

Fishery Conservation and Management

§ 635.16

the catch and distribution of fish for that trip.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999; 66 FR 17372, Mar. 30, 2001]

Subpart B—Limited Access

§ 635.16 Limited access permits.

As of July 1, 1999, the only valid commercial vessel permits for shark and swordfish are those that have been issued under the limited access criteria specified in this section. If the Federal commercial shark permit issued to the vessel owner prior to July 1, 1999, was based on the qualifications of the operator, then a shark limited access permit will be issued to the qualifying vessel owner, subject to the provisions in this part, with the requirement that the operator must be on board the vessel to fish for, take, retain, or possess Atlantic sharks in state or Federal waters. This requirement expires May 30, 2000.

(a) Eligibility requirements for ILAPs—

(1) *Directed permits.* To be eligible for a directed ILAP in the shark or swordfish fishery, a vessel owner must demonstrate past participation in the respective fishery by having—

(i) Been the owner of a vessel that was issued a valid permit for the respective fishery at any time from July 1, 1994, through December 31, 1997.

(ii) Documented shark or swordfish landings from the respective federally permitted vessel that he or she owned, of at least \$5,000 per year in value or in number per year as follows—

(A) One hundred and two sharks per year for any 2 calendar years, from January 1, 1991, through December 31, 1997, provided the landings after July 1, 1993, occurred when the permit was valid, or

(B) Twenty-five swordfish per year for any 2 calendar years, from January 1, 1987, through December 31, 1997, provided the landings occurred when the permit was valid.

(iii) Been the owner of a vessel in the respective fishery that—

(A) Had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or

(B) Had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998.

(2) *Incidental catch permits.* To be eligible for an incidental ILAP in the shark or swordfish fishery, a vessel owner must demonstrate past participation in the respective fishery by having—

(i) Been the owner of a vessel that was issued a valid permit for the respective fishery at any time from July 1, 1994, through December 31, 1997; and

(ii) Documented landings from the respective federally permitted vessel that he or she owned of at least—

(A) Seven sharks from January 1, 1991, through December 31, 1997, provided the landings after July 1, 1993, occurred when the permit was valid; or

(B) Eleven swordfish from January 1, 1987, through December 31, 1997, provided the landings occurred when the permit was valid; and

(iii) Been the owner of a vessel in the respective fishery that—

(A) Had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or

(B) Had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998; and

(iv) Met either the gross income from fishing or the gross sales of fish requirement specified in paragraph (a)(3)(i) or (ii) of this section; or

(v) Been the owner of a vessel that had a permit for Atlantic tuna in the Incidental category at any time from January 1, 1998, through December 31, 1998; or

(vi) Been the owner of a vessel that is eligible for a directed or incidental ILAP for swordfish (incidental shark ILAPs only).

(3) *Handgear permits.* To be eligible for a swordfish handgear ILAP—

(i) The owner's gross income from commercial fishing (i.e., harvest and first sale of fish) or from charter/headboat fishing must be more than 50 percent of his or her earned income, during one of the 3 calendar years preceding the application, or

(ii) The owner's gross sales of fish harvested from his or her vessel must have been more than \$20,000, during one of the 3 calendar years preceding the application, or

(iii) The owner must provide documentation of having been issued a swordfish permit for use with harpoon gear, or

(iv) The owner must document his or her historical landings of swordfish with handgear through logbook records, verifiable sales slips or receipts from registered dealers or state landings records.

(b) *Landings histories.* For the purposes of the landings history criteria in paragraphs (a)(1)(ii) and (a)(2)(ii) of this section:

(1) The owner of a permitted vessel at the time of a landing retains credit for the landing unless ownership of the vessel and the landings history has been transferred and there is a written agreement signed by both parties to the transfer, or there is other credible written evidence that the original owner transferred the landings history to the new owner.

(2) A vessel's landings history may not be divided among owners. A transfer of credit for landings history must be for the entire record of landings under the previous owner.

(3) Vessel landings histories may not be consolidated among vessels. Owners may not pool landings histories to meet the eligibility requirements.

(c) *Alternative eligibility requirements for initial permits.* (1) Persons who acquired ownership of a vessel and its landings history after December 31, 1997, are exempt from the requirement to have owned a federally permitted shark or swordfish vessel at any time during the period July 1, 1994, through December 31, 1997. The acquired landings history must meet the criteria for a directed or incidental catch permit specified in paragraph (a)(1)(ii)(A), (a)(1)(ii)(B), (a)(2)(ii)(A) or paragraph (a)(2)(ii)(B) of this section, and such persons must have had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998.

(2) If a person first obtained a shark or swordfish permit in 1997, the required landings for a directed or incidental catch permit specified in paragraphs (a)(1)(ii) and (a)(2)(ii) are modified as follows:

(i) To qualify for a directed shark or swordfish ILAP, respectively, such persons must document landings from a federally permitted vessel of at least:

(A) One hundred and two sharks in calendar year 1997, provided such landings occurred when the permit was valid, or

(B) Twenty-five swordfish in calendar year 1997, provided such landings occurred when the permit was valid.

(ii) To qualify for an incidental shark or swordfish catch ILAP, respectively, such persons must document landings from a federally permitted vessel of at least one shark or swordfish in calendar year 1997, provided such landings occurred when the permit was valid.

(d) *Procedures for initial issuance of LAPs—(1) Notification of status.* NMFS will send all written correspondence regarding limited access permits by certified mail.

(i) Shortly after the final rule is published, the Division Chief will notify each owner of a vessel who had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, each owner of a vessel who had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998, and each owner of a vessel that had a valid Atlantic tuna Incidental category permit at any time from January 1, 1998, through December 31, 1998, of the initial determination of the owner's eligibility for a directed or incidental catch ILAP. The Division Chief will make the initial determination based on the criteria in paragraphs (a)(1), (a)(2), and (c)(2) of this section and on records available to NMFS and mail the appropriate permit. The Division Chief will not make initial determinations of eligibility for a vessel permit under the alternative eligibility requirements specified in paragraph (a)(3) or (c)(1) of this section; persons that believe they qualify for a LAP under these criteria must apply to the Division Chief.

(ii) If NMFS determines that all qualifications for a directed or incidental catch ILAP have been met and that no further action is required, the appropriate permit for the vessel will be included with the notification. An ILAP issued by NMFS will be valid

through the expiration date indicated on the permit.

(iii) A person must apply to the Division Chief for the appropriate permit if—

(A) He or she does not agree with the initial determination;

(B) He or she believes that he or she qualifies for a directed or incidental catch ILAP but did not receive a letter from the Division Chief regarding eligibility status; or

(C) He or she believes that he or she qualifies for a swordfish handgear permit.

(2) *Applications for ILAPs.* (i) Applicants may obtain application forms and instructions from the Division Chief. The vessel owner must submit a completed signed application form and all required supporting documents.

(ii) An application for a directed or incidental catch ILAP must be submitted to the Division Chief post-marked no later than September 1, 1999. An application for an initial swordfish handgear permit must be submitted to the Division Chief post-marked no later than *December 1, 1999*. Any application received by the Division Chief after these dates will not be considered.

(iii) Each application must be accompanied by documentation showing that the criteria for the requested permit have been met. Vessel landings of sharks in numbers of fish or value through June 30, 1993, may be documented by verifiable sales slips or receipts from registered dealers or by state landings records. Vessel landings of sharks in numbers of fish after July 1, 1993, and all vessel landings of swordfish in numbers of fish may be documented only by fishing vessel logbook records that NMFS received before March 2, 1998. Vessel landings of sharks or swordfish in value may be documented by verifiable sales slips or receipts from registered dealers or by state landings records. NMFS will not apply any landing of fish by number of fish or value that occurred when the vessel did not have a valid Federal permit.

(iv) Information submitted on an application and documentation in support of an application is subject to verification by comparison with Fed-

eral, state, and other records and information. Submission of false information or documentation may result in disqualification from initial participation in the shark, swordfish, or tunas fisheries and may result in Federal prosecution.

(v) If the Division Chief receives an incomplete application in a timely manner, NMFS will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of receipt of the Division Chief's notification, the application will be considered abandoned.

(3) *Actions on applications.* Within 30 days of receipt of a complete application, the Division Chief will take one of the following actions:

(i) If the eligibility requirements are met, the Division Chief will issue the appropriate ILAP which will be valid through the marked expiration date.

(ii) If, based on the information and documentation supplied with the application, the Division Chief determines that the applicant does not meet the eligibility criteria for the requested vessel permit, the Division Chief will deny the application in a letter to the applicant. If, based on the documentation supplied, the Division Chief believes the applicant is qualified for an incidental catch vessel permit instead of the requested directed ILAP, he or she will notify the applicant of the denial of the requested directed ILAP but will issue the incidental catch ILAP.

(4) *Appeals.* (i) If an application for an ILAP is denied or if an incidental catch ILAP is issued instead of the requested directed ILAP, the applicant may appeal the denial to the Director. The sole grounds for appeal will be that the original denial by the Division Chief was based on incorrect or incomplete information. No other grounds will be considered. An appeal must be in writing, must be submitted to the Director postmarked no later than 90 days after receipt of the notice of denial, must specify the grounds for the appeal, and must include documentation supporting the grounds for the appeal. Documentation of vessel landings that the Director may consider in support of an appeal is described in paragraph (d)(2)(iii) of this section. Photocopies of documentation (e.g., permits, logbook

reports) will be acceptable for initial submission. The Director may request originals at a later date, which would be returned to the appellant.

(ii) Upon receipt of a complete written appeal with supporting documentation, the Director may issue a provisional ILAP that is valid for the period during the appeal. This provisional permit will be valid only for use with the specified gear and will be subject to all regulations contained in this part.

(iii) The Director will appoint an appeals officer who will review the appeal documentation and other available records. If the information and documentation presented in the appeal are insufficient, inconsistent with vessel ownership, landings history, and other information available from NMFS' records, or cannot be verified, the appeals officer may notify the appellant that the information supplied is not adequate to warrant issuance of the requested permit. The appellant will have 30 days from the date of receipt of the notification to submit to the appeals officer corroborating documents in support of the appeal or to submit a revised appeal. After the written appeal documentation is complete, the appeals officer will make findings and a recommendation, which shall be advisory only, to the Director within 60 days of receipt of the appeal.

(iv) The Director will make a final decision on the appeal and send the appellant notice of the decision. The Director's decision is the final administrative action of the Department of Commerce on the application.

(v) If the appeal is denied, the provisional permit will become invalid 5 days after receipt of the notice of denial. If the appeal is accepted, NMFS will issue an appropriate permit.

(e) *Transfer of LAPs.* For provisions on transfer of limited access permits, see § 635.4(l).

(f) *Renewal of LAPs.* For provisions on renewal of limited access permits, see § 635.4(m).

Subpart C—Management Measures

§ 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.* The size class of a BFT found with the head removed 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 with the Office of the Federal Register for publication notification of the adjustment.

(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 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.

(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.

(2) No person shall take, retain or possess a white marlin taken from its management unit that is less than 66 inches (168 cm), LJFL.

(3) No person shall take, retain or possess shoreward of the outer boundary of the EEZ a sailfish taken from its management unit that is less than 63 inches (160 cm), LJFL.

(e) *Sharks.* (1) No person shall take, retain, or possess in the Atlantic EEZ any species classified as a ridgeback LCS shark, taken from its management unit that is less than 54 inches (137 cm), fork length, or, if the head and fins have been removed, 30 inches (76 cm) as a straight line from the first dorsal fin ray to the precaudal pit. If the precaudal pit has been removed, such measurement will be to the posterior edge of the carcass. For the purposes of enforcing the minimum size, it