

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

[Docket No. 161227999–6999–01]

RIN 0648–BG49

**Atlantic Highly Migratory Species; Technical Amendment to Regulations**

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

**ACTION:** Final rule; technical amendments.

**SUMMARY:** NMFS is hereby making technical amendments to the regulations for Atlantic highly migratory species. Currently, certain cross-references meant to be in the regulations are either missing or incorrect. This final action will make the cross-references in the regulations accurate. The action also simplifies regulatory text by removing unnecessary language. The rule is administrative in nature and does not make any change with substantive effect to the regulations governing Atlantic highly migratory species (HMS) fisheries.

**DATES:** This final rule is effective on January 11, 2017.

**ADDRESSES:** Copies of other documents relevant to this rule are available from the HMS Management Division Web site at <http://www.nmfs.noaa.gov/sfa/hms/> or upon request from the Atlantic HMS Management Division at 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Larry Redd or Karyl Brewster-Geisz by phone at 301–427–8503.

**SUPPLEMENTARY INFORMATION:** Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*, (ATCA). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary of Commerce to the NOAA Assistant Administrator for Fisheries (AA). On May 28, 1999, NMFS published in the *Federal Register* (64 FR 29090) regulations implementing the Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). On October 2, 2006, NMFS

published in the *Federal Register* (71 FR 58058) regulations implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

**Background**

The regulations in 50 CFR 635.71 contain specific prohibitions, and those prohibitions contain or should contain regulatory cross-references specific to the regulatory requirements in other sections of 50 CFR part 635. The regulatory text in § 635.71 ensures that person(s) under United States jurisdiction are in compliance with the Federal rules promulgated under the Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act when fishing for Atlantic HMS. This technical amendment corrects the cross-references in the HMS regulations. It also simplifies regulatory text at § 635.71(b)(23) by removing unnecessary language.

**Corrections**

The regulations at § 635.71(a)(9), (b)(21), (e)(9), and (e)(10) are missing a clarifying cross-reference. This final action adds a cross reference to those regulations.

Additionally, the regulations at § 635.71(a)(17), (a)(18), (a)(37), (a)(54), (a)(56), (a)(59), (b)(36), (b)(37), (b)(39), (b)(40), and (e)(17) contain one or more incorrect cross-references. This final action corrects those cross-references. Additionally, § 635.71(b)(23) has an incorrect cross reference, which this action corrects. This action would remove language referencing that incidental to recreational fishing for other species would be retained in accordance with § 635.23(b) and (c), and simplifies the regulatory text to more broadly refer to the provisions of § 635.23.

**Classification**

The Assistant Administrator for Fisheries has determined that this final rule is necessary for the conservation and management of U.S. fisheries and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, and ATCA.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public

interest. This final rule makes only corrective, non-substantive changes to add missing, or correct, cross-references to HMS regulations or, in one instance, to remove confusing, unnecessary language, and is solely administrative in nature. Therefore, public comment would serve no purpose and is unnecessary. Furthermore, it is in the public interest to correct or insert the cross-references as quickly as possible to more clearly articulate the regulatory requirements to the public. Any delay in implementation would result in the continuation of incorrect cross-references in the regulations at 50 CFR 635. It is in the best interest of both the public and law enforcement to effectively enforce the new changes on publication to ensure person(s) are justifiably operating within U.S. law. Thus, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

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

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, and a proposed rule is not being published, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

NMFS has determined that fishing activities conducted pursuant to this rule will not affect endangered and/or threatened species or critical habitat listed under the Endangered Species Act, or marine mammals protected by the Marine Mammal Protection Act, because the action will not result in any change or increase in fishing activity, and is solely administrative in nature.

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

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

Dated: January 5, 2017.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, 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 § 635.71, revise paragraphs (a)(9), (a)(17), (a)(18), (a)(37), (a)(54), (a)(56), (a)(59), (b)(21), (b)(23), (b)(36), (b)(37), (b)(38), (b)(39), (b)(40), (e)(9), (e)(10), and (e)(17) to read as follows:

§ 635.71 Prohibitions.

\* \* \* \* \*

(a) \* \* \*

(9) Fail to report the catching of any Atlantic HMS to which a conventional tag has been affixed under a tag and release program as specified in § 635.26(a).

\* \* \* \* \*

(17) Fish for Atlantic tunas or swordfish with a gillnet or possess Atlantic tunas or swordfish on board a vessel with a gillnet on board, as specified in § 635.19(a), (b), and (e).

(18) Fail to retrieve fishing gear and move after an interaction with a protected species, as specified in § 635.21(b)(3).

\* \* \* \* \*

(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark gillnet gear as required by § 635.21(g)(1).

\* \* \* \* \*

(54) Possess, use, or deploy, in the Gulf of Mexico, any circle hook, other than as described at § 635.21(c). Vessels in the Gulf of Mexico, with pelagic gear onboard, are prohibited from possessing, using, or deploying circle hooks that are constructed of round wire stock which is larger than 3.65 mm in diameter (See: § 635.21(c)(5)(iii)(B)(2)(i)).

\* \* \* \* \*

(56) Have been issued a valid HMS Commercial Caribbean Small Boat permit and to purchase, barter for, or

trade for HMS harvested by other vessels with the intent to sell, as specified in § 635.4(o)(5).

\* \* \* \* \*

(59) Fish for, retain, possess, or land any HMS from a vessel with a pelagic longline on board when the Atlantic Tunas Longline category fishery is closed, as specified in § 635.28(a)(3), (b)(7), (c)(3), and (d).

\* \* \* \* \*

(b) \* \* \*

(21) Transfer a tuna as specified in § 635.29(a), except as may be authorized for the transfer of Atlantic BFT between purse seine vessels, as specified in § 635.29(c).

\* \* \* \* \*

(23) Fish for, catch, possess, or retain a bluefin tuna, except as specified under § 635.23.

\* \* \* \* \*

(36) Possess J-hooks onboard a vessel that has pelagic longline gear onboard, and that has been issued, or is required to have, a limited access swordfish, shark, or Atlantic Tunas Longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, except when green-stick gear is onboard, as specified at § 635.21(c)(2)(vii)(A) and (c)(5)(iii)(B)(3).

(37) Use or deploy J-hooks with pelagic longline gear from a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico, as specified in § 635.21(c)(5)(iii)(B).

(38) As specified in § 635.21(c)(5)(iii)(B)(3), possess more than 20 J-hooks onboard a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna Longline category permit for use in the Atlantic Ocean, including the

Caribbean Sea and Gulf of Mexico, when possessing onboard both pelagic longline gear and green-stick gear as defined in § 635.2.

(39) Use or deploy more than 10 hooks at one time on any individual green-stick gear, as specified in § 635.21(j), (c)(2)(vii)(A), or (c)(5)(iii)(B)(3).

(40) Possess, use, or deploy J-hooks smaller than 1.5 inch (38.1 mm), when measured in a straight line over the longest distance from the eye to any part of the hook, when fishing with or possessing green-stick gear onboard a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico, as specified at § 635.21(c)(5)(iii)(B)(3) or (c)(2)(vii)(A).

\* \* \* \* \*

(e) \* \* \*

(9) Fish for swordfish from the South Atlantic swordfish stock using gear other than pelagic longline, as specified at § 635.19(e)(1) and § 635.27(c)(1)(ii).

(10) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, “buoy gear” as defined at § 635.2, unless, as specified in § 635.19(e)(3), the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with § 635.4(f) or a valid HMS Commercial Caribbean Small Boat permit in accordance with § 635.4(o).

\* \* \* \* \*

(17) Failure to construct, deploy, or retrieve buoy gear as specified at § 635.21(h).

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