

closure, and further communicated through the Highly Migratory Species Fax Network, the Atlantic Tunas Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line at (888) USA-TUNA, (301) 713-1279, or (978) 281-9305, to check the status of the fishery before leaving for a fishing trip.

#### Classification

This action is taken under 50 CFR 285.22 and is exempt from review under E.O. 12866.

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

Dated: September 23, 1998.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 98-25927 Filed 9-23-98; 4:58 pm]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 630

[Docket No. 980527137-8237-02; I.D. 121597D]

RIN 0648-AL24

#### Atlantic Swordfish Fishery; South Atlantic Quotas; Quota Adjustment Procedures

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to establish annual quotas for the South Atlantic swordfish stock and to amend the regulations governing quota adjustment procedures in the Atlantic swordfish fishery. The purpose of this action is to improve the conservation and management of the Atlantic swordfish resource, while allowing harvests consistent with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

**DATES:** All provisions of this final rule are effective October 8, 1998.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) supporting this action may be obtained from Rebecca Lent, Chief, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD

20910. Applications for a delayed offloading exempted fishing permit may be obtained from Buck Sutter, Highly Migratory Species Management Division, St. Petersburg, FL, (813) 570-5447.

#### FOR FURTHER INFORMATION CONTACT:

Steve Meyers or Jill Stevenson: 301-713-2347 or FAX 301-713-1917.

**SUPPLEMENTARY INFORMATION:** The harvest of Atlantic swordfish by U.S. fishermen is managed pursuant to the Fishery Management Plan for Atlantic Swordfish. Regulations found at 50 CFR part 630 and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.) and of the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 et seq.) implement the plan. Regulations issued under the authority of ATCA implement the recommendations of ICCAT.

Background information about the need for revisions to Atlantic swordfish fishery regulations was provided in the preamble to the proposed rule (63 FR 31710, June 10, 1998) and is not repeated here.

#### South Atlantic Swordfish Quota

In this final rule, NMFS establishes the South Atlantic swordfish quota of 289 mt dw (384 mt ww) for each of the 1998, 1999, and 2000 fishing years. A single fishing period each year is preferred by fishery participants, semi-annual quotas are not established. The quotas established are consistent with ICCAT recommendations and negotiated quota-sharing agreements.

Reminder: In South Atlantic waters, U.S.-flagged vessels continue to be prohibited from fishing for swordfish with any gear other than pelagic longline. Following a closure of the directed longline fishery in the South Atlantic Ocean, no incidental harvest is allowed. Permitting and reporting requirements and minimum size requirements are also applicable to the South Atlantic swordfish fishery. Because no South Atlantic swordfish quota has been allocated to the recreational fishery sector, recreational fishery participants are prohibited from fishing for or landing South Atlantic swordfish.

#### Quota Adjustment Procedures

In this final rule, NMFS revises quota adjustment procedures to expedite adjustments involving simple carryover situations within a season or between seasons. Specifically, NMFS will accomplish within- and between-season carryover quota adjustments by

notice action. NMFS will consult on long-term quota adjustments necessary to prevent overfishing and/or to comply with ICCAT recommendations with the Magnuson-Stevens Act advisory panels (APs) during annual discussions on the need to amend the Fishery Management Plan (FMP).

#### Other Issues

In addition to the above measures, NMFS requested comments in this rulemaking on two related issues that concern management of Atlantic swordfish: (1) The offloading of swordfish harvested from the South Atlantic stock during a closure in the North Atlantic fishery and (2) the use of trip limits to extend the length of the North Atlantic swordfish fishery.

#### Offloading of Swordfish

NMFS is continuing the swordfish Vessel Monitoring System (VMS) pilot program (63 FR 12687, March 16, 1998), with one modification to the offloading provisions applicable during closures of the directed swordfish fisheries. Fishermen that apply for and receive an exempted fishing permit (EFP) may (1) offload swordfish after a directed fishery closure in either the North or the South Atlantic swordfish fishery and (2) possess greater than 15 South Atlantic swordfish on board in the North Atlantic Ocean during a closure of the North Atlantic directed fishery. NMFS intends to issue EFPs to those vessels that purchase, install, and operate a VMS unit. To apply for an EFP, fishermen must contact NMFS (see **ADDRESSES**).

NMFS must implement an ICCAT recommendation that requires 10 U.S. vessels to operate VMS units for a 3-year pilot program, beginning in 1999. Vessels that participate in the swordfish VMS program may be able to participate in the ICCAT program as well. NMFS encourages vessels that fish on the high seas for swordfish to join voluntarily the ICCAT VMS pilot program.

#### Trip Limits

Trip limits were implemented on a temporary basis in 1996 to slow down catch rates and avoid extended closure periods. In 1997 the trip limits lapsed. NMFS received comments on trip limits during the comment period of the proposed consolidation of the regulations governing highly migratory species (HMS) (61 FR 57361, November 6, 1996) and requested comments in connection with the present rule (63 FR 31710, June 10, 1998). Based on comments received, NMFS is not implementing trip limits in this rulemaking due to the need for further

analyses. Trip limits will be considered, however, in the draft FMP and in subsequent public hearings and AP meetings.

### Comments and Responses

Two written comments were submitted to NMFS and three public hearings were held during the comment period.

### South Atlantic Swordfish Quota

*Comment:* Two commenters supported the 289 mt dw quota allocated to the South Atlantic swordfish fishery.

*Response:* NMFS agrees.

*Comment:* Two commenters stated that a split season is not necessary for the South Atlantic swordfish quota. They both suggested that a split season may result in unused South Atlantic quota due to the nature of the fishery (limited number of vessels, high costs per trip due to long travel times). Interest was expressed by a commenter that the season should start later in the calendar year than June 1 to correspond to the seasonal nature of the South Atlantic fishery. Another commenter suggested it might start earlier to allow the distant water fleet to take advantage of the high demand for swordfish in early July.

*Response:* NMFS agrees that a split season is not necessary in the South Atlantic fishery and is establishing a single annual fishing period for the South Atlantic swordfish fishery. Under this scenario, fishing years (and the annual quota) begin June 1 and continue until the quota is caught. NMFS recognizes that economic factors determine preferences for fishing seasons in different geographic areas and is currently considering alternatives in the HMS FMP that would adjust the start of the fishing year.

### Quota Adjustment Procedures

*Comment:* A commenter recommended that NMFS quickly finalize 1997 landings estimates in order for fishermen to benefit from the carryover of unused 1997 North Atlantic and South Atlantic swordfish quotas.

*Response:* NMFS agrees. By this rule NMFS is streamlining the quota carryover procedures in order to maximize the benefit to swordfish fishermen. Under the new procedures carryovers are established by notice action rather than by an extended rulemaking action.

*Comment:* Two commenters recommended establishing a swordfish evaluation panel of industry representatives to improve relations between NMFS and the commercial

swordfishing industry. They believe that a panel would improve the accuracy of swordfish landings projections made by NMFS. One commenter indicated that the HMS Advisory Panel is a poor replacement for developing a "reasonable swordfish evaluation panel process."

*Response:* NMFS does not believe that the establishment of such a panel (which would have to comply with the Federal Advisory Committee Act) is warranted. NMFS will consult on long term quota adjustments necessary to prevent overfishing with the Magnuson-Stevens Act advisory panels during discussions on the need to amend the FMP. For short-term carryover adjustments to quotas, options are limited, with reduced need for consultation.

### Offloading of Swordfish

*Comment:* One commenter supported the use of a VMS unit if Spanish and Japanese vessels were also required to use one. This commenter was concerned about the confidentiality of the information that would be collected by NMFS.

*Response:* NMFS established a voluntary unilateral swordfish VMS program to benefit U.S. fishermen. However, all ICCAT member nations must abide by a 1997 ICCAT recommendation for a VMS pilot program by 1999. Consistent with legal requirements, NMFS maintains confidentiality of VMS data submitted to the NMFS

### Office of Law Enforcement.

*Comment:* One commenter supported allowing vessels with a VMS unit on board to transit the North Atlantic Ocean with greater than 15 South Atlantic swordfish on board.

*Response:* NMFS agrees that offloading of South Atlantic swordfish in northern areas provides an economic benefit to swordfish fishermen during closures in the North Atlantic. However, NMFS currently requires fishermen to obtain an EFP to be able to transit the North Atlantic area during a closed period with greater than 15 swordfish on board.

### Trip Limits

*Comment:* One commenter stated that there should be no trip limit in the South Atlantic swordfish fishery due to high costs incurred while fishing in that area.

*Response:* NMFS will not implement trip limits in the South Atlantic fishery because there is no need to slow the pace of the fishery at this time. Trip limits for the South Atlantic swordfish

fishery will be considered if the need arises to slow the pace of the fishery.

*Comment:* One commenter reiterated past comments that support trip limits only if accompanied by restrictive measures for smaller vessels such as a days-between-landings program. This commenter expressed that there would be a reduced likelihood of a closure in the first semi-annual season of the 1998 North Atlantic swordfish fishery due to a reduction in the distant water fleet and the carryover of unharvested 1997 quota.

*Response:* This issue needs additional analyses and opportunity for public comment. Enforcement is a particular concern for days-between-landings. NMFS agrees that, to the extent practicable, all fishery participants should be fairly affected by any effort controls in the Atlantic swordfish fisheries. The draft HMS FMP includes a re-proposal for limited access in the swordfish fishery. Once limited access measures are in place, further effort controls can be considered.

### Changes From the Proposed Rule

Based on comments received on the proposed rule, a single season quota is established for the South Atlantic swordfish fishery. No additional changes, other than editorial changes, were made to the proposed rule.

### Classification

This final rule is published under the authority of ATCA and the Magnuson-Stevens Act. The Assistant Administrator for Fisheries (AA), NOAA, has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and for the domestic management of the Atlantic swordfish fishery.

NMFS prepared an EA for this final rule with a finding of no significant impact on the human environment. In addition, an RIR was prepared with a finding of no significant impact. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities as follows. The quota represents an increase relative to the 1997 quota, reflects U.S. fishing effort and catch in 1993 and 1994, and is not overly restrictive. As a result, these measures will not have a significant economic impact on a substantial number of small entities. No comments were received that changed that basis for the original

certification. Therefore, no Regulatory Flexibility Analysis was prepared.

Because this rule increases the harvest quota for swordfish from the South Atlantic swordfish stock, thereby extending the fishing season and reducing the likelihood or duration of a fishery closure, this rule relieves a restriction and under 5 U.S.C. 553(d)(1) is not subject to a delay in effective date. To the extent that this rule implements certain quota adjustment procedures that will expedite carryover of North Atlantic swordfish quota not harvested in the 1997 fishing year, the AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of the new procedures for 30 days. NMFS will rapidly communicate the new regulations to fishery participants through its FAX network and HMS Information Line.

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

NMFS reinitiated formal consultation for the South Atlantic swordfish fishery on May 4, 1998, under section 7 of the ESA. The Biological Opinion resulting from this consultation was issued on August 5, 1998. It concluded that continued operation of the longline fishery in the South Atlantic Ocean may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction.

#### List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: September 23, 1998.

**Gary C. Matlock,**

Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is amended as follows:

#### PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

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

2. In § 630.24, paragraph (a)(3) is added; paragraphs (b), and (d) through (f) are revised; and paragraphs (g) and (h) are removed to read as follows:

##### § 630.24 Quotas.

(a) \* \* \*

(3) A swordfish possessed on board or offloaded from a vessel that used or had on board a driftnet during its current or most recent fishing trip in waters of the North and/or South Atlantic Oceans

(including the Gulf of Mexico and Caribbean Sea) will be deemed to have been harvested by a driftnet.

(b) *Directed-fishery quotas.* (1) The annual directed fishery quota for the North Atlantic swordfish stock for the period June 1, 1998, through May 31, 1999, is 2,098.6 mt dw, of which 2,057 mt dw is allocated for the longline/harpoon fishery and 41.6 mt dw is allocated for the driftnet fishery. The allocation for the longline/harpoon fishery is divided into two equal semiannual quotas of 1,028.5 mt dw, one for the period June 1 through November 30, 1998, and the other for the period December 1, 1998, through May 31, 1999.

(2) The annual directed fishery quota for the North Atlantic swordfish stock for the period June 1, 1999, through May 31, 2000, is 2,033.2 mt dw, of which 1,993 mt dw is allocated for the longline/harpoon fishery and of which 40.2 mt dw is allocated for the drift gillnet fishery. The allocation for the longline/harpoon fishery is divided into two equal semiannual quotas of 996.5 mt dw, one for the period June 1 through November 30, 1999, and the other for the period December 1, 1999, through May 31, 2000.

(3) The annual directed fishery quota for the South Atlantic swordfish stock for the period June 1, 1998, through May 31, 1999, is 289 mt dw.

(4) The annual directed fishery quota for the South Atlantic swordfish stock for the period June 1, 1999, through May 31, 2000, is 289 mt dw.

(5) The annual directed fishery quota for the South Atlantic swordfish stock for the period June 1, 2000, through May 31, 2001, is 289 mt dw.

\* \* \* \* \*

(d) *Annual adjustments.* (1) As necessary, NMFS will reevaluate the annual directed fishery quotas for the North and South Atlantic swordfish stocks and the annual incidental catch quota for the North Atlantic swordfish stock. NMFS will consider the best available scientific information regarding the following factors:

- (i) Swordfish stock abundance assessments;
- (ii) Swordfish stock age and size composition;
- (iii) Catch and effort in the swordfish fishery; and
- (iv) Consistency with ICCAT recommendations.

(2) Except for the carryover provisions of paragraph (d)(3), of this section, NMFS will announce any adjustments to the annual quotas by publication of a notice in the **Federal Register**, providing for a 30-day minimum

comment period. NMFS will prepare a report of its evaluations, a regulatory impact review, and an environmental assessment; and such documents will be made available to the public. NMFS will take into consideration all information received during this comment period and will publish a final rule in the **Federal Register**.

(3) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that management area. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual periods. NMFS will publish notification in the **Federal Register** of any adjustment and of the apportionment made under this paragraph (d)(3).

(e) *Inseason adjustments.* (1) NMFS may adjust the December 1 through May 31 semiannual directed fishery quota and gear quotas to reflect actual catches during the June 1 through November 30 semiannual period, provided that the 12-month directed fishery and gear quotas are not exceeded.

(2) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed fishery quotas.

(3) If NMFS determines that it is necessary to close the directed fishery, any estimated overharvest or underharvest of the directed fishery quota available immediately prior to that closure will be used to adjust the annual incidental catch quota accordingly.

(4) NMFS will publish notification in the **Federal Register** of any inseason adjustment and its apportionment made under this paragraph (e).

(f) *Gear allocations.* If NMFS determines that the annual or semiannual directed fishery or incidental catch quotas must be adjusted pursuant to paragraph (d) or (e) of this section, the annual or semiannual gear quotas will be adjusted so that the new gear quotas represent the same proportion (percentage) of the adjusted quota as they did of the quota before adjustment, provided such adjusted gear quotas are consistent with applicable requirements under the Endangered Species Act and the Marine Mammal Protection Act.

[FR Doc. 98-25928 Filed 9-24-98; 4:24 pm]

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