

List of Subjects in 49 CFR Part 71

Time zones.

For the reasons discussed above, the Office of the Secretary proposes to amend Title 49 Part 71 as follows:

PART 71—STANDARD TIME ZONE BOUNDARIES

1. The authority citation for part 71 continues to read as follows:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; Pub. L. 106–564, 15 U.S.C. 263, 114 Stat. 2811; 49 CFR 1.59(a).

2. Paragraph (b) of § 71.5 is revised to read as follows:

§ 71.5 Boundary line between eastern and central zones.

* * * * *

(b) *Indiana-Illinois.* From the junction of the western boundary of the State of Michigan with the northern boundary of the State of Indiana easterly along the northern boundary of the State of Indiana to the east line of LaPorte County; thence southerly along the east line of LaPorte County to the north line of Starke County; thence east along the north line of Starke County to the west line of Marshall County; thence south along the west line of Marshall County thence west along the north line of Pulaski County to the east line of Jasper County; thence south along the east line of Jasper County to the south line of Jasper County; thence west along the south lines of Jasper and Newton Counties to the western boundary of the State of Indiana; thence south along the western boundary of the State of Indiana to the north line of Knox County; thence easterly along the north line of Knox, Daviess, and Martin Counties to the west line of Lawrence County; thence south along the west line of Lawrence, Orange, and Crawford Counties to the north line of Perry County; thence easterly and southerly along the north and east line of Perry County to the Indiana-Kentucky boundary.

Issued in Washington, DC on November 22, 2006.

Rosalind A. Knapp,

Acting General Counsel.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 061121306–6306–01; I.D. 110206A]

RIN 0648–AU86

Atlantic Highly Migratory Species (HMS); U.S. Atlantic Swordfish Fishery Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend regulations governing the U.S. Atlantic swordfish fishery to enable a more thorough utilization of the U.S. North Atlantic swordfish quota. The U.S. North Atlantic swordfish quota is derived from the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). For the past several years, the U.S. Atlantic swordfish fishery has not fully harvested its available quota. The objective of this proposed action is to provide a reasonable opportunity for U.S. vessels to fully harvest the ICCAT-recommended U.S. North Atlantic swordfish quota, as specified in the Magnuson-Stevens Act, in recognition of the improved stock status of North Atlantic swordfish. This proposed rule would increase swordfish retention limits for incidental swordfish permit holders, and modify recreational swordfish retention limits for HMS Charter/headboat and Angling category permit holders. The proposed rule would also modify HMS limited access vessel upgrading restrictions for pelagic longline (PLL) vessels. These actions are necessary to address persistent underharvests of the domestic swordfish quota, while continuing to minimize bycatch to the extent practicable, so that swordfish are harvested in a sustainable, yet economically viable manner.

DATES: Written comments on the proposed rule must be received by 5 p.m. on January 31, 2007.

ADDRESSES: Written comments on the proposed rule or the Draft Environmental Assessment (Draft EA) may be submitted to Sari Kiraly,

Fisheries Management Specialist, Highly Migratory Species Management Division, using any of the following methods:

- E-mail: SF1.110206A@noaa.gov.
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope “Comments on Proposed Swordfish Rule”.
- Fax: 301–713–1917.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Include in the subject line the following identifier: “I.D. 110206A.”

Copies of the Draft EA, the 2006 Final Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) and other relevant documents are also available from the Highly Migratory Species Management Division website at <http://www.nmfs.noaa.gov/sfa/hms> or by contacting Sari Kiraly (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Sari Kiraly, by phone: 301–713–2347; by fax: 301–713–1917; or by e-mail: Sari.Kiraly@noaa.gov, or Richard A. Pearson, by phone: 727–824–5399; by fax: 727–824–5398; or by e-mail: Rick.A.Pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:**The North Atlantic Swordfish Fishery**

The U.S. Atlantic swordfish fishery is managed under the Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), and ATCA (16 U.S.C. 971 *et seq.*). Under ATCA, the United States is obligated to implement the recommendations of ICCAT, including those for Atlantic swordfish quotas (ICCAT Recommendations 02–02, 03–03, and 04–02). ICCAT is an inter-governmental fishery organization, currently consisting of 42 contracting parties, that is responsible for the conservation of tunas and tuna-like species, including swordfish, in the Atlantic Ocean and its adjacent seas.

In 2001, ICCAT established its “Criteria for the Allocation of Fishing Possibilities” (ICCAT Recommendation 01–25) that included 15 separate criteria to be considered when allocating quota within the ICCAT framework. The first two criteria relate to the past and present fishing activity of qualifying participants. These criteria specify that “historical catches” and “the interests, fishing patterns and fishing practices” of qualifying participants are to be considered when making allocation recommendations. Other criteria, including conservation measures, economic importance of the fishery,

geographical occurrence of the stock, compliance with ICCAT management measures, and dependence on the stocks, must also be considered when allocating quota.

At its 2002 meeting, ICCAT established an annual Total Allowable Catch (TAC) for North Atlantic swordfish of 14,000 mt (ww) for the years 2003, 2004, and 2005 (ICCAT Recommendation 02–02). A 14,000 mt (ww) TAC was later established for 2006 (ICCAT Recommendation 04–02) as well. 1,185 mt (ww) of the TAC were allocated to “other contracting parties and others,” with the remainder being distributed to the European Community (52.42 percent), United States (30.49 percent), Canada (10.52 percent), and Japan (6.57 percent), using the allocation criteria described above. This resulted in a baseline U.S. North Atlantic swordfish quota of 3,907 mt (ww) for the period 2004 - 2006.

An examination of historical catches reveals that U.S. North Atlantic swordfish catches, as reported to ICCAT, have declined by approximately 40 percent from 4,026 mt (ww) in 1995 to 2,424 mt (ww) in 2005, although they have stabilized since 2001. As a percent of the ICCAT-recommended U.S. quota, the decline in U.S. North Atlantic swordfish landings is even more apparent. Because landings below the baseline quota (an “underage”) in one year may be added to the subsequent year’s baseline quota, the “adjusted” U.S. North Atlantic swordfish quota has continued to increase. The United States has landed less than its ICCAT-recommended “baseline” and “adjusted” swordfish quota since 1997. Based on reported landings to ICCAT, the United States went from exceeding its “baseline” quota in 1996 to landing only 29 percent of its “adjusted” quota in 2005. As indicated above, reported catches in 2005 were 2,424 mt (ww) versus a 2005 “adjusted” quota of 8,319 mt (ww). This trend is likely to continue in 2006 because the “adjusted” quota is again significantly higher (9,803 mt (ww)). U.S. North Atlantic swordfish landings have also been less than the unadjusted “baseline” ICCAT-recommended quota since 1997. The United States landed approximately 62 percent (2,424 mt (ww)) of its unadjusted North Atlantic swordfish “baseline” quota (3,907 mt (ww)) in 2005.

The ICCAT Standing Committee on Research and Statistics (SCRS) just completed a stock assessment for North Atlantic swordfish in October 2006. The 2006 assessment indicated that North Atlantic swordfish biomass had improved, possibly due to strong

recruitment in the late 1990’s combined with reductions in reported catch since then. The SCRS estimated the biomass of North Atlantic swordfish at the beginning of 2006 (B_{2006}) to be at 99 percent of the biomass necessary to produce maximum sustainable yield (B_{MSY}). The 2005 fishing mortality rate (F_{2005}) was estimated to be 0.86 times the fishing mortality rate at maximum sustainable yield (F_{MSY}). In other words, in 2006, the North Atlantic swordfish stock is almost fully rebuilt and fishing mortality is low.

NMFS has implemented several important management measures in recent years, primarily to reduce the bycatch of undersized swordfish, non-target species, and protected species. These actions have been very effective at reducing bycatch, but they may also have had the unintended consequence of contributing to persistent underharvests of the U.S. swordfish quota, and a precipitous decline in the number of active PLL vessels (“active” is defined as vessels that report landings in the HMS logbook). Some of these measures include: Year-round closures in the DeSoto Canyon and East Florida Coast areas; seasonal closures in the Charleston Bump and Northeastern areas; limited access vessel permits; mandatory utilization of Vessel Monitoring Systems (VMS); mandatory circle hook and bait requirements; possession and utilization of release and disentanglement gear; utilization of non-stainless hooks; and a live bait prohibition in the Gulf of Mexico.

The Magnuson-Stevens Act specifies that NMFS shall provide a reasonable opportunity for domestic vessels to harvest quota allocations that are derived from international fishery agreements, such as ICCAT recommendations. In this action, NMFS prefers alternatives that would modify some management measures (swordfish retention limits and vessel upgrading provisions) to increase domestic swordfish landings and revenues, but that would also retain important bycatch reduction provisions. The preferred alternatives are intended to demonstrate that the United States is committed to revitalizing its historical swordfish fishery in recognition of the improved stock status of North Atlantic swordfish, and help to maintain or increase the historical U.S. North Atlantic swordfish quota allocation. These actions are necessary to address persistent underharvests of the domestic swordfish quota, while continuing to minimize bycatch to the maximum extent practicable, so that swordfish are harvested in a sustainable, yet economically viable manner.

This action would reduce swordfish dead discards by increasing swordfish retention limits for incidental swordfish permit holders, and modify recreational swordfish retention limits for HMS Charter/headboat and Angling category permit holders. This proposed rule would also modify HMS limited access vessel upgrading and permit transfer upgrading restrictions for PLL vessels.

The Agency conducted an Environmental Assessment to analyze alternatives for increasing incidental and recreational swordfish retention limits, and modifying HMS limited access vessel upgrading restrictions, while continuing to minimize the bycatch of target, non-target and protected species to the maximum extent practicable.

North Atlantic Swordfish Retention Limits

Under current regulations, vessels issued valid incidental swordfish limited access permits, other than those in the squid trawl fishery, are allowed to retain, possess or land no more than two swordfish per vessel per trip in or from the Atlantic Ocean north of 5° N. lat. Vessels issued valid incidental swordfish limited access permits and participating in the squid trawl fishery are allowed to retain, possess, or land no more than five swordfish per trip from the same area. HMS Angling and Charter/Headboat vessel permit holders are allowed to retain one North Atlantic swordfish per person, up to three per vessel per trip.

In addressing swordfish retention limits, three preferred alternatives were identified. One preferred alternative would increase the North Atlantic swordfish retention limit for vessels issued valid incidental swordfish limited access permits to 30 fish per vessel per trip; and, for vessels issued valid incidental swordfish limited access permits that participate in the squid trawl fishery, would increase the limit to 15 fish per vessel per trip. This alternative would allow vessels issued valid incidental swordfish limited access permits to land incidentally caught swordfish that might otherwise be discarded under the current two-fish limit. Also, it provides a reasonable opportunity for swordfish incidental permit holders to harvest the U.S. swordfish quota, but prevents a large increase in additional directed fishing effort on swordfish. This alternative is expected to have limited adverse ecological impacts because vessel operators are not expected to substantially alter their fishing practices for the opportunity to land 28 additional swordfish.

A second preferred alternative would allow HMS Charter/headboat vessels to retain one fish per paying passenger (i.e., not including the captain or crew), up to six swordfish per trip for charter vessels, and 15 swordfish per trip for headboat vessels. This alternative would maintain the current recreational limit of one swordfish per person, but increase the allowable upper retention limit from three fish per vessel. A six-fish upper vessel retention limit for charter vessels was the only alternative analyzed for this sector, besides the no action alternative, because these vessels are licensed to carry a maximum of six passengers per trip. Although headboats can carry upwards of 50 passengers, a 15-fish retention limit was analyzed because it would provide a better opportunity for anglers on headboats to land a swordfish while maintaining a recreational aspect to the charter/headboat fishery. In addition, given the lack of data for swordfish retention by anglers, a 15 fish limit is in keeping with a precautionary approach in that this limit is five times the limit now allowed, but is still conservative enough so as to preclude potential negative effects on the swordfish stock. This alternative is preferred in recognition of the fact that charter and headboat vessels may carry many paying passengers, and because it could provide additional U.S. swordfish landings with limited adverse ecological impacts.

A third preferred alternative would allow HMS Angling category vessels to retain one fish per person, up to four swordfish per vessel per trip. This alternative maintains the current recreational limit of one swordfish per person, but increases the upper retention limit from three fish to four fish per vessel per trip. A four-fish upper vessel retention limit for angling vessels was the only alternative analyzed for this sector, besides the no action alternative, because it would provide a modest increase in the opportunity to land a swordfish, while maintaining a recreational aspect to the fishery. Because there were 25,238 vessels issued HMS Angling category permits, as of February 1, 2006, an increase in the upper retention limit of more than one fish per angling vessel was considered, but rejected, due to concerns about potentially excessive recreational landings. HMS Angling category vessels do not carry paying passengers, so a higher limit based on the number of paying passengers onboard was considered, but rejected. This alternative is preferred because it could provide additional U.S. swordfish

landings, with limited adverse ecological impacts.

NMFS does not expect significant adverse ecological impacts to result from the proposed regulations to increase swordfish retention limits. The ecological impacts would vary based upon the resulting level of fishing effort. Currently, the U.S. swordfish fleet has been unable to catch the entire U.S. North Atlantic swordfish quota, causing significant amounts to be carried over to the subsequent fishing years. Adjusting incidental and recreational swordfish retention limits would allow swordfish that otherwise may have been discarded to be landed, thereby providing economic benefits while contributing to domestic swordfish landings. The proposed measures are not expected to significantly increase fishing effort because other management measures to mitigate adverse ecological impacts would remain in place. These include PLL time/area closures, mandatory PLL circle hook and bait requirements, mandatory PLL possession and use of release and disentanglement gear, a PLL live bait prohibition in the Gulf of Mexico, PLL VMS requirements, species-specific quotas, retention limits, minimum size limits, authorized gears, dealer and vessel logbook reporting, observer requirements, and HMS limited access vessel permits.

The social and economic impacts associated with the proposed regulations to increase swordfish retention limits would vary based upon the amount of swordfish kept minus any additional costs associated with catching the additional swordfish. The potential economic benefits associated with increased retention limits for Incidental swordfish permit holders are estimated by taking the difference between the value of two swordfish and the value of 30 swordfish, approximately \$7,864 per vessel per trip. For Charter/headboat vessels, the economic benefit would be derived from an increased perceived value of a for-hire or private trip for an angler, due to the ability to land more fish. Recreational anglers might take more trips, which could also lead to some multiplier benefits to tackle shops, boat dealers, hotels, fuel suppliers, and other related businesses.

HMS Limited Access Vessel Upgrading Restrictions

Under current regulations, owners may upgrade vessels or transfer permits to another vessel only if the vessel upgrade or permit transfer does not result in an increase in horsepower (HP) of more than 20 percent, or an increase of more than 10 percent in length

overall (LOA), gross registered tonnage (GRT), or net tonnage (NT), relative to the respective specifications of the first vessel issued the initial limited access permit (the baseline vessel). If any of the three vessel size specifications is increased, any increase in the other two must be performed at the same time. The current regulations also specify that vessel horsepower and vessel size may be increased only once. However, vessel size may be increased separately from an increase in vessel horsepower.

The proposed regulations establish new HMS limited access vessel upgrading and permit transfer upgrading restrictions only for HMS vessels that are authorized to fish with pelagic longline gear for swordfish and tunas, equivalent to 35 percent LOA, GRT, and NT, as measured relative to the baseline vessel specifications (i.e., the specifications of the vessel first issued an HMS limited access permit), and removes HP upgrading and HP permit transfer upgrading restrictions for these vessels. The proposed regulations also specify that vessel size may be increased only once subsequent to publication of the final regulations. This alternative is preferred because it could improve the ability of U.S. vessels to fully harvest the domestic ICCAT recommended North Atlantic swordfish quota, but imposes some limits on vessel upgrading by restricting the universe of potentially impacted entities only to PLL vessels, and limits the magnitude of allowable upgrades.

Under the proposed measures, fishing effort could potentially increase. However, any potential adverse ecological impacts associated with an increase in effort are expected to be mitigated by existing PLL management measures that would remain in effect, and which have significantly reduced bycatch in recent years. These include PLL time/area closures, PLL circle hook and bait restrictions, and all of the other measures that were described above. Because these existing management measures would remain in effect, and because of the limits on the magnitude and number of vessels affected by the upgrading modifications, NMFS does not expect significant adverse ecological impacts from the proposed regulations to modify PLL vessel upgrading restrictions.

Under the proposed regulations, positive social and economic impacts are anticipated. Vessel owners would gain economic benefits by having increased flexibility to adjust their vessel configurations to better fit their business needs. In addition, they would have a better ability to safely carry observers. The ability to upgrade could

also enhance the quality of life for crew and captains by providing larger, more comfortable, and more modern vessels. Finally, the potential to lengthen vessels and upgrade engine horsepower might have important positive safety implications, especially for smaller vessels operating far offshore in areas prone to extreme weather. The preferred alternative is not expected to adversely affect recreational fishing, as larger PLL vessels may be more likely to fish further offshore, and away from ecologically sensitive nearshore areas.

NMFS intends to hold public hearings to receive comments from fishery participants and other members of the public regarding the proposed swordfish regulations. The public hearing dates and locations will be announced in a forthcoming notice to be published in the **Federal Register**.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. NMFS has preliminarily determined that this action is consistent with section 304(b)(1) of the Magnuson-Stevens Act, including the national standards, and other applicable law.

An EA has been prepared that describes the impact on the human environment that could result from the implementation of alternative management measures to provide a reasonable opportunity for U.S. fishing vessels to harvest the ICCAT recommended domestic swordfish quota allocation by increasing recreational and incidental swordfish retention limits, and modifying HMS limited access vessel upgrading restrictions. Based on the EA, Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) under the Regulatory Flexibility Act, and a review of the National Environmental Policy Act (NEPA) criteria for significance evaluated above (NAO 216-6 Section 6.02), no significant effect on the quality of the human environment is anticipated from this action.

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

In compliance with Section 603 of the Regulatory Flexibility Act, an Initial Regulatory Flexibility Analysis was prepared for this rule. The IRFA analyzes the anticipated economic impacts of the preferred actions and any significant alternatives to the proposed rule that could minimize economic impacts on small entities. A summary of the IRFA is below. The full IRFA and analysis of economic and ecological impacts are available from NMFS (see **ADDRESSES**).

In compliance with Section 603(b)(1) and (2) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act and ATCA, to modify North Atlantic swordfish incidental and recreational retention limits and HMS limited access vessel upgrading restrictions to provide a reasonable opportunity for U.S. vessels to fully harvest the ICCAT recommended domestic swordfish quota.

Section 603(b)(3) requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The proposed actions to modify recreational swordfish retention limits could directly affect approximately 4,173 HMS Charter/headboat permit holders, and 25,238 HMS Angling category permit holders. The proposed action to increase incidental swordfish retention limits could directly affect 48 vessel owners possessing valid swordfish Incidental permits. The proposed action to modify PLL vessel upgrading restrictions could directly affect approximately 176 PLL vessel owners possessing valid swordfish permits. In total, the proposed actions could directly affect 29,587 HMS permit holders. Of these, 4,349 permit holders (the combined number of HMS Charter/headboat permit holders and valid swordfish-permitted PLL vessel owners) are considered small business entities according to the Small Business Administration's standard for defining a small entity. Other small entities involved in HMS fisheries such as processors, tackle shops, bait suppliers, marinas, and gear manufacturers might be indirectly affected by the proposed regulations.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603(c)(1)-(4)). Similarly, this proposed rule does not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)).

One of the requirements of an IRFA, under Section 603 of the Regulatory flexibility Act, is to describe any alternatives to the proposed rule that accomplish the stated objectives and that minimize any significant economic impacts (5 U.S.C. 603(c)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)-(4)) lists four categories for alternatives that must be considered. These categories are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of

performance rather than design standards; and (4) exemptions from coverage for small entities.

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, ATCA, and the Endangered Species Act (ESA), NMFS cannot exempt small entities or change the reporting requirements only for small entities. Thus, there are no alternatives that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above). NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. NMFS analyzed six different alternatives to increase swordfish retention limits, and five different alternatives to modify HMS limited access vessel upgrading restrictions. As described below, NMFS has provided justification for the selection of the preferred alternatives to achieve the desired objectives.

Alternative 1a is considered the no action, or status quo, alternative for modifying recreational and incidental swordfish retention limits. Under current regulations, vessels issued valid Incidental swordfish limited access permits, other than those in the squid trawl fishery, are allowed to retain, possess or land no more than two swordfish per vessel per trip in or from the Atlantic Ocean north of 5° N. lat. Vessels issued valid Incidental swordfish limited access permits that participate in the squid trawl fishery are allowed to retain, possess, or land no more than five swordfish per trip from the same area. HMS Angling and Charter/headboat vessel permit holders are allowed to retain one North Atlantic swordfish per person, up to three per vessel per trip.

Under alternative 1a, there would be no change in the current baseline economic and social impacts associated with previously implemented North Atlantic swordfish retention limits. This alternative is not preferred because it may be contributing to persistent underharvests of the domestic swordfish quota. Nineteen percent of trips reported by Incidental swordfish permit holders in the HMS logbook from 2002 - 2005 reported swordfish discards. If any of these swordfish discards were attributable to exceeding the current two fish limit, then these discards could potentially represent lost revenues associated with the status quo alternative. The current recreational

