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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 191011-0060]

RIN 0648-BJ29

Atlantic Highly Migratory Species; Removal of Billfish Certificate of Eligibility Requirements

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

ACTION: Final rule.

SUMMARY: This final rule removes obsolete language in the Atlantic highly migratory species (HMS) regulations requiring that a Billfish Certificate of Eligibility accompany certain product. The requirement to possess a Billfish Certificate of Eligibility no longer applies because passage of 2018 amendments to the Billfish Conservation Act of 2012 prohibited the associated product sales. This amendment removes a now-obsolete requirement consistent with an already-effective statutory provision. As further discussed below, we anticipate finding good cause that notice is unnecessary and that it will not be necessary to provide an opportunity for public comment. No aspect of this action is controversial.

DATES: This final rule is effective on [*insert date of publication in the Federal Register*].

ADDRESSES: Documents related to HMS fisheries management, such as the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments, are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic->

highly-migratory-species or upon request from the HMS Management Division at 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford by phone at 301-427-8503 or Rick Pearson by phone at 727-551-5742.

SUPPLEMENTARY INFORMATION: Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*, (ATCA). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) regulations implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries; these management measures have been amended or otherwise modified numerous times. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Background

The regulations at 50 CFR part 635 are promulgated under ATCA and the Magnuson-Stevens Act for the conservation and management of Atlantic HMS, including species of tunas, billfish, sharks, and swordfish. The sale of Atlantic billfish has been prohibited by regulation since implementation of the 1988 Fishery Management Plan (FMP) for the Atlantic Billfishes (53 FR 21501; June 8, 1988). The Billfish Conservation Act of 2012 prohibited any person from possessing or offering billfish or billfish products for sale but included a limited exception for Pacific billfish, with the result that Pacific billfish product could continue to be sold throughout the United States. Thus, HMS regulations continued to require that a Billfish Certificate of Eligibility accompany any billfish product sold to ensure that the product did not come from the Atlantic Ocean. In 2018, amendments to the Billfish Conservation Act of 2012, clarified that

billfish are only exempted from the sales prohibition when they are retained in Hawaii or the Pacific Insular Areas. Accordingly, such billfish may only be sold in the same location where landed or when legally transported to the other exempted location (i.e., from Hawaii to the Pacific Insular Areas or vice versa). The new prohibition became effective when the legislation was signed into law on August 2, 2018. Thus, the Billfish Certificate of Eligibility requirement in 50 CFR part 635 is no longer necessary, and this final rule removes the requirement.

Corrections to Remove Billfish Conservation Act of 2012 Language

Regulations at §§ 635.2 (definition of “Billfish Certificate of Eligibility (COE)” and 635.31(b)(2) and (3) are out of date. Except for two specific exemptions that apply to Hawaii and Pacific Insular Areas, the Billfish Conservation Act, as amended in 2018, prohibits any person from offering billfish or billfish products for sale, selling them, or having custody, control, or possession of them for purposes of offering them for sale. Therefore, any language in 50 CFR part 635 referencing the Billfish COE is obsolete. In order to be consistent with **Federal Register** guidelines, this final action removes the out of date definition at § 635.2 and the language at § 635.31(b)(2) and (3). This final action also revises the language at § 635.31 (b)(1).

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest. This action removes regulatory text at 50 CFR part 635 for a

requirement that became obsolete as a result of a statutory change that took place in 2018. For this reason, there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

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

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

NMFS has determined that fishing activities conducted pursuant to this rule will not affect endangered and/or threatened species or critical habitat listed under the Endangered Species Act, or marine mammals protected by the Marine Mammal Protection Act, because the action only removes obsolete regulatory text at 50 CFR part 635.

List of Subjects in 50 CFR Part 635

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

Dated: October 16, 2019.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

§ 635.2 [Amended]

2. In § 635.2, remove the definition of “Billfish Certificate of Eligibility (COE).”

3. In 635.31, revise paragraph (b) to read as follows.

§ 635.31 Restrictions on sale and purchase.

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(b) *Billfish*. Persons may not sell or purchase a billfish taken from its management unit.

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