

Dated: November 17, 2004.

Stefan G. Vencus,

Chief, Office of Regulations and
Administrative Law, United States Coast
Guard.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 030604143-4309-02; I.D.
030403C]

RIN 0648-AQ90

Atlantic Highly Migratory Species; Atlantic Swordfish Quotas

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

ACTION: Final rule.

SUMMARY: NMFS amends the regulations governing the North and South Atlantic swordfish fisheries to implement recommendations adopted at the 2002 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Specifically, NMFS: increases the North Atlantic swordfish quota to 3,877 metric tons (mt) whole weight (ww) in 2003 and to 3,907 mt ww in 2004 and 2005; establishes a dead discard allowance of 80 mt ww for 2003; transfers 25 mt ww of North Atlantic swordfish quota to Canada in 2003, 2004, and 2005; allows up to 200 mt ww of North Atlantic swordfish quota to be caught between 5 degrees North latitude and 5 degrees South latitude; and establishes a South Atlantic swordfish quota of 100 mt ww in 2003, 2004, and 2005 and 120 mt ww in 2006. In addition, NMFS adjusts the 2003 and 2004 directed and reserve quotas based on underharvests from the 2002 and 2003 fishing years, respectively.

DATES: This final rule is effective
December 23, 2004.

ADDRESSES: Copies of the
Environmental Assessment/Regulatory
Impact Review (EA/RIR) may be
obtained from Christopher Rogers,
Chief, Highly Migratory Species
Management Division F/SF1, 1315 East-
West Highway, Silver Spring, MD
20910. These documents are also
available from the Highly Migratory
Species Management Division website
at www.nmfs.noaa.gov/sfa/hms/.

FOR FURTHER INFORMATION CONTACT:
Chris Rilling, by phone: 301-713-2347
or by fax: 301-713-1917.

SUPPLEMENTARY INFORMATION: The
United States Atlantic swordfish and
tuna fisheries are managed under the
Fishery Management Plan for Atlantic
Tunas, Swordfish, and Sharks (HMS
FMP). Implementing regulations at 50
CFR part 635 are issued under the
authority of the Magnuson-Stevens
Fishery Conservation and Management
Act (Magnuson-Stevens 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 June
20, 2003, proposed rule (68 FR 36967)
contains the background information for
the management measures in this final
rule; the background information is not
repeated in this final rule.

Comments and Responses

NMFS held three public hearings in
July and August 2003 in Gloucester,
MA; Madeira Beach, FL; and Silver
Spring, MD. Comments were received
from fishery participants and other
members of the public regarding the
proposed regulations. In addition,
written comments were submitted to
NMFS during the 45-day comment
period. Written and oral comments are
summarized below with NMFS'
responses.

North Atlantic Swordfish Quota

Comment 1: One commenter supports
opportunities for U.S. fishermen to land
more swordfish as long as it is done in
a manner that does not compromise the
full rebuilding of the population and
long-term sustainability of the resource.

Response: NMFS agrees that ensuring
sustainability and rebuilding the
population are important aspects of
providing long term opportunities for
fishermen to harvest the resource. The
selected alternatives are consistent with
the objectives of the ICCAT rebuilding
program, Magnuson-Stevens Act, ATCA,
and the HMS FMP and will ensure the
sustainability of the stock.

Comment 2: To facilitate harvest of
the United States allocated quota, the
United States should make a limited
number of new handgear permits
available for distribution.

Response: Making a limited number
of new handgear permits available is
one option for addressing the
underharvest occurring in recent years.
Since this would require a plan
amendment, NMFS solicited comments
regarding this and other options during
the scoping process for Amendment 2 to
the HMS FMP and may consider those

options in Amendment 2 or other future
rulemaking.

Comment 3: If the United States is
unable to catch its quota, there will be
efforts by other ICCAT countries to
permanently reduce the U.S. quota
share and allocate that quota to other
fishing nations. This will have
conservation ramifications given that
U.S. fisheries are better managed than
fisheries in other ICCAT nations.

Response: This rule implements
recommendations agreed to at the 2002
meeting of ICCAT. The North Atlantic
swordfish quota levels are established
through 2005. ICCAT will reevaluate the
current quotas and recommend new
ones at that time. NMFS will continue
to evaluate the need for all current
regulations with regard to the effect on
harvest rates and will work with
fishermen to preserve the U.S. quota
share while ensuring consistency with
the Magnuson-Stevens Act, the
Endangered Species Act (ESA), and
other domestic laws.

Comment 4: U.S. underharvests are
primarily a result of the premature
closures of the directed fishery in 1997
and 1998 and the overly restrictive
time/area closures currently in place.
Scientific data shows swordfish
recovering before implementation of the
time/area closures. Because of current
management, this once thriving
domestic fishery has exhibited reduced
effort and profitability.

Response: NMFS implemented the
current time and area closures and other
restrictions to reduce bycatch in the
pelagic longline fishery. This bycatch
included juvenile swordfish, billfish,
sharks, and sea turtles. NMFS will
evaluate the impact and effectiveness of
the closures in Amendment 2 to the
HMS FMP or other future rulemaking
and will modify them if necessary to
meet management objectives and
legislative requirements.

Comment 5: One commenter opposed
an increase in the North Atlantic
swordfish quota. Even though the stock
assessment indicates improvement, the
stock is still overfished. Any increase in
quota will slow down or reverse the
improvement and lead to an increase in
dead discards of juvenile swordfish,
marlin, and sharks. Increasing the quota
goes against NMFS' stated goal of risk-
averse management. The increase is
hard to understand given the United
States has not landed the quota since
1995.

Response: At its 2002 meeting, ICCAT
conducted a North Atlantic swordfish
stock assessment and determined that
the population had nearly recovered to
a level that will support maximum
sustainable yield and that an increase

will still allow the stock to rebuild by 2009, the established goal for rebuilding Atlantic swordfish. Based on this finding, ICCAT recommended an increase in swordfish quota and will hold another stock assessment in 2005 to monitor its results. NMFS does not expect the increase in U.S. quota to result in an increase in dead discards. Further, based on current regulations and the level of effort in the U.S. fishery, it is unlikely that catch rates of target and bycatch species will increase.

Comment 6: The United States should force ICCAT to reduce the overall quota and refuse to accept increases in quota for overfished stocks.

Response: ICCAT is currently comprised of 38 contracting parties that cooperate to formulate management recommendations. The United States is not in a position to force ICCAT to adopt a particular quota because the organization works primarily by consensus. In this case, the stock assessment demonstrated that the swordfish population has nearly recovered to a level that will support maximum sustainable yield and that an increase in allowable harvest would not prevent rebuilding within the originally agreed timeframe. The North Atlantic swordfish quota was increased based on this scientific advice.

South Atlantic Swordfish Quota

Comment 7: One commenter asked NMFS to explain why the United States lost South Atlantic swordfish quota despite quota increases for other nations fishing in that area.

Response: The United States South Atlantic swordfish quota was reduced due to its lower catches in that area in recent years. However, up to 200 mt ww of swordfish landed between 5 degrees North and 5 degrees South latitude may be applied against the North Atlantic swordfish quota. Because most of the historical U.S. catch of South Atlantic swordfish has been harvested from that area, this should mitigate most impacts from the reduction of the South Atlantic swordfish quota.

Comment 8: One commenter opposed the proposed increase in South Atlantic quota to over 100 mt because it would increase pressure on a stock for which data are incomplete.

Response: The Standing Committee on Research and Statistics (SCRS) conducted a stock assessment of South Atlantic swordfish in 2002. Due to discrepancies between several of the data sets, reliable stock assessment results could not be produced. In general, the SCRS noted that the total catches have decreased since 1995, as recommended. As a result, ICCAT

increased the total allowable catch (TAC) for South Atlantic swordfish from 14,620 mt ww to 15,631 mt ww. The new ICCAT recommendation lowered the U.S. quota for South Atlantic swordfish from 384 mt ww in 2002 to 100 mt ww in 2003–2005. ICCAT further recommended that up to 200 mt ww of swordfish landed between 5 degrees North and 5 degrees South latitude be applied against the North Atlantic swordfish quota.

Quota Transfer

Comment 9: One commenter stated that the transfer of 25 mt ww of North Atlantic swordfish quota to Canada is an industry initiative to keep from losing part of the U.S. quota allocation if it is not likely to be harvested in the near future. Another commenter stated that the United States should keep control of this quota and not transfer it to Canada because any uncaught quota will help the stock rebuild faster and reduce bycatch.

Response: If the quota transfer to Canada did not transpire and there was a 25 mt ww underharvest, the remaining quota would be incorporated into the next year's U.S. North Atlantic swordfish quota. While keeping the 25 mt ww may help the stock rebuild in the short term (because neither the United States nor Canada would catch it), the quota would likely be harvested in the future. Transferring the quota to Canada may help maintain the U.S. allocation, but due to the current level of underharvests, more measures may be necessary to facilitate harvest of the full U.S. allocation.

Comment 10: Quota transfers and rulemaking concerning ICCAT recommendations should be conducted in a more timely manner. The start of the fishing year was changed to June 1 to give NMFS the opportunity to propose and finalize any actions needed as a result of ICCAT recommendations. Untimely actions can negatively impact U.S. fishermen with respect to foreign competitors.

Response: NMFS attempts to conduct rulemaking in as timely a manner as possible. However, compliance with other applicable laws, such as the Endangered Species Act, may require the preparation of additional analyses and consultations, which can cause delays.

Dead Discard Allowance

Comment 11: Because the dead discard allowance is slated to be phased out in 2004, NMFS should develop a rule to eliminate the waste resulting from the strict implementation of the minimum size. U.S. pelagic longline

vessels should not be required to discard undersized swordfish that cannot be returned to the sea alive and that are caught outside the closed areas. The minimum size should be enforced for other gear types within the closed areas.

Response: Currently, the minimum size restriction is a component of an ICCAT management recommendation. The U.S. adoption of the alternative minimum size with no tolerance is designed to reduce dead discards while still avoiding excess mortality of juvenile fish. Until ICCAT changes the minimum size, and NMFS implements the changes via a rulemaking process, NMFS will continue to enforce it for all gear types in all areas.

Comment 12: Commenters oppose the 80 mt ww dead discard allowance over and above the increase in quota. Dead discards should be counted against the existing quota.

Response: Previously, ICCAT recommended that the dead discard allowance for North Atlantic swordfish be phased out by 2004. At that time, a dead discard target was not provided for the 2003 fishing year. ICCAT corrected this omission in the 2002 recommendation and maintained the established schedule for the elimination of the dead discard allowance. Starting in 2004, dead discards will be counted against the applicable quotas for the harvesting nations.

North Atlantic Swordfish Quotas

The adjusted 2002 fishing year landings quota was 3,363.5 mt dressed weight (dw). Directed and incidental fishery landings of North Atlantic swordfish during the 2002 fishing year were reported to be 1747.2 mt dw, with a total underharvest of 1,616.3 mt dw. In addition to the landings quota, ICCAT allocated to the United States a 2002 dead discard allowance of 120.3 mt dw, of which an estimated 261.6 mt dw were discarded. The 141.3 mt dw excess dead discards are required to be deducted from quota available to be harvested in the subsequent fishing year. Thus, from the 2002 fishing year 1,475.0 mt dw is available as carryover (1,616.3 - 141.3).

In addition, the dead discards from 2001 were not accounted for at the beginning of the 2002 fishing year because the estimates were not available at that time. The total dead discard allowance in 2001 was 180.4 mt dw, and the United States discarded an estimated 306.8 mt dw. The 126.4 mt dw excess dead discards are required to be deducted from quota available to be harvested in the subsequent fishing year. However, due to the fact that the

2002–2003 fishing years have been completed, it is necessary to deduct this amount from 2004.

The 2003 fishing year base landings quota established by ICCAT was 2,915 mt dw, not adjusted for underharvests. NMFS is adjusting this quota by the carryover available from 2002 and the excess dead discards in 2001. Thus, the adjusted total landings quota for 2003 is 4,263.6 mt dw (2,915 + 1,475 - 126.4).

Although the 2003 fishing year for North and South Atlantic swordfish ended on May 31, 2004, NMFS is including the ICCAT established quotas and landings for 2003 in this rule in order to provide a complete accounting of underharvests in 2003 which were used to establish the 2004 adjusted quotas. Thus, the directed and incidental fishery landings of North Atlantic swordfish during the 2003 fishing year were reported to be 1,509 mt dw. Under this rule, NMFS is also transferring 18.8 mt dw out of the reserve category to Canada. In 2003, 2,735.8 mt dw of the available quota was not harvested (4,263.6 - 1,509 - 18.8). In addition to the landings quota, ICCAT allocated to the United States a 2003 dead discard allowance of 60.0 mt dw, of which an estimated 278 mt dw were discarded. The 218 mt dw excess dead discards are required to be deducted from quota available to be harvested in the subsequent fishing year. Therefore, a net total of 2,517.8 mt dw (2,735.8 - 218) of unharvested swordfish quota may be carried over to 2004 from the 2003 fishing year.

For 2004, the fishing year base landings quota established by ICCAT is 2,937.6 mt dw, not adjusted for underharvests. NMFS is adjusting this quota based on underharvest from 2003, and the excess discards from 2002. Thus, the new adjusted quota for 2004 is 5,455.4 mt dw (2,937.6 + 2,517.8), of which 5,035.1 mt dw is for the directed category, 300 mt dw is for the incidental category, and 120.3 mt dw is for the reserve category. In addition, 18.8 mt dw of the reserve category quota will be transferred to Canada for the 2004 fishing year.

South Atlantic Swordfish

Beginning June 1, 2003, through May 31, 2005, the annual ICCAT established quota for the South Atlantic swordfish stock is 75.2 mt dw. Beginning June 1, 2006, the annual directed fishery quota for the South Atlantic swordfish stock is 90.2 mt dw. ICCAT recommended that the U.S. underharvest from 2000 be carried over to 2003. Underharvests from 2001 and 2002 were ineligible for carryover because individual country quota levels for those years were not

agreed to by ICCAT, but established autonomously.

For 2000, the landings quota was set at 289 mt dw of which 93.8 mt dw were landed, leaving an underharvest of 195.2 mt dw. This underharvest is added to the base 2003 fishing year quota for an adjusted 2003 fishing year quota of 270.4 mt dw (75.2 + 195.2). In 2003, only 11.3 mt dw was harvested during the fishing year, leaving 259.1 mt dw available for carryover to the subsequent fishing year (270.4 - 11.3).

For 2004, the base fishing year landings quota established by ICCAT was 75.2 mt dw. NMFS is adjusting this base quota to account for the underharvest from 2003. Thus, the new adjusted quota for 2004 is 334.3 mt dw (75.2 + 259.1).

Changes from the Proposed Rule

The final rule contains no significant changes from the proposed rule published on June 20, 2003 (68 FR 36967).

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.* The Assistant Administrator (AA) for Fisheries, NOAA, has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

NMFS prepared an Environmental Assessment (EA) for this final rule, and the AA has concluded that there would be no significant impact on the human environment. The EA presents analyses of the anticipated impacts of these final actions and the alternatives considered. A copy of the EA, and other analytical documents prepared for this rule, are available from NMFS (see ADDRESSES).

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

Based on the management measures in several proposed rules, including the proposed rule for these regulations, a new Biological Opinion (BiOp) on the Atlantic pelagic longline (PLL) fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified Reasonable and Prudent Alternatives (RPAs) necessary to avoid jeopardizing leatherbacks, and listed the Reasonable and Prudent

Measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with PLL gear onboard. NMFS is implementing the other RPMs in compliance with the BiOp. On August 12, 2004, NMFS published an Advance Notice of Proposed Rulemaking (69 FR 49858) to request comments on potential regulatory changes to further reduce bycatch and bycatch mortality of sea turtles, as well as comments on the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur. NMFS will undertake additional rulemaking and non-regulatory actions, as required, to implement any management measures that are required under the 2004 BiOp. The majority of the measures that will be implemented by this current rule are not expected to have adverse impacts. The annual swordfish quota is being increased to 3,877 mt ww from 2,951 mt ww which, if effort increases, could potentially increase the number of protected species interactions. However, since 2000, U.S. fishermen have not caught either the North or South Atlantic swordfish quotas. For example, in 2003, there was a 1,348.6 mt dw underharvest of North Atlantic swordfish and a 195.2 mt dw underharvest of South Atlantic swordfish. Based on existing regulations, including time/area closures, minimum size, and permit restrictions, NMFS feels it is unlikely that there will be an increase in effort in the fishery. Thus, interactions with sea turtles should remain stable. Accordingly, no irreversible or irretrievable commitments of resources are expected from this action as the measures to be implemented by this final rule are not expected to adversely affect endangered species.

In examining the potential impact of these regulations, NMFS has determined that the only measure that could adversely affect stocks of protected species is the increase in the base North Atlantic swordfish quota from 2,951 mt ww to 3,877 mt ww and then to 3,907 mt ww in the upcoming fishing years. The increase in available quota could trigger an increase in fishing effort which could then increase the incidental catch of protected species. However, an increase in the incidental take of protected species by the PLL fleet due to an increase in effort is

unlikely. For the past several years, the level of effort in the PLL fishery has been steadily declining and a number of restrictions such as limited access and time/area closures have been placed on the PLL fleet. This declining effort has led to underharvests of 1,025.4 mt dw in the 2001 fishing year (68 FR 14167 March 24, 2003, correction 68 FR 16216, April 3, 2003), 1,475 mt dw in 2002, and 2,517.8 mt dw in 2003 (the latter two estimates include dead discard overharvests from 2002 and 2003).

In addition, NMFS has implemented regulations requiring PLL vessels to use only 18/0 hooks with whole mackerel and/or squid in the Northeast Distant (NED) Statistical Reporting Area, and 16/0 hooks and/or 18/0 hooks everywhere outside the NED using whole finfish or squid, and to possess and use sea turtle release equipment with specified sea turtle handling and release protocols. Handling and release guidelines are also required to be posted in the wheelhouse. Because this final rule does not relieve any of these restrictions, the level of effort in the fleet is unlikely to increase despite the change in quota level. Thus, the current level of incidental takes of protected species will remain at current levels or will decrease.

NMFS determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the enforceable policies of the approved coastal zone management programs of coastal states in the Atlantic, Gulf of Mexico, and Caribbean. All of the states that replied to the letter regarding compliance of the proposed rule with the Coastal Zone Management Act found NMFS' proposed actions to be consistent with their coastal zone management programs. NMFS presumes that the states that did not respond also concur.

At the proposed rule stage, NMFS conducted an Initial Regulatory Flexibility Analysis (IRFA) as required by the Regulatory Flexibility Act (RFA). NMFS received no comments regarding the potential economic impact of the proposed rule or on the IRFA. In preparing this final rule, NMFS has conducted a final EA and a final regulatory impact review that examines the impacts of the selected alternatives, discussed previously in this rulemaking. These analyses indicate that this rule would have negligible economic impacts on small entities. Therefore, in compliance with the RFA, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant

economic impact on a substantial number of small entities. The factual basis for this certification is stated below.

As required by ATCA, this rule implements the recommendations of the 2002 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT) regarding swordfish. The final rule adjusts the quota for North and South Atlantic swordfish, establishes the 2003 dead discard allowance, transfers 25 mt ww of North Atlantic swordfish quota to Canada, and allows up to 200 mt ww of swordfish caught in the area between 5 degrees North and 5 degrees South to be applied to the North Atlantic swordfish quota. These actions are necessary to ensure continued progress toward the conservation goals of ICCAT, the Magnuson-Stevens Act, ATCA, and the FMP for all tunas, swordfish, and sharks.

There are currently 397 commercial permit holders of which fewer than 200 have reported swordfish landings; most commercial permit holders use pelagic longline gear. There are also approximately 20,000 permit holders who could land swordfish recreationally (i.e., not for profit). Other sectors of highly migratory species fisheries such as dealers, processors, bait houses, and gear manufacturers might be affected by the final regulations, however, the final rule does not apply directly to them.

The overall result of the final rule would be to increase the 2004 North Atlantic swordfish quota by approximately 2,500 mt dw and the 2004 South Atlantic swordfish quota by 259.1 mt dw. These increases could potentially result in revenue increases, however, U.S. fishermen have not met either the North or South Atlantic swordfish quotas since 2000. For example, in 2003, there was a 1,348.6 mt dw underharvest of North Atlantic swordfish and a 195.2 mt dw underharvest of South Atlantic swordfish. The net impact of the of the final actions results in a quota level that is greater than current catches. Thus, NMFS does not believe that the net benefits and costs will change significantly as a result of the implementation of the selected alternatives compared to the baseline of no action.

Criteria used to evaluate potential impacts include analysis of gross revenues in recent years from pelagic longline logbook data. In future fishing years, the present value of gross and net revenues for the swordfish fishery at the ex-vessel level could be increased, but that would depend on the extent to which fishermen can expand their effort

to catch the quota. For example, increasing the North Atlantic swordfish quotas could increase ex-vessel gross revenues by \$4.9 million if the entire quota is caught. Currently, based on existing regulations, including time/area closures, minimum size, and permit restrictions, NMFS feels it is unlikely that there will be an increase in effort in the fishery. Thus, the economic impacts of the rule should be negligible. If effort is increased, U.S. fishermen would likely experience positive benefits as a result of this final rule. As a result, a FRFA was not prepared.

List of Subjects in 50 CFR Part 635

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

Dated: November 17, 2004.

Rebecca J. Lent,

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.*

■ 2. In § 635.27, paragraph (c)(1) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(c) *Swordfish*—(1) *Categories.*

Consistent with ICCAT recommendations, the fishing year's total amount of swordfish that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction is divided into quotas for the North Atlantic swordfish stock and the South Atlantic swordfish stock. The quota for the North Atlantic swordfish stock is further divided into equal semi-annual directed fishery quotas, an annual incidental catch quota for fishermen targeting other species or taking swordfish recreationally, and a reserve category.

(i) *North Atlantic swordfish.* (A) A swordfish from the North Atlantic swordfish stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit, or a handgear permit for swordfish, has been issued is counted against the directed fishery quota. The annual fishery quota, not adjusted for over- or underharvests, is 2,937.6 mt dw for 2004 and 2,937.6 mt dw for 2005. In 2004 and 2005, the

annual quota is subdivided into two equal semiannual quotas of 1,468.8 mt dw: one for June 1 through November 30, and the other for December 1 through May 31 of the following year.

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish or an HMS Angling or Charter/Headboat permit has been issued, or caught after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued, is counted against the incidental catch quota.

(C) A dead discard allowance of 60.2 mt dw is established for North Atlantic swordfish in 2003, but the allowance is reduced to zero in 2004 and beyond. All swordfish discarded dead from U.S. fishing vessels in 2004 and beyond, regardless of whether such vessels are permitted under this part, shall be counted against the annual directed fishing quota.

(D) A portion of the total allowable catch of North Atlantic swordfish shall be held in reserve for inseason adjustments to fishing categories, to compensate for projected or actual overharvest in any category, for fishery independent research, or for other purposes consistent with management objectives.

(E) In the event of an overharvest of South Atlantic swordfish, up to 150.4 mt dw of swordfish landed between 5 degrees North and 5 degrees South latitude may be applied against the North Atlantic swordfish quota. Otherwise, swordfish landed from this area shall be applied against the South Atlantic swordfish quota. For example, if the South Atlantic swordfish quota were 100 mt dw, and 50 mt dw were landed between 5 degrees North and 5 degrees South latitude, and 75 mt dw were caught south of 5 degrees South latitude, then 25 mt dw of the swordfish caught between 5 degrees North and 5 degrees South latitude would be applied against the North Atlantic swordfish quota. If only 25 mt dw of swordfish were caught between 5 degrees North and 5 degrees South latitude, and 150 mt dw of swordfish were caught south of 5 degrees South latitude, 25 mt dw would be applied against the North Atlantic swordfish quota. The remaining 50 mt dw overharvest would be counted against the following year's South Atlantic swordfish quota.

(ii) *South Atlantic swordfish.* From June 1, 2003, to May 31, 2006, the annual directed fishery quota for the South Atlantic swordfish stock is 75.2 mt dw. Beginning June 1, 2006, the annual directed fishery quota for the

South Atlantic swordfish stock is 90.2 mt dw. The entire quota for the South Atlantic swordfish stock is reserved for vessels with pelagic longline gear onboard and for which a directed fishery permit for swordfish has been issued; retention of swordfish caught incidental to other fishing activities or with other fishing gear is prohibited in the Atlantic Ocean south of 5 degrees North latitude.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 111804A]

Atlantic Highly Migratory Species; Bluefin Tuna Fisheries

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

ACTION: Closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category and Angling category fisheries will close in all areas. This action is being taken to ensure that U.S. BFT harvest is consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), pursuant to the Atlantic Tunas Convention Act (ATCA), to meet domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), and to prevent overharvest of the 2002 ICCAT recommended quota.

DATES: Effective 11:30 p.m., local time November 19, 2004, through 11:30 p.m., local time May 31, 2005.

FOR FURTHER INFORMATION CONTACT: Highly Migratory Species (HMS) Management Division at 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by ICCAT among the various domestic fishing categories, and

together with General category effort controls are specified annually under 50 CFR 635.23(a) and 635.27(a). The proposed initial 2004 BFT Quota and General category effort controls will be published in the **Federal Register** in the near future.

General and Angling Category Closure

Based on anticipated quotas and concern over potential overharvest, the most recent General category and Angling category BFT landing estimates, previous fishing years landing estimates, availability of BFT on the fishing grounds, physical oceanographic conditions, and social and economic aspects of these two fishing categories, NMFS has determined that a closure in both the General and Angling quota categories is warranted at this time. Therefore, fishing for, retaining, possessing, or landing BFT by persons aboard vessels permitted in the Atlantic tunas General, HMS Angling, and HMS Charter/Headboat categories, must cease at 11:30 p.m. local time November 19, 2004, in all areas. The intent of these closures is to ensure that the overall U.S. BFT harvest is consistent with ICCAT recommendations.

When more precise quota and landings estimates are available these fisheries may be reopened to provide Angling, General and Charter/Headboat category fishermen fishing opportunities off south Atlantic states during the December/January time frame when BFT are expected to be available as in recent prior years. NMFS will announce any re-openings and/or quota transfers in separate **Federal Register** notices. Atlantic tunas General, HMS Angling, and HMS Charter/Headboat category permit holders may tag and release BFT of all sizes while the General and Angling quota categories are closed, subject to the requirements of the tag-and-release program at § 635.26.

NMFS is required, under § 635.28(a)(1), to file with the Office of the **Federal Register** for publication, notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year, or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period, or until such date as specified in the notification.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public