

## Fishery Conservation and Management

## § 630.51

tuna, apply to swordfish from the North Atlantic swordfish stock.

### Subpart D—Donation Program

SOURCE: 59 FR 55064, Nov. 3, 1994, unless otherwise noted.

#### § 630.50 Purpose.

This subpart implements a program under which swordfish from the North Atlantic swordfish stock that are retained in excess of the trip allowance for undersized swordfish specified in § 630.23(b) must be retained for donation through the Second Harvest National Foodbank Network to the needy. This program is intended to obtain additional information regarding the harvest, mortality, and biological characteristics of swordfish less than the minimum size limit and to avoid waste of swordfish that would otherwise be discarded dead.

#### § 630.51 Participation.

(a) *General.* Owners of vessels and dealers permitted under § 630.4 may volunteer to participate in the swordfish donation program by contacting the Chief, Highly Migratory Species Division, Office of Fisheries Conservation and Management, NMFS, 1335 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713-2347, facsimile (301) 588-4967. The Chief, Highly Migratory Species Division, will select owners of vessels and dealers who may participate in the donation program and will keep selected vessel owners advised of the selected dealers.

(1) Factors that will be considered in the selection process include:

(i) History of voluntary participation in NMFS cooperative scientific programs;

(ii) Whether both vessel and dealer volunteers can be matched in an area throughout the year (including truck routes) to ensure distribution of donated fish;

(iii) Representative coverage of the fishery, to the extent possible; and

(iv) Compliance record of volunteers. Specifically, any person who has been issued a Notice of Violation and Assessment (NOVA) for violating any provision of the Magnuson Act (16 U.S.C. 1802 *et seq.*), the Lacey Act (16 U.S.C.

3371 *et seq.*), or the ATCA (16 U.S.C. 971 *et seq.*), or who is currently under investigation for such a violation, may be excluded from the program.

(2) Selected dealers will also be advised of the selected vessel owners and of authorized Second Harvest recipients of donated swordfish.

(3) Second Harvest is the Second Harvest National Foodbank Network, 116 South Michigan Avenue, Suite 4, Chicago, IL 60603-6001. Second Harvest affiliates are Certified Affiliate Food Banks throughout the United States that have a contract with Second Harvest and are officially part of their National Foodbank Network. Agents of Second Harvest are the individual charities that distribute or serve food to the needy from the Affiliate Food Banks, or a business designated by letter from Second Harvest to transport donated food between the foodbank and the charity.

(b) *Vessels.* The owner, or their operator, of a vessel that has been selected to participate in the donation program and so notified in writing by the Chief, Highly Migratory Species Division, may retain swordfish from the North Atlantic swordfish stock that are in excess of the trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. No person may land a swordfish in excess of the trip allowance for undersized swordfish other than in accordance with these terms and conditions; any such landing constitutes a violation of the prohibition specified in § 630.7(q).

(1) The vessel's selection letter from the Chief, Highly Migratory Species Division, must be carried on board the fishing vessel and the operator must present it for inspection upon the request of an authorized officer.

(2) The vessel's owner or operator must release any swordfish that is less than the minimum allowable size specified in § 630.23(a) and that is alive when brought aboard the vessel, in a manner that will ensure maximum probability of survival. If caught by hook, such fish must be released by cutting the line near the hook without removing the swordfish from the water. The

owner or operator must make a reasonable effort to tag each swordfish released under this paragraph (b)(2). In addition, participants are encouraged to tag all released small bluefin tuna, big eye tuna, yellowfin tuna and sharks where possible. Tags will be provided by the Science and Research Director. A record of each tag and release must be maintained and submitted to the Science and Research Director on forms provided with the tags.

(3) The vessel's owner or operator must retain any swordfish that is dead when brought aboard the vessel.

(4) The vessel's owner or operator must tag any swordfish that is retained under the donation program of this subpart prior to its off-loading from a vessel at the facility of a selected dealer, using a non-reusable, individually numbered donation tag provided by the Chief, Highly Migratory Species Division. The donation tag is not to be removed by the vessel crew, dealer, or Second Harvest until the carcass is processed.

(5) All tags assigned to a vessel by NMFS Highly Migratory Species Division, used or unused, must be accounted for by the owner/operator at the request of any authorized officer.

(6) The vessel's owner or operator must off-load any swordfish that is retained under the donation program of this subpart only at a specified facility of a dealer who has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program. Off-loading must begin between the hours of 8 a.m. and 6 p.m. local time. An owner or operator must notify the Chief, NMFS Office of Enforcement, by telephone at numbers given in the vessel owner's selection letter, and a selected dealer, at least 24 hours prior to off-loading swordfish under the donation program, unless stated otherwise in the vessel owner's selection letter.

(7) The Assistant Administrator, upon consulting with industry representatives and NMFS Office of Enforcement, may change the requirements for off-loading by notification in the FEDERAL REGISTER.

(8) All swordfish harvested during a trip by a vessel participating in this pilot program must be off-loaded at the

same facility to a dealer participating in this donation program.

(9) No vessel owner or operator may sell, trade, or barter, or attempt to sell, trade, or barter, any swordfish or any part thereof that is retained under the donation program of this subpart.

(c) *Dealers.* A dealer who has been selected and so notified in writing by the Chief, Highly Migratory Species Division, to participate in the donation program may receive and retain swordfish from the North Atlantic swordfish stock that are in excess of a vessel's trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. Possession of an undersized swordfish other than in accordance with these terms and conditions constitutes a violation of the prohibition specified in § 620.7(a) of this chapter.

(1) Dealers must have available on their premises, or facility, the dealer selection letter from the Chief, Highly Migratory Species Division, and must present it for inspection upon the request of an authorized officer.

(2) A dealer may receive swordfish in excess of a vessel's trip allowance for undersized swordfish only from a vessel that has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program.

(3) A swordfish that is received under the donation program must be kept separate from other swordfish possessed by the dealer. The donation tag on such swordfish may not be removed.

(4) No dealer may sell, trade, or barter, or attempt to sell, trade, or barter, any swordfish, or any part thereof, that is retained under the donation program of this subpart.

(5) A dealer may transfer any swordfish that is received under the donation program only to Second Harvest, and such swordfish may be transported only by Second Harvest or their designated agent. The dealer must obtain the receipt specified in paragraph (d)(3) of this section from Second Harvest or their designated agent. A copy of the receipt must be furnished by the dealer to the harvesting vessel.

(6) The dealer must include individual swordfish tag numbers along with the associated individual carcass weights of swordfish received under the

donation program in the twice-monthly reports required by § 630.5(b).

(d) *Second Harvest.* Second Harvest, or its affiliates or agents, may receive and distribute swordfish from the North Atlantic swordfish stock that are in excess of the trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. Possession of a swordfish other than in accordance with these terms and conditions constitutes a violation of the prohibition specified in § 620.7(a) of this chapter.

(1) Second Harvest may receive swordfish that are in excess of the trip allowance for undersized swordfish only from a dealer who has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program.

(2) Second Harvest may receive only undersized swordfish with donation tags attached.

(3) Upon receiving swordfish under the donation program, Second Harvest must provide a bill of lading receipt that shows, or has affixed, individual carcass weights and associated tag numbers of swordfish received, the names and permit number(s) of the vessel(s) that harvested the swordfish, the name and permit number of the dealer, and the date of receipt. Such receipt must be distributed as follows: Original and one copy (for the vessel owner or operator) to the dealer, one copy to the Chief, Highly Migratory Species Division, and one copy retained by Second Harvest to accompany the carcass shipment until it is processed.

(4) All tags received by Second Harvest affiliates or agents must be returned to Second Harvest and accounted for by Second Harvest at the request of any authorized officer, or

Chief, Highly Migratory Species Division.

(5) Second Harvest, its affiliates or agents, may not sell, trade, or barter, or attempt to sell, trade, or barter, any swordfish or any part thereof that is retained under the donation program of this subpart.

(e) *Duration of selection.* A selection letter remains valid for the period specified therein, provided the permit issued to the participating vessel or dealer under § 630.4 remains valid, except that such selection letter may be revoked by the Chief, Highly Migratory Species Division—

(1) Upon the request of the participating vessel owner or dealer;

(2) Upon issuance of a Notice of Violation and Assessment against the participating vessel owner or dealer for a violation of the Magnuson Act (16 U.S.C. 1802 *et seq.*), the Lacey Act (16 U.S.C. 3371 *et seq.*), or the ATCA (16 U.S.C. 971 *et seq.*); or

(3) For actions not consistent with the requirements of the pilot program of this subpart.

(f) *Transfer.* A selection letter issued under this subpart is not transferable or assignable. Such letter is valid only for the vessel or dealer for which it was issued.

#### **§ 630.52 Termination.**

Upon a finding by the Assistant Administrator that the intended purposes of the program are not being achieved, or that the program is no longer in conformance with the recommendations of the International Commission for the Conservation of Atlantic Tunas, the Assistant Administrator may terminate the program by notification in the FEDERAL REGISTER.