

only seating positions will continue, even though the subject rulemaking is being terminated.

For the reasons outlined above, the agency has decided to terminate the rulemaking that was initiated in response to the petition submitted by Ms. Weber.

Issued on: March 24, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 04-6901 Filed 3-26-04; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 300 and 635

[Docket No. 040316092-4092-01; I.D. 103003A]

RIN 0648-AQ37

#### International Fisheries; Atlantic Highly Migratory Species

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to require dealers who import, export, or re-export bluefin tuna (BFT), southern bluefin tuna (SBFT), bigeye tuna (BET) and swordfish (SWO), regardless of ocean area of origin, to hold a valid highly migratory species (HMS) international trade permit, to complete and submit required statistical documents and re-export certificates, and to comply with all applicable recordkeeping and reporting requirements of the trade monitoring programs. The regulations would implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) to establish statistical document programs to track the international trade of SWO and BET, would implement the recommendation of the Inter-American Tropical Tuna Commission (IATTC) to establish a statistical document program to track the international trade of BET, would require dealers to comply with the SBFT statistical document program adopted by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), and would expand the current BFT statistical document program to include the re-export of BFT.

**DATES:** Comments on the proposed rule and supporting documents must be

received on or before May 10, 2004.

Comments sent to the Office of Management and Budget (OMB) on the information collection requirements of the proposed rule must be received on or before May 10, 2004.

**ADDRESSES:** Please submit your comments on the proposed rule and supporting documents by mail to Dianne Stephan, Highly Migratory Species Management Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Comments may be submitted by e-mail. The mailbox address for providing e-mail comments is [NeroHMSTrade@noaa.gov](mailto:NeroHMSTrade@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: Nero HMS Trade Rule.

Comments on the burden-hour estimates or on other aspects of the collection of information relevant to this proposed rulemaking may be submitted to NMFS at the above address, or may be submitted to the Office of Regulatory Affairs, Office of Management and Budget, by email to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or by facsimile (Fax) to (202) 395-7285.

Copies of the supporting documents, including the original ICCAT and IATTC recommendations, are available by sending your request to Dianne Stephan at the NMFS address listed above.

BFT, SBFT, BET, and SWO statistical documents, re-export certificates, and biweekly dealer reports may be obtained from:

Atlantic coast: NMFS, HMS, ATTN: Kathy Goldsmith, 1 Blackburn Drive, Gloucester, MA 01930-2298,

Gulf coast: NMFS, National Seafood Inspection Laboratory, ATTN: Lori Robinson, 705 Convent St, Pascagoula, MS 39568-1207;

West coast: NMFS, Southwest Region, Sustainable Fisheries Division, ATTN: Pat Donley, 501 West Ocean Blvd. Suite 4200, Long Beach, CA 90802-4213, and;

Western Pacific: NMFS, Pacific Islands Regional Office, ATTN: Raymond Clarke, 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700.

**FOR FURTHER INFORMATION CONTACT:**

Dianne Stephan (Atlantic coast), 978-281-9397; Raymond Clarke (Western Pacific), 808-973-2935; Lori Robinson (Gulf coast), 228-769-8964; or Patricia J. Donley (West coast), 562-980-4033.

**SUPPLEMENTARY INFORMATION:**

**Background**

At its 2001 meeting, ICCAT adopted recommendations for the establishment of SWO and BET statistical document programs to further the domestic and international understanding of these

fisheries, and to help address illegal, unreported and unregulated (IUU) fishing for these species. More recently, IATTC also adopted a recommendation to establish a BET statistical document program similar to the ICCAT program. At its 2003 meeting, ICCAT made slight modifications to all of its statistical document forms to collect more information relevant to vessel identification and farming operations. Generally, these programs require that imports of certain fish be accompanied by a species specific statistical document, or when appropriate, a re-export certificate. The United States is a member of both ICCAT and IATTC. The purpose of this proposed rule is to implement these ICCAT and IATTC recommendations.

The Atlantic Tunas Convention Act (ATCA) of 1975 (16 U.S.C. 971 *et seq.*) authorizes the promulgation of regulations as may be necessary and appropriate to implement ICCAT recommendations. The Tuna Conventions Act of 1950 (TCA)(16 U.S.C. 951 *et seq.*) authorizes rulemaking to carry out IATTC recommendations. NMFS manages the Atlantic SWO and tuna fisheries under the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP). Regulations implementing the HMS FMP at 50 CFR part 635 were promulgated under the authorities of the Magnuson-Stevens Fishery Conservation and Management Act (M-SA or Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and ATCA. NMFS manages SWO and tuna in the Pacific Ocean under the Western Pacific Pelagics Fishery Management Plan (PFMP) that was prepared by the Western Pacific Fishery Management Council (WPFMC). Regulations implementing those plans at 50 CFR parts 300 and 660 were promulgated under the authorities of the ATCA, TCA and the M-SA, respectively. The Pacific Fishery Management Council also has developed an FMP for U.S. West Coast Highly Migratory Species, which is under review.

Other authorities relevant to Pacific management include the South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*), the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*), and the U.S.-Canada Albacore Treaty. A new Western and Central Tuna Fisheries Convention is likely to come into force sometime in 2004. Customs requirements pertaining to the import and export of product harvested by national and international SWO and tuna fisheries include those under 19 U.S.C. 1 *et seq.* and regulations of the Bureau of Customs and Border Protection (CBP), formerly the U.S.

Customs Service (Customs), under title 19 of the CFR.

### Statistical Document Programs

International commissions such as ICCAT, IATTC, CCSBT and the Indian Ocean Tuna Commission (IOTC) have recognized the use of statistical document programs as an effective tool to combat IUU fishing by controlling the illegal trade of stocks and to improve the effectiveness of conservation and management measures and the scientific evaluation of the stocks. This proposed rule would implement such programs for BFT, SBFT, BET, and SWO in the United States, which includes the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and all other U.S. commonwealths, territories, or possessions. Specifically, the regulations would require dealers who import, export, or re-export these species from any ocean area to hold an HMS international trade permit, complete statistical documents and re-export certificates, and submit biweekly reports on these trade activities. Documentation requirements would apply to all imports and exports of the species regardless of whether an importing or exporting nation is a member of one of the above-referenced commissions. Often, non-member countries have difficulty obtaining HMS catch information from vessels under their own flag. The statistical document programs are designed to capture these unreported catches.

ICCAT, IATTC, and IOTC individually adopted recommendations for a BET statistical document program, noting that better quality trade data would reduce uncertainty in catch information for this species. NMFS is proposing to implement a BET statistical document program, but is considering delaying implementation of the documentation requirements for fresh BET products initially and only implementing them for frozen BET products. In the past, ICCAT and IATTC have recognized that prior to implementing this program for fresh products, several practical problems need to be solved, such as guidelines to ensure procedures for handling fresh products at customs. NMFS particularly seeks public comment on this issue.

Similar to the BET program, ICCAT's SWO statistical document program is intended to track the trade of SWO and reduce IUU fishing. The United States currently requires a SWO certificate of eligibility (COE) for imports of SWO (50 CFR 635.46) to ensure that Atlantic SWO imported into the United States meet ICCAT and NMFS minimum size

requirements. The ICCAT SWO statistical document program would incorporate all the requirements of the COE, thus replacing the COE requirement.

To be effective, the SWO and BET statistical document programs track the international trade of SWO and BET whose origin is from any ocean. Although ICCAT's area of concern is the Atlantic Ocean and IATTC's area of concern is the eastern Pacific Ocean, these programs would easily be circumvented if they did not also track catches from other oceans. The ocean of origin for these species, once on the international market, cannot be ascertained without documentation of the flag state of harvesting vessels and ocean areas of catch. Moreover, without validation, an importing country has no effective means to tell whether a shipment is composed of Indian Ocean product rather than Atlantic or Pacific. The trade tracking programs adopted by these international commissions assist in providing a comprehensive, global monitoring program for these species.

The BFT statistical document program, which was previously implemented in the United States pursuant to an ICCAT recommendation (60 FR 14381; March 17, 1995), set a precedent for tracking trade from all ocean areas. When it was adopted, the ICCAT recommendation for the BFT program only included a statistical document requirement for imports and exports. A 1997 ICCAT recommendation added a re-export certificate to the program; this requirement is included in this proposed rule. More recently, the CCSBT has developed a SBFT statistical document program and requested non-members such as the United States to support this program. While the United States is not a member of CCSBT and ICCAT has not issued a recommendation pertaining to SBFT, the United States proposes to implement the CCSBT SBFT program under its ATCA authority in order to ensure that there are no loopholes in the existing BFT program. The BFT reporting requirements could be circumvented if BFT is mislabeled as SBFT and not properly identified. Thus, this proposed rule would therefore require U.S. dealers importing, exporting, or re-exporting SBFT to comply with the SBFT statistical document program in order to ensure the effectiveness of the BFT program.

### Form Design and Implementation Process

Prior to passing their statistical document recommendations, ICCAT, IATTC, and technical experts

extensively discussed the scope of areal coverage and jurisdiction of international fishery organizations. As described below, they also discussed the specific structure and format of the statistical documents and suitability and applicability of certain exemptions.

ICCAT convened an international meeting of technical experts in July 2001 to consider and resolve technical issues related to the implementation of the recommended SWO and BET statistical document programs. Prior to this meeting, members of the U.S. fishing industry were consulted to review initial BET and SWO statistical document prototypes. Harmonization of all statistical document programs under ICCAT purview (SWO, BET, and BFT) was also considered. At the July 2001 meeting, the U.S. proposed a single, harmonized document to track BFT, SWO, and BET imports. Although this proposal was consistent with ICCAT's directive to endeavor to harmonize all statistical documents under its purview, it was rejected by the technical experts. Some experts expressed concern that the trade patterns and practices of the three species were so different that one document was not practical. In addition, some stated that there could be a risk to the current functioning and effectiveness of the current BSD program if it was altered to include additional species. As a result, ICCAT has developed separate species-specific forms for BET and SWO. This proposed rule allows the use of statistical documents from ICCAT, IATTC, or IOTC for BET relative to area of harvest. The existing statistical document for BFT will remain unchanged, and the statistical document approved by the CCSBT for SBFT will be implemented.

Harmonizing these individual forms is a long-term goal of NMFS. NMFS has begun and will continue to have discussions on how to significantly streamline the existing reporting processes, reduce paperwork, ease reporting requirements on dealers and minimize government administrative oversight. However, in the interest of implementing and complying with the ICCAT and IATTC recommendations as soon as possible, NMFS proposes to implement these separate trade tracking programs and associated paperwork through the existing internal infrastructure. Several different NMFS offices on the east and west coasts and western and central Pacific Islands already manage the operations and tracking of HMS trade and dealer activity. This proposed rule intends to implement the SWO and tuna trade tracking programs by building on the existing body of expertise and

capability, thereby minimizing disruption and confusion between dealers and associated NMFS offices. Extensive coordination and consultation has taken place between the relevant NMFS offices to assist as much as possible with smooth implementation of the program, if adopted, and to assist with constituent concerns.

#### **Dealer Permitting Requirements**

NMFS proposes to require a Federal HMS international trade permit for each dealer in the United States, including those in U.S. commonwealths, territories, and possessions, who import, export, or re-export BFT, SBFT, BET or SWO from any ocean area. These dealers would have to prepare and submit appropriate statistical documents and re-export certificates, complete biweekly reports and validate exports of all BFT, BET, SBFT or SWO as described below. NMFS specifically solicits public comment on implementation aspects of the proposed rule as well as ideas for future improvements.

#### **Dealer Statistical Documents and Re-export Certificate Reporting Requirements**

The proposed rule would require a completed statistical document as a condition for the import or export of SBFT, BET or SWO, and a re-export certificate for re-export of all BFT, SBFT, BET or SWO shipments into or from the customs territory of the United States, which includes the States, District of Columbia, and Commonwealth of Puerto Rico, 19 CFR 101.1, and into or from the customs territories of insular possessions of the United States, which include the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and other U.S. commonwealths, territories, and possessions that are outside the customs territory of the United States, 19 CFR 7.2. The statistical document and, where appropriate, re-export certificate would be required to accompany each fresh or frozen shipment of BFT, SBFT, BET or SWO along with other shipping documentation ordinarily required for international trade.

In order to be considered complete, the species-specific statistical document or statistical document and re-export certificate accompanying each shipment would have to include the information required under proposed Subpart L to title 50 of the CFR, be certified by the exporter, importer, and re-exporter, and be validated by a government official or other non-government institution upon export or re-export, as applicable.

Copies of statistical documents or re-export certificates may be obtained from NMFS (see **ADDRESSES**).

Dealers re-exporting BFT, SBFT, BET or SWO that were previously imported into the customs territory of the United States or of a U.S. insular possession, must complete the intermediate importer certification section on the original statistical document that accompanied the import shipment, and complete a re-export certificate to accompany each fresh or frozen shipment of BET, BFT, SBFT, or SWO for re-export. The original statistical document that accompanied the import shipment must be included together with the original re-export certificate for re-export. If the original shipment is subdivided into sub-shipments and exported to more than one location, the original statistical document or a copy must accompany each sub-shipment along with an original re-export certificate.

The completed statistical document accompanying any import of BET, SBFT, or SWO into the customs territory of the United States or any U.S. insular possession must be validated by a responsible government official of the country whose flag vessel harvested the fish regardless of where it is first landed, unless NMFS waives this requirement for that country pursuant to a recommendation by the appropriate international commission. For BET, SBFT, or SWO exports from the United States, the accompanying statistical document must be validated by a U.S. Government official, unless an authorized waiver provides for validation by NMFS-authorized non-government officials. BFT, SBFT, BET, and SWO re-exports would also need to be validated by a U.S. Government official, unless there is an applicable waiver. In the case of a U.S. insular possession, a statistical document or re-export certificate may be validated by a U.S. Government official, authorized government official from that possession, or NMFS-authorized non-government official. For any situations where validation by someone other than a Federal NMFS official is authorized, NMFS may, in the future, consider developing a verification system that assesses whether procedures set up by third parties are working as intended. Such a verification system may include auditing, random inspections, and compliance checks.

The BSD program developed by ICCAT allowed for the use of BFT dealer (BSD) tags to fulfill the validation requirement for statistical documents. However, the statistical document programs for BET, SBFT, and SWO do

not include this provision and NMFS does not currently have a system for issuing dealer tags for these species. If U.S. dealers indicate an interest in having a tagging option for BET, SBFT, and SWO as an alternative method for validating statistical documents, NMFS may consider pursuing such an option at the appropriate international commission. If the use of tags is recommended, then a system for distributing, affixing, and recording tags on BET, SBFT and SWO could be developed.

#### **Responsible Parties for Certification**

For purposes of exporter certification, the exporter would be considered the person(s) or company that first exported the shipment from the country where the fish is first landed.

For purposes of the importer certification, the intermediate country importer would be considered the person(s) or company who shipped the product through an intermediate country, entering that country's customs territory as an import. An intermediate country for the purposes of these proposed regulations under 50 CFR part 300, is distinct from an intermediary nation as defined in section 3(5) of the MMPA, 16 U.S.C. 1362(5). Shipments of BET, BFT, SBFT or SWO made on a through bill of lading, or made in any other manner that does not enter the products into that country's customs territory as an import, would not make that country an intermediate country under the MMPA.

For purposes of the importer certification, the final destination importer would be considered the persons or company that is the recipient of the product at its final destination (i.e., country of consumption).

#### **Dealer Biweekly Reporting Requirements**

All dealers who obtain an HMS international trade permit would be required to submit biweekly reports on imports, exports, and re-exports of BFT, SBFT, BET and/or SWO. The report would have to be postmarked and mailed within 10 days after the end of each reporting period in which BFT, SBFT, BET and/or SWO were imported, exported, or re-exported. The biweekly reporting periods would be defined as the first day to the fifteenth day of each month and the sixteenth day to the last day of each month. Each report would have to specify accurately and completely for each fish or shipment of bulk frozen fish exported: date of landing or import; any tag number (if so tagged); and weight in pounds (specify

if round or dressed). Negative reports would not be required.

### Dealer Maintenance of Forms and Enforcement

Dealers would be required to maintain a copy of statistical documents, re-export certificates, and biweekly reports (forms) and records supporting the information provided in the forms for a period of 2 years from the date on which each form was submitted to NMFS. Also, dealers would be required to make forms and records available for inspection and duplication by any person authorized to carry out enforcement activities under these regulations, or any employee of NMFS designated by the Regional Administrator or Assistant Administrator (AA).

### Applicable Products

The Harmonized Tariff Schedule (HTS) subheading numbers for each product to which this proposed rule would apply are given below.

BFT: The re-export certificate proposed under this rule would be required for all fresh or frozen BFT products exported from or imported into the customs territory of the United States or of a U.S. insular possession and identified by HTS subheading numbers for the following:

(1) Fresh or chilled BFT, excluding fillets and other fish meat, No. 0302.39.00;

(2) Frozen BFT, excluding fillets, No. 0303.49.00.00.

SBFT: The statistical document and re-export certificate proposed under this rule would be required for all fresh or frozen SBFT products that are exported from or imported into the customs territory of the United States or of a U.S. insular possession and identified by HTS subheading numbers for the following:

(1) Fresh or chilled SBFT, excluding fish fillets and other fish meat, No. 0302.36.00.00;

(2) Frozen SBFT, No. 0303.46.00.00.

BET: The statistical document and re-export certificate proposed under this rule would be required for all fresh or frozen BET products that are exported from or imported into the customs territory of the United States or of a U.S. insular possession and identified by HTS subheading numbers for the following:

(1) Fresh or chilled BET tuna, excluding fillets and other fish meat, No. 0302.34.00.00;

(2) Frozen BET tuna, excluding fillets, No. 0303.44.00.00.

NMFS is considering whether implementation should be delayed for

fresh BET, and specifically seeks comment on this issue.

SWO: The statistical document and re-export certificate proposed under this rule would be required for all SWO in any form that are exported from or imported into the customs territory of the United States or of a U.S. insular possession and identified by any HTS subheading numbers including the following:

(1) Fresh or chilled SWO, steaks, No. 0302.69.20.41,

(2) Fresh or chilled SWO, excluding fish fillets, steaks, and other fish meat, No. 0302.69.20.49,

(3) Frozen SWO, steaks, No. 0303.79.20.41,

(4) Frozen SWO, excluding fillets, steaks and other fish meat, No. 0303.79.20.49,

(5) Fresh, chilled or frozen SWO, fillets and other fish meat No. 0304.20.60.92.

### Ports of Entry

To facilitate enforcement, the AA may, in the future, designate ports of entry. If ports of entry are designated through a rulemaking, all BFT, SBFT, BET and/or SWO entering the United States would be restricted to those ports of entry. Currently, no ports of entry have been proposed.

### Enforcement

Under this proposed rule, any BET, SBFT, and/or SWO product identified by the HTS subheading numbers referred to previously that is unaccompanied by a completed statistical document would be considered unlawful for importation into the United States. If the AA has designated ports of entry for shipments of BET, SBFT, and/or SWO products, any shipment arriving at non-designated ports of entry would be considered unlawful and the importer would be subject to penalties under ATCA. Actions that would be considered unlawful and subject to penalties under NMFS and customs regulations include: importing, exporting, or re-exporting BFT, BET, SBFT, and/or SWO without an appropriate dealer permit, falsifying records, or failing to submit reports and other required documentation.

Dealers would also be expected to allow inspections by government officials or risk penalties. Similarly, non-government institutions given authorization to validate statistical documents accompanying BET, SBFT and SWO would also be subject to inspections by government officials or risk penalties. Scierter requirements (i.e., knowledge and intent level) and sanctions for TCA and ATCA violations

are set forth in 16 U.S.C. §§ 957 and 971e.

This proposed rule also corrects an existing cross-reference in Part 300 in the prohibitions set forth at § 300.28(l).

### Exemptions

The ICCAT and IATTC BET statistical document program recommendations state that BET destined principally for canneries are not subject to the statistical document requirement. Thus, BET caught by purse seiners and pole and line (bait) vessels and destined principally for the canneries in the United States, including Puerto Rico and the United States Pacific coast and the western and central Pacific Islands (e.g., American Samoa, Northern Marianas, and Guam), would be exempt from the statistical document and re-export certificate requirements under this proposed rule. This exemption would cover all potential U.S. ports of entry, as well as ports within commonwealths, territories, and possessions of the United States on the Pacific coast and in the western and central Pacific Islands.

### Dolphin Safe Tuna Requirements

This proposed rule would not change any requirements under the Marine Mammal Protection Act (MMPA), as amended by the International Dolphin Conservation Program Act (IDCPA), 16 U.S.C. 1361 *et seq.*, and their implementing regulations (50 CFR Part 216).

The MMPA established a moratorium with certain exceptions on the taking or importation of marine mammals. Because of dolphin interactions with purse seine vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean (ETP), imports of yellowfin tuna from the ETP are subject to various documentation and other requirements. For an overview of the requirements, see [http://www.nmfs.noaa.gov/prot\\_res/PR2/Tuna\\_Dolphin/tunadolpin.html](http://www.nmfs.noaa.gov/prot_res/PR2/Tuna_Dolphin/tunadolpin.html).

### Scenarios

The following are examples of use of the BET, SBFT, or SWO statistical document programs under the proposed rule in which shipments of BET, SBFT, and SWO are imported into or exported or re-exported from the United States, which includes all U.S. commonwealths, territories, and possessions:

1. Imports of fresh or frozen SWO, regardless of ocean of origin, into the United States:

An ICCAT SWO statistical document would have to be validated by a responsible government official by the exporting country and accompany the

product. The exporter would complete the export, export certification, and description of the shipment sections of the statistical document. The exporter would also complete the SWO minimum size certification of the statistical document. The original statistical document would accompany the shipment to the United States and a copy would be submitted to the domestic fisheries agency of the exporter.

If a U.S. importer plans to sell the fish for consumption in the domestic market, the import section (naming a U.S. state and city as final point of import) and the importer's certification section of the statistical document would be completed by the importer. The original statistical document with the importer's entries and certification would be submitted to NMFS within 24 hours of time of import.

If a U.S. dealer re-exports the product, the U.S. dealer would complete the importer's certification section of the statistical document (naming the United States as the intermediate country) and a re-export certificate. The dealer would also be required to obtain validation of the re-export certificate. The original statistical document, with the intermediate country importer's entries and certification, and the re-export certificate would accompany the shipment to the final destination. If the shipment was subdivided and re-exported to more than one location, the original statistical document or a copy and an original re-export certificate would be required for each sub-shipment. Completed copies would be submitted to NMFS within 24 hours of the time of re-export.

2. Exports of U.S.-caught fresh SWO, regardless of ocean of origin, from the United States:

Exports of SWO or SWO products, whether fresh or frozen, would be accompanied by an ICCAT SWO statistical document. The exporter would complete the export, exporter certification, and description of shipment sections of the statistical document and have the document validated by either a U.S. Government official or an authorized non-Government institution or association. In the case of a U.S. insular possession, validation can be made by a U.S. Government official, authorized government official from that possession, or NMFS-authorized non-government official. The original statistical document with the exporter's entries and certification would accompany the shipment to the final destination, and a completed copy

would be submitted to NMFS within 24 hours of the time of export.

3. Exports of U.S.-caught fresh or frozen BET, regardless of ocean of origin, from the United States:

Exports of BET, whether fresh or frozen, would be accompanied by a species specific statistical document. When exporting Atlantic BET, the ICCAT statistical document would be used. When exporting Pacific BET, the IATTC statistical document would be used. The exporter would complete the export, exporter certification, and description of shipment sections on the appropriate statistical document and have the document validated by either a U.S. Government official or an authorized non-Government institution or association. In the case of a U.S. insular possession, validation can be made by a U.S. Government official, authorized government official from that possession, or NMFS-authorized non-government official. The original statistical document with the exporter's entries and certification would accompany the shipment to the final destination, and a completed copy of the statistical document would be submitted to NMFS by the exporter within 24 hours of the time of export.

4. Re-Exports of fresh or frozen BET or SWO, regardless of ocean of origin, through the United States:

If a U.S. dealer imports and then re-exports a product, the dealer would complete the importer's certification section of the statistical document (naming the United States as the intermediate country) and re-exporter section of the re-export certificate. The dealer would also need validation of the re-export certificate. When re-exporting Atlantic BET (e.g. an ICCAT statistical document accompanies the shipment), the ICCAT Re-export certificate would be used. When re-exporting Pacific BET (e.g. an IATTC statistical document accompanies the shipment), the IATTC re-export certificate would be used. The original statistical document, with the intermediate country importer's entries and certification, and the re-export certificate would accompany the shipment to the final destination, and a completed copy would be submitted to NMFS within 24 hours of the time of re-export. If the shipment was subdivided and re-exported to more than one location, the original statistical document or a copy of the original statistical document would accompany each sub-shipment along with an original re-export certificate.

#### Classification

This proposed rule is published under the authority of the ATCA, 16 U.S.C.

971 *et seq.*, the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and the TCA (16 U.S.C. 955 *et seq.*). The AA has preliminarily determined that this proposed rule is necessary to implement the recommendations of ICCAT and IATTC and is necessary for the management of BFT, BET and SWO.

NMFS has prepared a Regulatory Impact Review and an Initial Regulatory Flexibility Analysis (IRFA) that examine the impacts of the alternatives for implementing the ICCAT and IATTC recommendations for international trade monitoring programs. The objectives of the proposed rule, its legal basis, and reasons for its consideration are set forth in the Summary and Supplementary Information sections of this Preamble. The proposed programs would affect approximately 1,890 seafood dealers that participate in international trade of swordfish, bluefin tuna, southern bluefin tuna and bigeye tuna, all of which are considered small entities. Impacts to dealers would occur in two areas - permitting and reporting. NMFS expects only minor negative economic impacts from the preferred alternative because the proposed measures only involve adjusting the permitting and reporting requirements. A description of the alternatives, associated requirements, and estimated costs follows.

The no action/status quo alternative (alternative 2) would make no changes to current programs. The remaining three alternatives would implement the recommended trade programs for swordfish, bigeye tuna, and bluefin tuna. The preferred alternative (alternative 1) and alternative 4 would implement the recordkeeping requirements by linking them to the proposed HMS international dealer trade permit for dealers of these species. The preferred alternative differs from alternative 4 by requiring trade monitoring for southern bluefin tuna in addition to the other species, in order to facilitate program effectiveness, whereas alternative 4 would not require the use of SBFT statistical documents or require a dealer permit for trading in SBFT. Alternative 3 would implement the trade program by building onto existing dealer permits and associated recordkeeping requirements. Overall, the immediate costs associated with the preferred alternative and alternatives 3 and 4 are expected to be greater than for alternative 2 (no action); however, access to international markets could be reduced under the status quo, which is expected to have much greater negative economic impacts in the long term.

The initial cost of obtaining the permit for each U.S. dealer under the

preferred alternative and alternative 4 is expected to be \$100 plus the time of filling out the form and the cost of postage, which would be approximately \$2. NMFS expects this amount to be a minor negative impact for the affected dealers. The permit-associated cost for the preferred alternative and alternative 4 differs from building onto existing systems (alternative 3) in an amount between \$0 to \$100 per dealer, depending upon the other permits held by the dealer. Under alternative 3, if the dealer were required to have an Atlantic or Pacific tuna permit to trade in bigeye tuna or southern bluefin tuna, there would be no associated cost since these permits are issued free of charge. However, if the dealer were required to have a swordfish permit for importing or exporting swordfish, the cost could be either \$25 or \$100, depending upon whether the dealer has another permit issued by the Southeast Region of NMFS. NMFS estimates that approximately 960 dealers would be impacted by the preferred alternative and alternative 3. Alternative 4 would entail similar costs per dealer as alternative 1; however, slightly fewer dealers would be impacted since dealers trading in southern bluefin tuna without trade in any of the other covered species would not be required to purchase a permit.

NMFS estimates that approximately 1,890 dealers (930 foreign and 960 domestic) could be impacted by the reporting requirements under the preferred alternative and alternatives 3 and 4. Impacts for each of these alternatives is expected to be approximately the same since all dealers must submit the required reports, regardless of the type of permit. The professional skills necessary to complete the reporting requirements are equivalent to an educational level of high school completion. The annual economic impacts of the reporting requirements, in addition to the potential costs of the HMS ITP discussed in the previous paragraph, would be approximately \$386 per dealer, including statistical document and re-export certificate opportunity costs (\$285) and mailing (\$2), biweekly opportunity cost (\$90) and mailing (\$9). This amount will vary depending on the volume of HMS imported or exported or the number of forms submitted. Alternative four would eliminate the need for reporting southern bluefin tuna trade, so costs would be slightly reduced. Finally, dealers could be negatively impacted if the time burden interferes with how dealers conduct their business; however, NMFS does not

expect the direct or indirect costs or associated time burden of additional reporting to be more than a minor negative impact for the affected constituents.

NMFS does not believe that the proposed alternatives would conflict with any relevant regulations, federal or otherwise. To avoid duplication with the requirements of the HMS ITP, this rule would remove the international components of the existing swordfish and Atlantic tuna dealer permits.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

This proposed rule contains new and revised collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act. These requirements have been submitted to OMB for approval. The public reporting burden for completing an application for a Federal permit for Atlantic coast dealers that import, export, or re-export BET, BFT, SBFT, or SWO is estimated at 0.08 hours (5 minutes) per response. The public reporting burden for dealers for collection-of-information on dealer reports is estimated at 0.08 hours (5 minutes) each for statistical documents and re-export certificates; 2 hours for validation; 2 hours for authorization for non-governmental validation; 0.25 hours (15 minutes) for international trade biweekly report; 0.25 hours (15 minutes) for Southeast Region HMS dealer report; 0.05 hours (3 minutes) for Southeast Region HMS dealer negative reporting; 0.25 hours (15 minutes) for Atlantic BFT biweekly dealer report; 0.02 hours (1 minute) for tagging; and 0.03 hours (2 minutes) for landing cards. The proposed rule also addresses previously approved requirements for domestic dealer permits as follows: a swordfish dealer permit and shark dealer permit have been approved under collection 0648-0205 and an Atlantic tuna dealer permit has been approved under collection 0648-0202. The response time for each of these domestic permits is 5 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the

burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the ADDRESSES above, and e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### List of Subjects

##### 50 CFR Part 300

Fisheries, Reporting and recordkeeping requirements, Treaties.

##### 50 CFR Part 635

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: March 22, 2004.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 300 and 635 to read as follows:

#### PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for subpart C is revised to read as follows:

**Authority:** 16 U.S.C. 951-961 *et seq.*

2. In subpart C, revise § 300.20 to read as follows:

##### § 300.20 Purpose and scope.

The regulations in this subpart are issued under the authority of the Tuna Conventions Act of 1950 (Act). The regulations implement recommendations of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean so far as they affect vessels and persons subject to the jurisdiction of the United States.

3. In § 300.21, remove the definitions for “*Pacific bluefin tuna*” and “*Tag*,” and revise the introductory paragraph to read as follows:

##### § 300.21 Definitions.

In addition to the terms defined in § 300.2, the Act, and the Convention for the Establishment of an Inter-American Tropical Tuna Commission, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the

Convention, the definition in this section shall apply.

\* \* \* \* \*

### Subpart C [Amended]

4. Remove §§ 300.24 through 300.25 and redesignate §§ 300.28 and 300.29 as §§ 300.24 and 300.25, respectively, and remove and reserve §§ 300.26 through 300.27.

5. In newly redesignated § 300.24, remove (e) through (g), redesignate paragraphs (h) through (l) as paragraphs (e) through (i), respectively, and revise newly redesignated paragraphs (h) and (i) to read as follows:

#### § 300.24 Prohibitions.

\* \* \* \* \*

(h) Fail to use the sea turtle handling, release, and resuscitation procedures in § 300.25(e); or

(i) Fail to report information when requested by the Regional Administrator under § 300.22.

6. Subpart L is added to read as follows:

### Subpart L—International Trade Documentation and Tracking Programs

Sec.	
300.180	Purpose and scope.
300.181	Definitions.
300.182	Highly migratory species (HMS) international trade permit.
300.183	Dealer recordkeeping and reporting.
300.184	Species subject to documentation requirements.
300.185	Documentation and reporting requirements.
300.186	Contents of documentation.
300.187	Validation requirements.
300.188	Ports of entry.
300.189	Prohibitions.

### Subpart L—International Trade Documentation and Tracking Programs

**Authority:** 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

#### § 300.180 Purpose and scope.

The regulations in this subpart are issued under the authority of the Atlantic Tunas Convention Act of 1975 (ATCA), Tuna Conventions Act of 1950, and Magnuson-Stevens Act. The regulations implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) for the conservation and management of tuna and tuna-like species in the Atlantic Ocean and of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean, so far as they affect vessels and persons subject to the jurisdiction of the United States.

#### § 300.181 Definitions.

*Atlantic bluefin tuna* means the species *Thunnus thynnus* found in the Atlantic Ocean.

*Bigeye tuna* means the species *Thunnus obesus* found in any ocean area.

*Bluefin tuna*, for purposes of this subpart, means Atlantic and Pacific bluefin tuna, as defined in this section.

*BSD tag* means a numbered tag affixed to a bluefin tuna issued by any country in conjunction with a catch statistics information program and recorded on a bluefin tuna statistical document.

*CCSBT* means the Commission for the Conservation of Southern Bluefin Tuna established pursuant to the Convention for the Conservation of Southern Bluefin Tuna.

*Customs territory of the United States* has the same meaning as § 101.1 of title 19 of the CFR and includes only the States, the District of Columbia, and Puerto Rico.

*Dealer*, for purposes of this subpart, means, unless otherwise specified, a person who obtains a dealer permit under § 300.182 of this subpart.

*Dealer tag* means the numbered, flexible, self-locking ribbon issued by NMFIS for the identification of Atlantic bluefin tuna sold to a dealer permitted under § 635.4 of this title as required under § 635.5(b) of this title.

*Export* means, for purposes of this subpart, a shipment to a destination outside the customs territory of the United States for which a Shipper's Export Declaration Commerce Form (7525–V) is required. For a U.S. insular possession, an export means a shipment to a destination outside the customs territory of that possession for which authorized export documentation from that possession's customs authority is required. HMS destined from one foreign country to another, which transit the customs territory of the United States or a U.S. insular possession and for which a Shipper's Export Declaration or authorized, equivalent documentation is not required to be filed, is not an export under this definition.

*Exporter* means the principal party responsible for effecting export from the United States as listed on the Shipper's Export Declaration Commerce Form (7525–V) or any authorized, equivalent electronic medium, or any authorized export documentation from the customs authority of a U.S. insular possession.

*Finlet* means one of the small individual fins on a tuna located behind the second dorsal and anal fins and forward of the tail fin.

*Fish or fish products regulated under this subpart* means bluefin tuna, bigeye

tuna, southern bluefin tuna and swordfish and products of these species.

*Foreign dealer*, for purposes of this subpart, means a person who imports fish products regulated under this subpart from the United States or exports fish or fish products regulated under this subpart to the United States.

*IATTC* means the Inter-American Tropical Tuna Commission, established pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

*ICCAT* means the International Commission for the Conservation of Atlantic Tunas established pursuant to the International Convention for the Conservation of Atlantic Tunas.

*International Commission*, as defined under this subpart, means CCSBT, IATTC, ICCAT, or IOTC.

*IOTC* means the Indian Ocean Tuna Commission established pursuant to the Agreement for the Establishment of the Indian Ocean Tuna Commission approved by the Food and Agriculture Organization (FAO) Council of the United Nations.

*Import* means, for the purposes of this subpart, the release of HMS from a nation's customs' custody and entry into the customs territory of that nation. HMS are imported into the customs territory of the United States pursuant to filing an entry summary document (Customs Form 7501) or any authorized, equivalent electronic medium. HMS are imported into the customs territory of a U.S. insular possession pursuant to filing any authorized entry documentation from that possession's customs authority. HMS destined from one foreign country to another that transit the customs territory of the United States or a U.S. insular possession and for which an entry summary or equivalent documentation is not required to be filed, is not an import under this definition.

*Importer*, for the purposes of this subpart, means the importer of record as declared on U.S. Customs Form 7501 or any authorized, equivalent electronic medium, or any authorized entry documentation from the customs authority of a U.S. insular possession.

*Insular possession of the United States or U.S. insular possession*, for purposes of this section, means the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and other possessions listed under 19 CFR 7.2, that are outside the customs territory of the United States.

*Intermediate country* means a country that exports to another country HMS previously imported by that nation. Shipments of HMS through a country on a through bill of lading or in another



manner that does not enter the shipments into that country as an importation do not make that country an intermediate country under this definition.

*Pacific Bluefin Tuna* means the species *Thunnus orientalis* found in the Pacific Ocean.

*Re-export*, for purposes of this subpart, means the export of HMS that were previously imported into the customs territory of the United States or a U.S. insular possession.

*Southern Bluefin Tuna* means the species *Thunnus maccoyii* found in any ocean area.

*Swordfish* means the species *Xiphias gladius* that is found in any ocean area.

*Tag* means either a dealer tag or a BSD tag.

#### **§ 300.182 HMS international trade permit.**

(a) *General.* A person importing, exporting, or re-exporting fish or fish products regulated under this subpart from any ocean area must possess a valid dealer permit issued under this section. Importation of fish or fish products regulated under this subpart by nonresident corporations is restricted to those entities authorized under 19 CFR 141.18.

(b) *Application.* A person must apply for a permit in writing on an appropriate form obtained from NMFS. The application must be completed, signed by the applicant, and submitted with required supporting documents, at least 30 days before the date upon which the permit is made effective. Application forms and instructions for their completion are available from NMFS.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR 904, NMFS will issue a permit within 30 days of receipt of a completed application.

(2) NMFS will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section is valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit that is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* NMFS may issue replacement permits. An application for a replacement permit is not considered a new application. An appropriate fee, consistent with paragraph (j) of this section, may be charged for issuance of a replacement permit.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by NMFS for such purpose.

(i) *Sanctions.* The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* NMFS may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, 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 on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit must report the change to NMFS in writing. The permit is void if any change in information is not reported within 15 days.

(l) *Renewal.* Persons must apply annually for a dealer permit issued under this section. A renewal application must be submitted to NMFS, at an address designated by NMFS, at least 30 days before the permit expiration to avoid a lapse of permitted status. NMFS will renew a permit provided that the application for the requested permit is complete, all reports required under the Magnuson-Stevens Act, ATCA, and the Tuna Conventions Act of 1950 have been submitted, including those required under §§ 300.183, 300.185, 300.186, and 300.187 and 50 CFR Part 635.5; and the applicant is not subject to a permit sanction or denial under paragraph (i) of this section.

#### **§ 300.183 Dealer recordkeeping and reporting.**

(a) Any person issued a dealer permit under § 300.182 must submit to NMFS a biweekly report of imports, exports, and re-exports of fish or fish products regulated under this subpart on forms supplied by NMFS.

(1) The report required to be submitted under paragraph (a) must be postmarked within 10 days after the end of each biweekly reporting period in which bluefin tuna, southern bluefin tuna, bigeye tuna, or swordfish were imported, exported, or re-exported. The bi-weekly reporting periods are defined as the first day to the 15th day of each month and the 16th day to the last day of the month.

(2) Each report must specify accurately and completely the requested information for fresh shipments of fish or fish products regulated under this subpart, and for each shipment of bulk-frozen fish or fish products regulated under this subpart that are imported, exported or re-exported.

(b) Any person issued a dealer permit under § 300.182 must retain at his/her principal place of business a copy of each biweekly report and supporting records for a period of 2 years from the date on which it was submitted to NMFS.

(c) Any person authorized to carry out the enforcement activities under the regulations in this part has the authority, without warrant or other process, to inspect, at any reasonable time, fish or fish products regulated under this subpart, biweekly reports, statistical documents or re-export certificates, sales receipts, or other records and reports required by this part to be made, kept, or furnished. A dealer that has been issued a permit under § 300.182 must allow NMFS or an authorized person to inspect and copy any required reports and the records, in any form, on which the completed reports are based, wherever they exist. An agent of a person issued a dealer permit under this part, or anyone responsible for importing, exporting, storing, packing, or selling fish or fish products regulated under this subpart, shall be subject to the inspection provisions of this section.

#### **§ 300.184 Species subject to documentation requirements.**

The following fish or fish products are subject to the documentation requirements of this subpart regardless of ocean area of catch.

(a) *Bluefin tuna.* (1) Documentation is required for bluefin tuna identified by the following subheading numbers from the Harmonized Tariff Schedule:

(i) Fresh or chilled bluefin tuna, excluding fillets and other fish meat, No. 0302.35.00.00.

(ii) Frozen bluefin tuna, excluding fillets, No. 0303.45.00.00.

(2) In addition, bluefin tuna products in other forms (e.g., chunks, fillets, canned) listed under any other



subheading numbers from the Harmonized Tariff Schedule are subject to the documentation requirements of this subpart, except that fish parts other than meat (e.g., heads, eyes, roe, guts, tails) may be allowed entry without said statistical documentation.

(b) *Southern bluefin tuna.* (1) Documentation is required for southern bluefin tuna identified by the following subheading numbers from the Harmonized Tariff Schedule:

(i) Fresh or chilled southern bluefin tuna, excluding fillets and other fish meat, No. 0302.36.00.00

(ii) Frozen southern bluefin tuna, excluding fillets, No. 0303.46.00.00.

(2) [Reserved]

(c) *Bigeye tuna.* (1) Documentation is required for bigeye tuna identified by the following subheading numbers from the Harmonized Tariff Schedule:

(i) Fresh or chilled bigeye tuna, excluding fillets and other fish meat, No. 0302.34.00.00.

(ii) Frozen bigeye tuna, excluding fillets, No. 0303.44.00.00.

(2) Bigeye tuna caught by purse seiners and pole and line (bait) vessels and destined for canneries within the United States, including all U.S. commonwealths, territories, and possessions, may be allowed entry without the statistical documentation required under this section.

(d) *Swordfish.* (1) Documentation is required for swordfish identified by the following subheading numbers from the Harmonized Tariff Schedule:

(i) Fresh or chilled swordfish, steaks, No. 0302.69.20.41

(ii) Fresh or chilled swordfish, excluding fish fillets, steaks, and other fish meat, No. 0302.69.20.49,

(iii) Frozen swordfish, steaks, No. 0303.79.20.41,

(iv) Frozen swordfish, excluding fillets, steaks and other fish meat, No. 0303.79.20.49,

(v) Fresh, chilled or frozen swordfish, fillets and other fish meat, No. 0304.20.60.92.

(2) [Reserved]

### **§ 300.185 Documentation and reporting requirements.**

Imports into and exports or re-exports from the customs territory of the United States or a U.S. insular possession of fish or fish products specified under § 300.184 are subject to the documentation and reporting requirements of this subpart.

(a) *Imports.* (1) Imports of all fish or fish products specified under § 300.184 into the customs territory of the United States or a U.S. insular possession must, at the time of completing an entry summary, be accompanied by an

original completed approved species specific statistical document with the information and exporter's certification specified in § 300.186. An entry summary consists of a Customs Form 7501 or authorized, electronic equivalent, or other authorized, equivalent document from the customs authority of a U.S. insular possession. Customs Form 7501 can be obtained by contacting the local Customs and Border Protection port office; contact information is available at [www.cbp.gov](http://www.cbp.gov). For a U.S. insular possession, contact the local customs office for any forms required for entry. The statistical document must be validated as specified in § 300.187 by a responsible government official of the country whose flag vessel caught the fish (regardless of where the fish are first landed). The U.S. dealer who receives the imported fish products either for domestic commercial use or for re-export must provide on the original statistical document that accompanied the import shipment the correct information and importer's certification specified in § 300.186 and must note on the top of the statistical document the entry number assigned at the time of filing the entry summary.

(2) Bluefin tuna imported into the customs territory of the United States or a U.S. insular possession from a country requiring a BSD tag on all such bluefin tuna available for sale must be accompanied by the appropriate BSD tag issued by that country, and said BSD tag must remain on any bluefin tuna until it reaches its final destination. If the final import destination is the United States, which includes all U.S. commonwealths, territories, and possessions, the BSD tag must remain on the bluefin tuna until it is cut into portions. If the bluefin tuna portions are subsequently packaged for domestic commercial use or re-export, the BSD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(3) *Reporting.* For imports of fish or fish products regulated under this subpart whose final destination is within the United States, which includes all U.S. commonwealths, territories, and possessions, a dealer must submit to NMFS the original statistical document that accompanied the fish product as completed under paragraph (a)(1) of this section. A copy of the original completed statistical document must be postmarked and mailed, or faxed, by said dealer to NMFS at an address designated by NMFS within 24 hours of the time the fish product was imported into the customs territory of the United States or

a U.S. insular possession. For imports of fish products specified in § 300.184 which are re-exported, a dealer must submit to NMFS a copy of the statistical document that accompanied the product as completed under paragraph (a)(1) of this section and a copy of the re-export certificate as completed under paragraph (c)(1) of this section.

(b) *Exports.* (1) A dealer who exports fish or fish products regulated under this subpart that were harvested by U.S. vessels and first landed in the United States, or harvested by vessels of a U.S. insular possession and first landed in that U.S. insular possession, must complete an original numbered species specific statistical document issued to that dealer by NMFS. Such an individually numbered document is not transferable and may be used only once by the dealer to which it was issued to report on a specific export shipment. A dealer must provide on the statistical document the correct information and exporter certification specified in § 300.186. The statistical document must be validated, as specified in § 300.187, by a U.S. Government official, authorized government official for a U.S. insular possession, or authorized non-government official. A list of such officials may be obtained by contacting NMFS. A dealer requesting U.S. validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export shipment.

(2) For exports of fish or fish products regulated under this subpart, a dealer must submit an original statistical document as completed under paragraph (b)(1) of this section to accompany the shipment of such products to their export destination. A copy of the statistical document must be postmarked and mailed by said dealer to NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was exported from the United States.

(c) *Re-exports.* (1) A dealer who re-exports fish or fish products regulated under this subpart that were previously imported into the customs territory of the United States or a U.S. insular possession through filing the documentation specified under paragraph (a)(1) of this section must complete an original individually numbered species specific re-export certificate issued to that dealer by NMFS. Such an individually numbered document is not transferable and may be used only once by the dealer to which it was issued to report on a specific re-export shipment. A dealer must provide on the re-export certificate the correct

information and re-exporter certification specified in § 300.186. The dealer must also attach the original statistical document that accompanied the import shipment and provide the correct information and intermediate importer's certification specified in § 300.186 and must note on the top of both the statistical document and the re-export certificate the entry number assigned at the time of filing the entry summary. If the original shipment is subdivided into sub-shipments for re-export to more than one location, the original statistical document or a copy must be attached to each re-export shipment.

(2) The re-export certificate must be validated, as specified in § 300.187, by a U.S. Government official, authorized government official for a U.S. insular possession, or authorized non-government official. A list of such officials may be obtained by contacting NMFS. A dealer requesting U.S. validation for re-exports should notify NMFS as soon as possible to avoid delays in inspection and validation of the re-export shipment. The requirements of this paragraph do not apply to fish products destined from one foreign country to another which transit the United States or a U.S. insular possession and for which an entry summary, as specified under paragraph (a)(1) of this section, is not filed and for which a Shipper's Export Declaration for in-transit merchandise must be filed. A Shipper's Export Declaration consists of an ENG Form 7513 or electronic equivalent, or other authorized, equivalent document from the customs authority of a U.S. insular possession. ENG Form 7513 can be obtained by contacting the U.S. Army Corps of Engineers at <http://www.iwr.usace.army.mil/ndc/usforeign/>. For a U.S. insular possession, contact the local customs office for any forms required for in-transit merchandise.

(3) For re-exports of fish products specified in § 300.184, a dealer must submit the original of the completed statistical document and re-export certificate completed as specified under paragraphs (c)(1) and (c)(2) of this section to accompany the shipment of such products to their re-export destination. A copy of the completed statistical document and re-export certificate must be postmarked and mailed by said dealer to NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was re-exported from the United States.

(d) *Recordkeeping.* A dealer must retain at his or her principal place of business a copy of each statistical document and re-export certificate required to be submitted to NMFS

pursuant to this section and supporting records for a period of 2 years from the date on which it was submitted to NMFS.

(e) *Inspection.* A dealer must comply with the inspection requirements provided at § 300.183(c).

#### § 300.186 Contents of documentation.

(a) *Statistical Documents.* All statistical documents, to be deemed complete, must state:

(1) The document number assigned by the country issuing the document.

(2) The name of the country issuing the document, which must be the country whose flag vessel harvested the fish, regardless of where it is first landed.

(3) The name of the vessel that caught the fish, the vessel's length (in meters), the vessel's registration number and the ICCAT record number, if applicable.

(4) The point of export, which is the city, state or province, and country from which the fish is first exported.

(5) The product type (fresh or frozen), time of harvest (month/year), and product form (round, gilled and gutted, dressed, fillet, or other).

(6) The method of fishing used to harvest the fish (e.g., purse seine, trap, rod and reel).

(7) The ocean area from which the fish was harvested.

(8) The weight of each fish (in kilograms for the same product form previously specified) or the net weight of each product type, as applicable.

(9) The name and license number of, and be signed and dated in the exporter's certification block by, the exporter.

(10) If applicable, the name and title of, and be signed and dated in the validation block by, a responsible government official of the country whose flag vessel caught the fish (regardless of where the fish are first landed) or by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the statistical document.

(11) If applicable, the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by, each intermediate and the final importer.

(b) *Bluefin Tuna Statistical Documents.* Bluefin tuna statistical documents, to be deemed complete, in addition to the elements in § 300.186(a), must also state:

(1) Whether the fish was farmed or captured.

(2) The name and address of the owner of the trap that caught the fish, or the farm from which the fish was taken, if applicable.

(3) The identifying tag number, if landed by vessels from countries with BSD tagging programs or tagged pursuant to § 635.5(b) of this or pursuant to § 300.187(d).

(c) *Southern Bluefin Tuna Statistical Documents.* Southern bluefin tuna statistical documents, to be deemed complete, in addition to the elements in § 300.186(a), must also state:

(1) The name and address of the processing establishment, if applicable.

(2) [Reserved]

(d) *Bigeye Tuna Statistical Documents.* Bigeye tuna statistical documents, to be deemed complete, in addition to the elements in § 300.186(a), must also state:

(1) The name of the owner of the trap that caught the fish, if applicable.

(2) The net weight of product for each product type (in kilograms for the same product form previously specified).

(e) *Swordfish Statistical Documents.* Swordfish statistical documents, to be deemed complete, in addition to the elements in § 300.186(a), must state:

(1) Certification by the exporter that the individual Atlantic swordfish included in the shipment are greater than 15 kilograms (33 lb) or if pieces, that the pieces were derived from a swordfish weighing more than 15 kilograms (33 lb).

(2) [Reserved]

(f) *Re-Export Certificates.* All re-export certificates, to be deemed complete must state:

(1) The document number assigned by the country issuing the document.

(2) The name of the country issuing the document, which must be the country through which the product is being re-exported.

(3) The point of re-export, which is the city, state, or province, and country from which the product was re-exported.

(4) The description of the fish product as imported, including the product type (fresh or frozen), product form (round, gilled and gutted, dressed, fillet, or other), the net weight, flag country of the vessel that harvested the fish in the shipment, and the date of import to the country from which it is being re-exported.

(5) The description of the fish product as re-exported, including the product type (fresh or frozen), product form (round, gilled and gutted, dressed, fillet, or other) and the net weight.

(6) The name and license number (if applicable) of, and be signed and dated

in the re-exporter's certification block by, the re-exporter.

(7) If applicable, the name and title of, and be signed and dated in the validation block by, a responsible government official of the re-exporting country appearing on the certificate, or by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the re-export certificate.

(8) If applicable, the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by each intermediate and the final importer.

(g) *Bluefin Tuna Re-Export Certificates.* Bluefin tuna re-export certificates, to be deemed complete, in addition to the elements in § 300.186(f), must also state:

(1) Whether the fish for re-export was farmed.

(2) The name and address of the farm from which the fish was taken.

(h) An approved statistical document or re-export certificate may be obtained from NMFS to accompany exports of fish or fish products regulated under this subpart from the customs territory of the United States or a U.S. insular possession. Foreign dealers in a country that does not provide an approved statistical document or re-export certificate to exporters may obtain an approved statistical document or re-export certificate from the appropriate website as follows: *www.iccat.org*, *www.iattc.org*, *www.ccsbt.org*, or *www.iotc.org* to accompany exports to the United States.

(i) A foreign dealer who exports or re-exports fish or fish products regulated under this subpart to the United States may use an approved statistical document or re-export certificate obtainable from the websites listed in paragraph (h) of this section or a document developed by the country of export, if that country submits a copy to the ICCAT Executive Secretariat and NMFS concurs with the ICCAT Secretariat's determination that the document meets the information requirements of the ICCAT recommendation. In such case, NMFS will provide a list of countries for which statistical documents and re-export certificates are approved, with examples of approved documents, to the appropriate official of the Bureau of Customs and Border Protection or

customs authority for a U.S. insular possession. Effective upon the date indicated in such notice to the customs officials, shipments of fish or fish products regulated under this subpart offered for importation from said country(ies) may be accompanied by either that country's approved statistical document or re-export certificate or by the statistical document or re-export certificate obtained by the foreign country exporter from the websites listed in paragraph (h) of this section.

#### § 300.187 Validation requirements.

(a) *Imports.* The approved statistical document accompanying any import of any fish or fish product regulated under this subpart must be validated by a government official from the issuing country, unless NMFS waives this requirement pursuant to an applicable recommendation of the relevant international commission. NMFS will furnish a list of countries for which government validation requirements are waived to the appropriate official of the Bureau of Customs and Border Protection or customs authority for a U.S. insular possession. Such list will indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate statistical documents and re-export certificates for that country.

(b) *Exports and re-exports.* The approved statistical document and, as appropriate, re-export certificate accompanying any export or re-export of fish or fish products regulated under this subpart from the United States or a U.S. insular possession must be validated, except pursuant to a waiver, if any, specified on the form and accompanying instructions, or in a letter to the permitted dealer from NMFS. Validation must be made by a U.S. Government official or authorized government official from a U.S. insular possession. Any waiver of government validation will be consistent with applicable recommendations of the respective international commission concerning validation of statistical documents and re-export certificates. If authorized, such waiver of government validation may include:

(1) Exemptions from government validation for Pacific bluefin tuna with individual BSD tags affixed pursuant to paragraph (d) of this section or for Atlantic bluefin tuna with tags affixed pursuant to § 635.5(b) of this title; or

(2) Validation by non-government officials authorized to do so by NMFS under paragraph (c) of this section.

(c) *Authorization for non-government validation.* An institution or association

seeking authorization to validate statistical documents or re-export certificates accompanying exports or re-exports from the United States, which includes U.S. commonwealths, territories, and possessions, must apply in writing to NMFS at an address designated by NMFS for such authorization. The application must indicate the procedures to be used for verification of information to be validated, list the names, addresses, and telephone/fax numbers of individuals to perform validation, and provide an example of the stamp or seal to be applied to the statistical document or re-export certificate. NMFS, upon finding the institution or association capable of verifying the information required on the statistical document or re-export certificate, will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate statistical documents or re-export certificates accompanying exports from the United States. The effectiveness of such authorization will be delayed as necessary for NMFS to notify the appropriate international commission of non-government institutions and associations authorized to validate statistical document or re-export certificates. Institutions or associations given authorization to validate statistical documents or re-export certificates must renew such authorization on a yearly basis.

(d) *BSD tags—(1) Issuance.* NMFS will issue numbered BSD tags for use on Pacific bluefin tuna upon request to each person receiving a dealer's permit under § 300.182.

(2) *Transfer.* BSD tags issued under this section are not transferable and are usable only by the permitted dealer to whom they are issued.

(3) *Affixing BSD tags.* At the discretion of dealers permitted under § 300.182, a tag issued under paragraph (1) of this section may be affixed to Pacific bluefin tuna purchased or received by the dealer. If so tagged, the tag must be affixed to the tuna between the fifth dorsal finlet and the keel and tag numbers must be recorded on NMFS reports required by § 300.183 and any documents accompanying the shipment of bluefin tuna for domestic commercial use or export as indicated in § 300.186.

(4) *Removal of tags.* A tag, as defined in this subpart and affixed to any bluefin tuna, must remain on the fish until it is cut into portions. If the bluefin tuna or bluefin tuna parts subsequently are packaged for transport for domestic commercial use or for export, the number of the dealer tag or the BSD tag must be written legibly and indelibly on

the outside of any package containing the bluefin tuna. Such tag number also must be recorded on any document accompanying the shipment of bluefin tuna for commercial use or export.

(5) *Labeling*. BSD tags affixed to a Pacific bluefin tuna under paragraph (d)(3) must be recorded on any document accompanying the shipment of the fish or fish product for commercial use or for export.

(6) *Reuse*. BSD tags issued under this section are separately numbered and may be used only once, one tail tag per Pacific bluefin tuna, to distinguish the purchase of one Pacific bluefin tuna. Once affixed to a tuna or recorded on any package, container or report, a BSD tag and associated number may not be reused.

#### **§ 300.188 Ports of entry.**

NMFS shall monitor the importation of fish or fish products regulated under this subpart into the United States. If NMFS determines that the diversity of handling practices at certain ports at which fish or fish products regulated under this subpart are being imported into the United States allows for circumvention of the statistical document requirement, NMFS may undertake a rulemaking to designate, after consultation with the Bureau of Customs and Border Protection, those ports at which fish or fish products regulated under this subpart from any ocean area may be imported into the United States.

#### **§ 300.189 Prohibitions.**

In addition to the prohibitions specified in §§ 300.4, 600.725 and 635.71 of this title, it is unlawful for any person subject to the jurisdiction of the United States to violate any provision of this part, the Atlantic Tunas Convention Act, the Magnuson-Stevens Act, the Tuna Conventions Act of 1950, or any other rules promulgated under those Acts.

It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Falsify information required on an application for a permit submitted under § 300.182.

(b) Import, receive for export, export, or re-export any fish or fish product regulated under this subpart or purchase or receive for export any fish or fish product regulated under this subpart without a valid dealer permit issued under § 300.182.

(c) Fail to possess and make available for inspection a dealer permit at the dealer's place of business, or alter any such permit as specified in § 300.182.

(d) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in § 300.183 or § 300.185.

(e) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 300.183 or § 300.185.

(f) Fail to comply with the documentation requirements for imported, exported, or re-exported fish or fish product regulated under this subpart as specified in §§ 300.185 and 300.186.

(g) Fail to comply with the documentation requirements for the importation, exportation, or re-exportation of a swordfish, or part thereof, that is less than the minimum size, as specified in § 300.186.

(h) Validate statistical documents or re-export certificates without authorization as specified in § 300.187.

(i) Validate statistical documents or re-export certificates as provided for in § 300.187 with false information.

(j) Remove any NMFS issued numbered tag affixed to any Pacific bluefin tuna or any tag affixed to a bluefin tuna imported from a country with a BSD tag program before removal is allowed under § 300.187, fail to write the tag number on the shipping package or container as specified in § 300.187, or reuse any NMFS issued numbered tag affixed to any Pacific bluefin tuna or any tag affixed to a bluefin tuna imported from a country with a BSD tag program or any tag number previously written on a shipping package or container as prescribed by § 300.187.

(k) Import, or attempt to import, any fish or fish product regulated under this subpart in a manner inconsistent with any ports of entry designated by NMFS as authorized by § 300.188.

(l) Ship, transport, purchase, sell, offer for sale, import, export, re-export, or have in custody, possession, or control any fish or fish product regulated under this subpart that was imported, exported, or re-exported contrary to this subpart.

### **PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

1. The authority citation for 50 CFR part 635, continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.4 revise paragraph (g) to read as follows:

#### **§ 635.4 Permits and fees.**

(g) Dealer Permits—(1) *Atlantic tunas*. A person that receives, purchases, trades for, or barter for Atlantic tunas

from a fishing vessel of the United States, as defined under § 600.10, must possess a valid dealer permit.

(2) *Shark*. A person that receives, purchases, trades for, or barter for Atlantic sharks from a fishing vessel of the United States, as defined under § 600.10, must possess a valid dealer permit.

(3) *Swordfish*. A person that receives, purchases, trades for, or barter for Atlantic swordfish from a fishing vessel of the United States, as defined under § 600.10, must possess a valid dealer permit.

\* \* \* \* \*

3. In § 635.5, remove paragraph (b)(1)(ii) and redesignate paragraphs (b)(1)(iii) through (b)(1)(v) as (b)(1)(ii) through (b)(1)(iv), respectively, and revise paragraph (b) introductory text, (b)(1)(i) and newly redesignated paragraph (b)(1)(ii) to read as follows:

#### **§ 635.5 Recordkeeping and reporting.**

\* \* \* \* \*

(b) *Dealers*. Persons who have been issued a dealer permit under § 635.4 must submit reports to NMFS, to an address designated by NMFS, and maintain records as follows:

(1) *Atlantic HMS*. (i) Dealers that have been issued an Atlantic tunas, swordfish and/or sharks dealer permit under § 635.4 must submit to NMFS all reports required under this section.

(ii) Reports of Atlantic tunas, Atlantic swordfish, and/or Atlantic sharks received by dealers from U.S. vessels, as defined under § 600.10, on the first through the 15th of each month, must be postmarked not later than the 25th of that month. Reports of such fish received on the 16th through the last day of each month must be postmarked not later than the 10th of the following month. If a dealer issued an Atlantic tunas, swordfish or sharks dealer permit under § 635.4 has not received any Atlantic HMS from U.S. vessels during a reporting period as specified in this section, he or she must still submit the report required under paragraph (b)(1)(i) of this section stating that no Atlantic HMS were received. This negative report must be postmarked for the applicable reporting period as specified in this section. This negative reporting requirement does not apply for Bluefin tuna.

\* \* \* \* \*

#### **Subpart D [Amended]**

4. In subpart D, § 635.41 is removed and § 635.45 is redesignated as § 635.41 and §§ 635.42, 635.43, 635.44, 635.46, and 635.47 are removed and reserved.

5. In subpart F, § 635.71 paragraphs (b)(2), (b)(25), (e)(10) and (e)(12) are

removed and reserved and paragraphs (a)(24), (b)(26) and (e)(1) are revised as follows:

**§ 635.71 Prohibitions**

\* \* \* \* \*

(a) \* \* \*

(24) Import, or attempt to import, any fish or fish products regulated under this part in a manner contrary to any

import requirements or import restrictions specified at §§ 635.40 or 635.41.

\* \* \* \* \*

(b) \* \* \*

(26) Import a bluefin tuna or bluefin tuna product into the United States from Belize, Panama, or Honduras other than as authorized in § 635.41.

\* \* \* \* \*

(e) \* \* \*

(1) Purchase, barter for, or trade for a swordfish from the north or south Atlantic swordfish stock without a dealer permit as specified in § 635.4(g).

\* \* \* \* \*

[FR Doc. 04-6857 Filed 3-26-04; 8:45 am]

**BILLING CODE 3510-22-S**