. The permit(s) must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2), and (b)(2)(i).

(6) *Sanctions and denials.* A permit issued under this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at 15 CFR part 904, subpart D.

(7) *Alteration.* A vessel or dealer permit that is altered, erased, mutilated, or otherwise modified is invalid.

(8) *Replacement.* NMFS may issue a replacement permit upon the request of the permittee. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (a)(9) of this section, may be charged for issuance of the replacement permit.

(9) *Fees.* NMFS may charge a fee for each application for a permit or for each transfer or replacement of a permit. The amount of the fee is calculated 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 in the instructions provided with each application form. Each applicant must include the appropriate fee with each application or request for transfer or replacement. A permit will not be issued to anyone who fails to pay the fee.

(10) *Permit condition.* An owner of a vessel with a valid Atlantic tunas, swordfish, shark, HMS Angling, HMS Charter/Headboat, Incidental HMS squid trawl, or HMS Commercial Caribbean Small Boat permit issued pursuant to this part must agree, as a condition of such permit, that the vessel's HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the U.S. EEZ, or outside the U.S. EEZ, and without regard to where such HMS, or gear, are possessed, taken, or landed. However,

when a vessel fishes within the waters of a state that has more restrictive regulations pertaining to HMS, persons aboard the vessel must abide by the state's more restrictive regulations.

(b) *HMS Charter/Headboat permits.* (1) The owner of a charter boat or headboat used to fish for, retain, possess, or land any Atlantic HMS must obtain an HMS Charter/Headboat permit. In order to fish for, retain, possess, or land Atlantic sharks, the owner must have a valid shark endorsement issued by NMFS. A vessel issued an HMS Charter/Headboat permit for a fishing year shall not be issued an HMS Angling permit, a Swordfish General Commercial permit, or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(2) While persons aboard a vessel that has been issued an HMS Charter/Headboat permit are fishing for or are in possession of Atlantic HMS, the operator of the vessel must have a valid Merchant Marine License or Uninspected Passenger Vessel License, as applicable, issued by the U.S. Coast Guard pursuant to regulations at 46 CFR part 10. Such Coast Guard license must be carried on board the vessel.

(3) The owner of a charter boat or headboat that intends to sell Atlantic tunas or swordfish must obtain a commercial sale endorsement for the vessel's HMS Charter/Headboat permit. The owner of a charter boat or headboat that intends to sell Atlantic sharks must obtain a commercial sale endorsement for the vessel's HMS Charter/Headboat permit at the time of permit renewal or when the permit is obtained and must also obtain any applicable Atlantic commercial shark permits. A vessel owner that has obtained an HMS Charter/Headboat permit without a commercial sale endorsement is prohibited from selling any Atlantic HMS.

(c) *HMS Angling permits.* (1) The owner of any vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed recreationally, must obtain an HMS Angling permit, except as provided in paragraph (c)(2) of this section. In order to fish for, retain, possess, or land Atlantic sharks, the

owner must have a valid shark endorsement issued by NMFS. Atlantic HMS caught, retained, possessed, or landed by persons on board vessels with an HMS Angling permit may not be sold or transferred to any person for a commercial purpose. A vessel issued an HMS Angling permit for a fishing year shall not be issued an HMS Charter/Headboat permit, a Swordfish General Commercial permit, or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(2) A vessel with a valid Atlantic Tunas General category permit issued under paragraph (d) of this section or with a valid Swordfish General Commercial permit issued under paragraph (f) of this section may fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has registered with NMFS' HMS Management Division as required under § 635.5(d). When a vessel with a valid Atlantic Tunas General category permit or a valid Swordfish General Commercial permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in paragraphs (c)(3) through (5) of this section.

(3) A vessel issued an Atlantic Tunas General category permit fishing in a tournament, as authorized under § 635.4(c)(2), shall comply with Atlantic Tunas General category regulations when fishing for, retaining, possessing, or landing Atlantic tunas.

(4) A vessel issued a Swordfish General Commercial permit fishing in a tournament, as authorized under § 635.4(c)(2), shall comply with Swordfish General Commercial permit regulations when fishing for, retaining, possessing, or landing Atlantic swordfish.

(5) In order to fish for, retain, possess, or land sharks, the owner of a vessel fishing in a registered recreational HMS fishing tournament and issued either an Atlantic Tunas General category or Swordfish General Commercial permit must have a shark endorsement.

(d) *Atlantic Tunas vessel permits.* (1) The owner of each vessel used to fish for or take Atlantic tunas commer-

cially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas, HMS Angling, HMS Charter/Headboat, or an HMS Commercial Caribbean Small Boat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit or permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, or Trap category of the Atlantic Tunas permit, a valid HMS Charter/Headboat permit with a commercial sale endorsement, or an HMS Commercial Caribbean Small Boat permit.

(3) A vessel issued an Atlantic Tunas permit in any category for a fishing year shall not be issued an HMS Angling permit, HMS Charter/Headboat permit, or an Atlantic Tunas permit in any other category for that same fishing year, regardless of a change in the vessel's ownership. A vessel issued an Atlantic Tunas permit may be issued an HMS Commercial Caribbean Small Boat permit, subject to restrictions set forth at § 635.4(o), within that same fishing year; however, a vessel may not hold any other HMS fishing permit simultaneously with the HMS Commercial Caribbean Small Boat permit.

(4) A person can obtain an Atlantic Tunas Longline category LAP for a vessel only if the vessel has been issued both a LAP for shark and a LAP, other than handgear, for swordfish. Atlantic Tunas Longline category LAPs may only be obtained through transfer from current owners consistent with the provisions under paragraph (1)(2) of this section.

(e) *Shark vessel permits.* (1) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic

sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, at least one of the Federal Atlantic commercial shark permits described below or an HMS Commercial Caribbean Small Boat permit. A Federal Atlantic commercial shark permit or HMS Commercial Caribbean Small Boat permit is not required if the vessel is recreationally fishing and retains no more sharks than the recreational retention limit specified in §635.22(c), is operating pursuant to the conditions of a shark display or EFP issued pursuant to §635.32, or fishes exclusively within State waters. It is a rebuttable presumption that the owner or operator of a vessel without a permit issued pursuant to this part, on which sharks are possessed in excess of the recreational retention limits, intends to sell the sharks.

(2) The owner of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in headings A, B, or C of Table 1 of appendix A to this part with an intention to sell must obtain a Federal Atlantic commercial shark directed or incidental LAP or an HMS Commercial Caribbean Small Boat permit. The only valid Federal commercial shark directed and shark incidental LAPs are those that have been issued under the limited access program consistent with the provisions under paragraphs (1) and (m) of this section.

(3) A vessel owner issued or required to be issued a Federal Atlantic commercial shark directed or shark incidental LAP may harvest, consistent with the other regulations in this part, any shark species listed in headings A, B, or C of Table 1 of appendix A to this part.

(4) Owners of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in heading E, Smoothhound Sharks, of Table 1 of appendix A to this part with an intention to sell them must obtain a Federal commercial smoothhound permit. In addition to other permits issued pursuant to this section or other authorities, a Federal commercial smoothhound permit may be issued to a vessel alone or to a vessel that also holds either a

Federal Atlantic commercial shark directed or incidental LAP.

(f) *Swordfish vessel permits.* (1) Except as specified in paragraphs (n) and (o) of this section, the owner of a vessel of the United States used to fish for or take swordfish commercially from the management unit, or on which swordfish from the management unit are retained or possessed with an intention to sell, or from which swordfish are sold, must obtain an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, or one of the following swordfish permits: A swordfish directed LAP, swordfish incidental LAP, swordfish handgear LAP, or a Swordfish General Commercial permit. These permits cannot be held in combination with each other on the same vessel, except that an HMS Charter/Headboat permit with a commercial sale endorsement may be held in combination with a swordfish handgear LAP on the same vessel. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are the HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section (and only when on a non for-hire trip), the Swordfish General Commercial permit issued under paragraph (f) of this section, a swordfish LAP issued consistent with paragraphs (1) and (m) of this section, or permits issued under paragraphs (n) and (o) of this section.

(3) A commercial Federal permit for swordfish is not required if the vessel is recreational fishing.

(4) A directed or incidental swordfish LAP is valid only when the vessel has on board a valid shark LAP and a valid Atlantic Tunas Longline category LAP issued for such vessel.

(5) A Swordfish General Commercial permit may not be held on a vessel in conjunction with an HMS Charter/Headboat permit issued under paragraph (b) of this section, an HMS Angling category permit issued under

paragraph (c) of this section, a swordfish LAP issued consistent with paragraphs (l) and (m) of this section, an Incidental HMS Squid Trawl permit issued under paragraph (n) of this section, or an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section. A vessel issued a Swordfish General Commercial open access permit for a fishing year shall not be issued an HMS Angling permit or an HMS Charter/Headboat permit for that same fishing year, regardless of a change in the vessel's ownership.

(g) *Dealer permits*—(1) *Atlantic tunas*. A dealer, as defined under §600.10 of this chapter, must possess a valid federal Atlantic tunas dealer permit to purchase, trade, or barter any Atlantic tunas except as noted under paragraph (o) of this section.

(2) *Shark*. A dealer, as defined in §600.10 of this chapter, must possess a valid federal Atlantic shark dealer permit to purchase, trade, or barter any Atlantic shark listed in Table 1 of appendix A to this part except as noted under paragraph (o) of this section.

(3) *Swordfish*. A dealer, as defined under §600.10 of this chapter, must possess a valid federal Atlantic swordfish dealer permit to purchase, trade, or barter any Atlantic swordfish except as noted under paragraph (o) of this section.

(h) *Applications for permits*. An owner of a vessel or a dealer must submit to NMFS, at an address designated by NMFS, a complete application and required supporting documents at least 30 days before the date on which the permit is to be made effective. Application forms and instructions for their completion are available from NMFS.

(1) *Atlantic Tunas, HMS Angling, HMS Charter/Headboat, Swordfish General Commercial, Incidental HMS Squid Trawl, and HMS Commercial Caribbean Small Boat vessel permits*. (i) An applicant must provide all information concerning his or her identification, vessel, gear used, fishing areas, fisheries participated in, the corporation or partnership owning the vessel, and income requirements requested by NMFS and included on the application form.

(ii) An applicant must also submit a copy of the vessel's valid U.S. Coast

Guard documentation or, if not documented, a copy of its valid state registration and any other information that may be necessary for the issuance or administration of the permit as requested by NMFS. The owner must submit such information to an address designated by NMFS.

(iii) NMFS may require an applicant to provide documentation supporting the application before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (a)(6) of this section.

(iv) An applicant for an incidental HMS squid trawl permit must submit, in addition to all other information specified in paragraph (h)(1) of this section, a copy of a valid *Illex* squid moratorium permit, as described at §648.4(a)(5)(ii) of this chapter.

(2) *LAPs for swordfish and shark*. See paragraph (l) of this section for transfers of LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

(3) *Dealer permits*. (i) An applicant for a dealer permit must provide all the information requested on the application form necessary to identify the company, its principal place of business, and mechanisms by which the company can be contacted.

(ii) An applicant must also submit a copy of each state wholesaler's license held by the dealer and, if a business is owned by a corporation or partnership, the corporate or partnership documents requested on the application form.

(iii) An applicant must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(i) *Change in application information*. A vessel owner or dealer must report any change in the information contained in an application for a permit within 30 days after such change. The report must be submitted in a manner and/or to a location designated by NMFS. For certain information changes, a new permit may be issued to incorporate the new information, subject to limited access provisions specified in paragraph (l)(2) of this section.

NMFS may require supporting documentation before a new permit will be issued. If a change in the permit information is not reported within 30 days, the permit is void as of the 31st day after such change.

(j) *Permit issuance.* (1) NMFS will issue a permit within 30 days of receipt of a complete and qualifying application. An application is complete when all requested forms, information, and documentation have been received, including all reports and fishing or catch information required to be submitted under this part.

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

(3) A vessel owner issued an Atlantic Tunas permit in the General, Harpoon, or Trap category or an Atlantic HMS permit in the Angling or Charter/Headboat category under paragraph (b), (c), or (d) of this section may change the category of the vessel permit at any time during the fishing year, provided the vessel has not landed BFT during that fishing year as verified by NMFS via landings data.

(4) In order to obtain a shark endorsement to fish for, retain, possess, or land sharks, a vessel owner with a vessel fishing in a registered recreational HMS fishing tournament and issued or required to be issued either an Atlantic Tunas General category or Swordfish General Commercial permit or a vessel owner of a vessel issued or required to be issued an HMS Angling or HMS Charter/Headboat permit must take a shark endorsement online quiz. After completion of the quiz, NMFS will issue the vessel owner a new or revised permit with the shark endorsement for the vessel. The vessel owner can take the quiz at any time during the fishing year, but his or her vessel may not leave the dock on a trip during which sharks will be fished for, retained, possessed, or landed unless a new or revised permit with a shark endorsement has been issued by NMFS for the vessel. The addition of a shark

endorsement to the permit does not constitute a permit category change and does not change the timing considerations for permit category changes specified in paragraph (j)(3) of this section. Vessel owners may request that NMFS remove the shark endorsement from the permit at any time. If NMFS removes the shark endorsement from the vessel permit, no person on board the vessel may fish for, retain, possess, or land sharks.

(k) *Duration.* A permit issued under this section will be valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904, the vessel or dealership is sold, or any other information previously submitted on the application changes, as specified in paragraph (i) of this section.

(l) *Transfer*—(1) *General.* A permit issued under this section is not transferable or assignable to another vessel or owner or dealer; it is valid only for the vessel or owner or dealer to whom it is issued. If a person acquires a vessel or dealership and wants to conduct activities for which a permit is required, that person must apply for a permit in accordance with the provisions of paragraph (h) of this section or, if the acquired vessel is permitted in either the shark, swordfish, or tuna longline fishery, in accordance with paragraph (1)(2) of this section. If the acquired vessel or dealership is currently permitted, an application must be accompanied by the original permit, by a copy of a signed bill of sale or equivalent acquisition papers, and the appropriate workshop certificates as specified in § 635.8.

(2) *Shark, swordfish, and tuna longline LAPs.* (i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (1)(2)(ii) of this section, as applicable, and to the limitations on ownership of permitted vessels in paragraph (1)(2)(iii) of this section, an owner may transfer a shark or swordfish LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear LAPs for swordfish may be transferred to another vessel or to another person but only for use with handgear and subject to the upgrading restrictions in

paragraph (1)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (1)(2)(iii) of this section. Shark directed and incidental LAPs, swordfish directed and incidental LAPs, and Atlantic Tunas Longline category permits are not subject to the upgrading requirements specified in paragraph (1)(2)(ii) of this section. Shark and swordfish incidental LAPs are not subject to the ownership requirements specified in paragraph (1)(2)(iii) of this section.

(ii) An owner may upgrade a vessel with a swordfish handgear LAP, or transfer such permit to another vessel or to another person, and be eligible to retain or renew such permit only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications.

(A) The vessel baseline specifications are the respective specifications (length overall, gross registered tonnage, net tonnage, horsepower) of the first vessel that was issued an initial LAP or, if applicable, of that vessel's replacement owned as of May 28, 1999.

(B) Subsequent to the issuance of a swordfish handgear LAP, the vessel's horsepower may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the baseline specifications of the vessel initially issued the LAP.

(C) Subsequent to the issuance of a swordfish handgear LAP, the vessel's length overall, gross registered tonnage, and net tonnage may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. An increase in any of these three specifications of vessel size may not exceed 10 percent of the baseline specifications of the vessel initially issued the LAP. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) No person or entity may own or control more than 5 percent of the vessels for which swordfish directed, shark

directed, or Atlantic Tunas Longline category LAPs have been issued.

(iv) In order to transfer a swordfish, shark, or an Atlantic Tunas Longline category LAP to a replacement vessel, the owner of the vessel issued the LAP must submit a request to NMFS, at an address designated by NMFS, to transfer the LAP to another vessel, subject to requirements specified in paragraph (1)(2)(ii) of this section, if applicable. The owner must return the current valid LAP to NMFS with a complete application for a LAP, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' U.S. Coast Guard documentation or state registration must accompany the application.

(v) For swordfish, shark, and Atlantic Tunas Longline category LAP transfers to a different person, the transferee must submit a request to NMFS, at an address designated by NMFS, to transfer the original LAP(s), subject to the requirements specified in paragraphs (1)(2)(ii) and (iii) of this section, if applicable. The following must accompany the completed application: The original LAP(s) with signatures of both parties to the transaction on the back of the permit(s) and the bill of sale for the permit(s). A person must include copies of both vessels' U.S. Coast Guard documentation or state registration for LAP transfers involving vessels.

(vi) For LAP transfers in conjunction with the sale of the permitted vessel, the transferee of the vessel and LAP(s) issued to that vessel must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit(s) LAP(s), subject to the requirements specified in paragraphs (1)(2)(ii) and (iii) of this section, if applicable. The following must accompany the completed application: The original LAP(s) with signatures of both parties to the transaction on the back of the permit(s), the bill of sale for the LAP(s) and the vessel, and a copy of the vessel's U.S. Coast Guard documentation or state registration.

(vii) The owner of a vessel issued a LAP(s) who sells the permitted vessel but retains the LAP(s) must notify NMFS within 30 days after the sale of the change in application information

in accordance with paragraph (i) of this section. If the owner wishes to transfer the LAP(s) to a replacement vessel, he/she must apply according to the procedures in paragraph (1)(2)(iv) of this section.

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental swordfish LAP, a directed or incidental shark LAP, and an Atlantic Tunas Longline category LAP are required to retain swordfish for commercial purposes. Accordingly, a swordfish LAP obtained by transfer without either a directed or incidental shark LAP or an Atlantic Tunas Longline category LAP will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(ix) As specified in paragraph (d)(4) of this section, a directed or incidental swordfish LAP, a directed or incidental shark LAP, and an Atlantic Tunas Longline category LAP are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category LAP obtained by transfer without either a directed or incidental swordfish or shark LAP will not entitle an owner or operator to use the permitted vessel to fish in the Atlantic tunas fishery with pelagic longline gear.

(m) *Renewal*—(1) *General*. Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, swordfish, Incidental HMS squid trawl, or HMS Commercial Caribbean Small Boat vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to § 635.8, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit are met, including those described in paragraphs (h)(1)(iv) and (1)(2) of this section; all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in §§ 635.5 and 300.185 of this title; the applicant is not

subject to a permit sanction or denial under paragraph (a)(6) of this section; and the workshop requirements specified in § 635.8 are met.

(2) *Shark and swordfish permits*. A vessel owner must obtain the applicable LAP(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section and/or a Federal commercial smoothhound permit issued under paragraph (e) of this section; or an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, if: The vessel is used to fish for or take sharks commercially from the management unit; sharks from the management unit are retained or possessed on the vessel with an intention to sell; or sharks from the management unit are sold from the vessel. A vessel owner must obtain the applicable LAP(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, a Swordfish General Commercial permit issued under paragraph (f) of this section, an Incidental HMS Squid Trawl permit issued under paragraph (n) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, which authorizes a Charter/Headboat to fish commercially for swordfish on a non for-hire trip subject to the retention limits at § 635.24(b)(4) if: The vessel is used to fish for or take swordfish commercially from the management unit; swordfish from the management unit are retained or possessed on the vessel with an intention to sell; or swordfish from the management unit are sold from the vessel. The commercial retention and sale of swordfish from vessels issued an HMS Charter/Headboat permit with a commercial sale endorsement is permissible only when the vessel is on a non for-hire trip. Only persons holding non-expired shark and swordfish LAP(s) in the preceding year are eligible to renew those LAP(s). Transferors may not renew LAP(s) that have been transferred according to the procedures in paragraph (1) of this section.

(n) *Incidental HMS Squid Trawl permits*. (1) The owner of a vessel in the squid trawl fishery, as described at



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§ 635.24(b)(2), on which Atlantic swordfish are retained, or possessed with an intention to sell, or from which Atlantic swordfish are sold must obtain, in addition to any other required permits, an Incidental HMS squid trawl permit.

(2) An Incidental HMS squid trawl permit is valid only when the vessel has on board a valid *Illex* squid moratorium permit, as described at § 648.4(a)(5)(ii) of this chapter, and no commercial fishing gear other than trawl gear.

(o) *HMS Commercial Caribbean Small Boat permits.* (1) The owner of a vessel who fishes in the U.S. Caribbean, as defined at § 622.2 of this chapter, possesses handgear or green-stick gear and retains, with the intention to sell, any BAYS tunas, Atlantic swordfish, or Atlantic sharks may obtain an HMS Commercial Caribbean Small Boat permit. An HMS Commercial Caribbean Small Boat permit is valid only within the U.S. Caribbean, as defined at § 622.2 of this chapter.

(2) To be eligible for an HMS Commercial Caribbean Small Boat permit, vessel owners must provide documentation that the vessel is less than or equal to 13.7 m (45 ft) in length overall.

(3) A vessel issued an HMS Commercial Caribbean Small Boat permit may not be issued any other HMS fishing permit, except those issued under § 635.32, as long as the HMS Commercial Caribbean Small Boat permit is valid.

(4) The owner of a vessel issued an HMS Commercial Caribbean Small Boat permit may fish for, take, retain, or possess only BAYS tunas, Atlantic swordfish, and Atlantic sharks, subject to the trip limits specified at § 635.24.

(5) HMS landed under an HMS Commercial Caribbean Small Boat permit may be sold by the owner or operator to individuals who do not possess a valid HMS dealer permit otherwise required under § 635.4(g). HMS Commercial Caribbean Small Boat permit holders may not sell HMS harvested or landed by another vessel or purchase, barter, or trade for HMS harvested by other vessels with the intent to sell.

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 635.4, see the List of CFR Sections Affected, which appears in the

## 50 CFR Ch. VI (10–1–23 Edition)

Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 635.5 Recordkeeping and reporting.

Information on HMS vessel and dealer reporting requirements may be obtained from the Division Chief or where otherwise stated in this part.

(a) *Vessels*—(1) *Logbooks.* If an owner of an HMS charter/headboat vessel, an Atlantic tunas vessel, a shark vessel, a swordfish vessel, or a vessel in the squid trawl fishery for which a permit has been issued under § 635.4(b), (d), (e), (f), or (n) is selected for logbook reporting in writing by NMFS, he or she must maintain and submit a fishing record on a logbook form specified by NMFS. Entries are required regarding the vessel's fishing effort and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the logbook form within 48 hours of completing that day's activities or before offloading, whichever is sooner. The owner or operator of the vessel must submit the logbook form(s) postmarked within 7 days of offloading all Atlantic HMS. If no fishing occurred during a calendar month, a no-fishing form so stating must be submitted postmarked no later than 7 days after the end of that month. If an owner of an HMS charter/headboat vessel, Atlantic tunas vessel, shark vessel, swordfish vessel, or a vessel in the squid trawl fishery permitted under § 635.4(b), (d), (e), (f), or (n) is selected in writing by NMFS to complete the cost-earnings portion of the logbook(s), the owner or operator must maintain and submit the cost-earnings portion of the logbook postmarked no later than 30 days after completing the offloading for each trip fishing for Atlantic HMS during that calendar year, and submit the Atlantic Highly Migratory Species Annual Expenditures form(s) postmarked no later than the date specified on the form of the following year.

(2) *Weighout slips.* If an owner of a permitted vessel is required to maintain and submit logbooks under paragraph (a)(1) of this section, and Atlantic HMS harvested on a trip are sold, the owner or operator must obtain and submit copies of weighout slips for those fish. Each weighout slip must show the dealer to whom the fish were