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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 960314073-6073-01; I.D. 030896E]

RIN 0648-AI23

Atlantic Swordfish Fishery; Quotas, Minimum Size, and Technical Changes

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to amend the regulations governing the Atlantic swordfish fishery to: Reduce the total allowable catch (TAC) to 2,625 metric tons (mt) dressed weight (dw) via a split season (June 1 - May 31), decrease the minimum size to 73 cm (29 inches) cleithrum to caudal keel measure and eliminate the trip allowance for undersized fish, and make technical changes to ensure consistency of regulations. The intent of this action is to protect the swordfish resource while allowing harvests of swordfish consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: Comments on the proposed rule must be submitted on or before May 2, 1996.

ADDRESSES: Copies of an Environmental Assessment/Regulatory Impact Review (EA/RIR) supporting this action may be obtained from William Hogarth, Acting Chief, Highly Migratory Species Management Division, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to William Hogarth and to the Office of Management and Budget (OMB), (0648-0016), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: William Hogarth, 301-713-2339; fax: 301-713-0596.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part

630 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

The 1994 ICCAT stock assessment for North Atlantic swordfish indicated the stock is continuing to decline and that large reductions in quotas are required in the immediate future to rebuild the stock to levels that can support the maximum sustainable yield. In 1995, the Standing Committee on Research and Statistics (SCRS) of ICCAT re-ran the stock production model using revised catch data through 1993, and results indicated that the North Atlantic swordfish resource has continued to decline despite reductions in total reported landings from peak values in 1987. Based on the assessment results, ICCAT recommended reduced quotas for the major nations fishing for North Atlantic swordfish, i.e., the United States, Spain, Canada, and Portugal. For 1996, the recommended U.S. quota is 3,500 mt whole weight (ww), or 5.8 million lb dw.

These proposed regulatory changes would improve NMFS' ability to implement the ICCAT recommendations and further the management objectives for the Atlantic swordfish fishery. NMFS has re-evaluated the annual TAC, the seasonal implementation of this TAC, and the need for technical changes to the regulatory text in the Atlantic swordfish fishery in accordance with the procedures and factors specified in 50 CFR 630.24(d), including consideration of the latest stock assessment and recommendations of ICCAT. The proposed regulations are summarized as follows:

1. Total Allowable Catch (TAC)

NMFS proposes to change the definition of the fishing year for purposes of TAC implementation for several reasons. First, establishing that the fishing year begins June 1 would facilitate NMFS' implementation of ICCAT quotas for all future years by allowing additional months following the November ICCAT meeting for the regulatory process (scoping, proposed rule, public hearings, final rule). Second, this approach would ensure that the domestic swordfish fishery would be open during certain critical marketing months, namely early July and the December holiday period. Anecdotal evidence indicates that if the swordfish fishery is subject to a calendar-year quota, closures during December are particularly difficult, not

only due to the inability to supply the holiday market demand for swordfish, but also due to the lack of alternative fisheries (no other tunas, for example). There is a high probability that the large coastal shark fishery would be closed during that end-of-the-year time period as well.

NMFS proposes to decrease the annual TAC by 359 mt to 2,625 mt, which is consistent with the 1994 ICCAT recommendation. All weights are in dressed weight of swordfish, unless indicated otherwise. The TAC would be divided between a directed-fishery quota of 2,371 mt and a bycatch quota of 254 mt. The directed-fishery quota would be divided into two 1,185.5 mt semiannual quotas for each of the 6-month periods, June 1 through November 30, and December 1 through May 31. Each of the 1,185.5 mt semiannual quotas would be further subdivided into a drift gillnet quota of 23.45 mt and a longline and harpoon quota of 1,162.05 mt. This allocation by gear types uses the same percentages that were in effect in 1995.

NMFS estimates that approximately 97.6 mt of swordfish semiannually will be discarded dead, based on the rate used in 1995. Therefore, the semiannual landing quota for the longline and harpoon swordfish fishery would be the semiannual catch quota of 1162.05 mt minus the estimated semiannual dead discards of 97.6 mt, or 1,064.44 mt for each of the two semiannual periods.

Following a closure of the directed longline fishery, any overharvest or underharvest would be added or subtracted, respectively, to the bycatch reserve of 254 mt. The ability to add or subtract underage or overage ensures that the United States would abide by ICCAT quotas.

NMFS has no new information sufficient to justify changes in the existing 10 mt special set-aside quota for harpoon gear.

2. Bridge Period TAC

Because a split season is proposed, a bridge period TAC must be determined for the first 5 months of 1996. NMFS proposes a TAC equal to five twelfths of the 1995 U.S. quota, which is equivalent to 1,149.5 mt (106 mt bycatch, 1021 mt longline, and 22.5 mt drift gillnet).

Quota for this bridge period plus the first semiannual quota result in a January 1-December 1 quota of 2,364.4 mt dw, or approximately 3,144.6 mt round weight, which is 355 mt less than the 3,500 mt calendar-year quota set by ICCAT. Since it is unlikely that December 1996 landings will exceed 355 mt, implementation of the split season with the five twelfths bridge

period TAC also meets the ICCAT calendar year quota requirements.

3. Alternative Minimum Size

This proposed rule would implement the ICCAT-recommended alternative minimum size of 119 cm lower jaw fork length with a zero tolerance for undersized fish. Therefore, the current tolerance of undersized fish (15 percent by number per trip) would be eliminated. The minimum size is equivalent to a cleithrum to caudal keel measure (CK) of 73 cm (29 inches) or 15 kg (33 lb) dw. SCRS research shows that this reduced minimum size with zero tolerance is equivalent to the alternative recommendation in terms of fishing mortality. This alternative would allow U.S. fishermen to harvest smaller fish and may reduce the discard rate. It also greatly facilitates enforcement.

4. Technical Changes

This proposed rule includes changes to the regulatory text regarding vessel reporting requirements, in an effort to be consistent with changes in the logbook program.

Classification

This proposed rule is published under the authority of ATCA. The Assistant Administrator has preliminarily determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic swordfish fishery. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule would not have a significant economic impact on a substantial number of small entities. The 1996 TAC represents about a 12 percent reduction from the TAC of the previous year, which could result in short-term potential losses in gross revenue of about \$3.2 million. However, these potential losses will be at least partially offset by increases in price due to declining supply (demand is price-inelastic) and the split season. In addition, pelagic longline vessels may redirect fishing effort to Atlantic tunas, dolphin fish, and other species, as occurred in the 1995 season. As a result, a regulatory flexibility analysis was not prepared. The RIR provides further discussion of the economic effects of the proposed rule.

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

Notwithstanding any other provision of law, no person is required to respond

to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

This proposed rule includes changes to the regulatory text regarding vessel reporting requirements, in an effort to be consistent with changes in the logbook program. However, there are no new collection-of-information requirements since the proposed rule simply clarifies requirements that have been approved by the Office of Management and Budget under Control Number 0648-0016. Public reporting burden for this collection of information is estimated to average 2 minutes for logbook records and trip summaries.

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. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see ADDRESSES).

NMFS issued biological opinions under the Endangered Species Act on September 1, 1995, and on February 2, 1996, indicating that the level of impact and marine mammal takes from the longline and harpoon, and drift gillnet swordfish fishery is not likely to jeopardize the continued existence of any sea turtle species or any marine mammal populations.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: April 2, 1996.

Gary Matlock,

Program Manager, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is proposed to be 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 § 630.5, paragraph (a)(1) is revised to read as follows:

§ 630.5 Recordkeeping and recording.

(a) *Fishing vessel reports.* (1) The owner and operator of a vessel for which a vessel permit has been issued

under § 630.4 must ensure that a daily logbook form is maintained of the vessel's swordfishing effort, catch, and disposition on logbook forms available from the Science and Research Director. Such forms must be submitted to the Science and Research Director postmarked not later than the 7th day after sale of the swordfish off-loaded from a trip. If no fishing occurred during a month, a report so stating must be submitted in accordance with instructions provided with the logbook forms. Logbooks must be kept on board the vessel at all times.

* * * * *

3. In § 630.7, paragraph (q) is revised to read as follows:

§ 630.7 Prohibitions.

* * * * *

(q) Possess on board a vessel a swordfish that is smaller than the minimum size specified in § 630.23(a).

* * * * *

4. In § 630.23, paragraph (b) is removed, paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively, and the first sentence of paragraph (a) and the last sentence of newly designated paragraph (b) are revised to read as follows:

§ 630.23 Harvest limitations.

(a) *Minimum size.* The minimum allowable size for possession on board a fishing vessel for a swordfish taken from the management unit is 29 inches (73 cm) carcass length, measured along the body contour (i.e., a curved measurement) from the cleithrum to the anterior portion of the caudal keel (CK measurement) or, if swordfish are weighed, 33 lb (15 kg) dressed weight.

* * *

(b) * * * A shark-bit swordfish for which the remainder of the carcass is less than the minimum size limit specified in paragraph (a) of this section may not be landed.

* * * * *

5. In § 630.24, paragraphs (b)(1), (d)(4), and (e) are revised, paragraph (b)(2) is redesignated as paragraph (b)(3), and a new paragraph (b)(2) is added to read as follows:

§ 630.24 Quotas.

* * * * *

(b) * * *

(1) The directed fishery quota for the period January 1, 1996, through May 31, 1996, is 1,021 mt dressed weight for the longline fishery, 22.5 mt dressed weight for the drift gillnet fishery, and 106 mt dressed weight for the bycatch fishery.

(2) The annual quota for the directed fishery for swordfish is 2,371 mt dressed

weight, divided into two semiannual quotas as follows:

(i) For the semiannual period June 1 through November 30:

(A) 23.45 mt dressed weight, that may be harvested by drift gillnet; and

(B) 1,162.05 mt dressed weight that may be harvested by longline and harpoon. To account for harvested fish that are discarded dead, only 1064.44 mt dressed weight, may be landed in this category.

(ii) For the semiannual period December 1 through May 31:

(A) 23.45 mt dressed weight that may be harvested by drift gillnet; and

(B) 1,162.05 mt dressed weight that may be harvested by longline and harpoon. To account for harvested fish that are discarded dead, only 1064.44

mt dressed weight may be landed in this category.

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(d) * * *

(4) Any adjustments to the 12-month directed-fishery quota will be apportioned equally between the June 1 through November 30 and December 1 through May 31 semiannual periods.

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(e) 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.

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6. In § 630.25, the first sentence of paragraph (b) is revised to read as follows:

§ 630.25 Closures and bycatch limits.

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(b) * * * The procedures of paragraph (a)(1) of this section notwithstanding, during the June 1 through November 30 semiannual period, swordfish not exceeding 21,500 lb (9,752 kg), dressed weight, may be set aside for the harpoon segment of the fishery. * * *

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