

PART 6101—CONTRACT DISPUTE CASES**6101.1 [Amended]**

■ 3. Amend section 6101.1 by removing the second sentence from paragraph (a).

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 300 and 635**

[080724902–91404–02]

RIN 0648–AX07

Atlantic Highly Migratory Species; North and South Atlantic Swordfish Quotas

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

ACTION: Final rule.

SUMMARY: This final rule adjusts the North and South Atlantic swordfish quotas for the 2009 fishing year (January 1, 2009, through December 31, 2009) to account for underharvests, and transfers 18.8 metric tons (mt) dressed weight (dw) to Canada per the 2006 and 2008 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 06–03 and 08–02. In addition, this final rule includes minor regulatory modifications and clarifications, eliminates an existing sunset provision in the Madison-Swanson and Steamboat Lumps time/area closure, and establishes a small time/area closure in the Gulf of Mexico called the “Edges 40 Fathom Contour.” These changes could impact fishermen with a commercial swordfish, HMS Angling, or Charter/Headboat (CHB) permit who fish for Atlantic swordfish.

DATES: This rule is effective on January 15, 2010.

ADDRESSES: For copies of the supporting documents, including the proposed rule (74 FR 39032, August 5, 2009); the EA for the Gulf of Mexico time/area closures included in this rule; the Environmental Assessment (EA) for the 2007 Swordfish Specifications, Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA); and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), please write to Highly Migratory Species Management Division, 1315 East-West

Highway, Silver Spring, MD 20910, visit the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/>, or contact Steve Durkee.

FOR FURTHER INFORMATION CONTACT: Steve Durkee or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917 or Rick Pearson by phone: 727–824–5399.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated 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.

Information on the specific measures laid out in the proposed rule can be found in 74 FR 39032 (August 5, 2009) and are not repeated here. A brief summary of the actions in this final rule can be found below.

1. Swordfish Quotas

This final rule adjusts the North and South Atlantic swordfish quotas for the 2009 fishing year (January 1, 2009, through December 31, 2009) to account for underharvests in 2008, and to transfer 18.8 metric tons (mt) dressed weight (dw) to Canada per the 2006 and 2008 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 06–03 and 08–02. The 2009 North Atlantic swordfish baseline quota is 2,937.6 mt dw. The total North Atlantic swordfish underharvest for 2008 was 2,692 mt dw, which exceeds the maximum carryover cap of 1,468.8 mt dw, established in ICCAT recommendation 06–02, and renewed in 08–02. Therefore, NMFS is carrying over the capped amount per the ICCAT recommendation. Thus, the baseline quota plus the underharvest carryover maximum of 1,468.8 mt dw equals an adjusted quota of 4,406.4 mt dw for the 2009 fishing year (Table 1).

The 2009 South Atlantic swordfish baseline quota is 75.2 mt dw. The total South Atlantic swordfish underharvest for 2008 was 150.4 mt dw, which exceeds the maximum carryover cap of 75.2 mt dw, established in ICCAT recommendation 06–03. Therefore, NMFS is carrying over the capped amount per the ICCAT recommendation. As a result, the baseline quota plus the underharvest carryover maximum of 75.2 mt dw equals an adjusted quota of 150.4 mt dw for the 2009 fishing year (Table 1).

2. Administrative Regulatory Modifications and Clarifications

In addition to adjusting the North and South Atlantic swordfish quotas, NMFS is also performing the following five administrative modifications and clarifications to the regulations: (1) clarifying minimum size requirements for whole and dressed swordfish; (2) issuing “participant certificates” at shark identification workshops to attendees who do not have a dealer license; (3) requiring that any dead bycatch in the pelagic longline fishery be brought on board, at the observer’s request, for biological sampling; (4) requiring that any changes in information contained in an application for an Atlantic Tuna Longline Limited Access Permit be submitted in writing; and (5) clarifying the information that is to be included on consignment documents for the importation of Atlantic, Pacific and Southern bluefin tuna, frozen bigeye tuna, and swordfish.

3. Adjustment and Implementation of Time/Area Closures in the Gulf of Mexico

Under current regulations (50 CFR 635.21 (a)(4)(ii) (iv)), the Madison-Swanson and Steamboat Lumps time/area closures within the Gulf of Mexico are set to expire on June 16, 2010. This rule eliminates this sunset provision and prevents expiration of the time/area closures on June 16, 2010, consistent with the Gulf of Mexico Fishery Management Council (GOMFMC) regulations. Additionally, this final rule establishes a time/area closure in the northwestern Gulf of Mexico called the “Edges 40 Fathom Contour,” at the request of GOMFMC. The boundaries of this closure are defined by the coordinates: NW = 28° 51’N, 85° 16’W; NE = 28° 51’N, 85° 04’W; SW = 28° 14’N, 84° 54’W; SE = 28° 14’N, 84° 42’W.

Response to Comments

NMFS received two comments on the proposed rule which are summarized below, together with NMFS’ responses.

Comment: NMFS received two comments in opposition to the annual 18.8 mt dw quota transfer to Canada from the reserve category. The first comment, made by Captain Chris Walter, expressed general opposition to the quota transfer. The second stated comment, made by David Allison of Oceana, expressed concern over higher bycatch rates in the Canadian swordfish fishery than in the U.S. fishery. This commenter wrote that negative impacts on sea turtles in the Canadian swordfish fishery were not specifically examined in the 2007 Environmental Assessment

for the 2007 Swordfish Specifications, and that analysis must be performed before any further annual quota transfers. This analysis should include both an Environmental Impact Statement and ESA Biological Opinion.

Response: The annual transfer of quota to Canada is necessary to comply with ICCAT Recommendation 06–02 (extended via Rec. 08–02), as agreed upon by the CPCs, which explicitly states that the U.S. is to transfer 25 mt ww (18.8 mt dw) to Canada annually, among other things. Per the ATCA, the U.S. is obligated to implement ICCAT-approved recommendations. This mandate offers no leeway for NMFS to alter the annual quota transfer to Canada. The 2007 Environmental Assessment for the 2007 Swordfish Specifications addressed this transfer by reference to the 2004 Environmental Assessment accompanying the final rule to Implement ICCAT Atlantic Swordfish Quota Recommendations. In addition, the amount of quota transferred to Canada is low enough that any impacts, including any negative impacts to sea turtles, will be negligible. The 25 mt ww quota transfer is 0.18 percent of the total North Atlantic swordfish quota, and only 0.64 percent of the U.S. portion of the quota.

Changes from the Proposed Rule

This final rule contains one change from the proposed rule. The regulatory language modifying the method to change address information on an Atlantic Tuna Longline Limited Access Permit (50 CFR 635.4(i)) was altered to be more general. The regulatory language in the proposed rule stated that permit information changes must be made, in writing, to an address specified by NMFS. The language in this final rule states that permit information changes must be made in a manner and/or to a location specified by NMFS. The intent and practical effect did not change, but the more general language will give NMFS flexibility in altering the method to change information to a permit in the future.

Classification

The Acting Assistant Administrator for Fisheries has determined that this final rule is consistent with the Consolidated HMS FMP, the Magnuson-Stevens Act, ATCA, and other applicable law.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during

the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects

50 CFR Part 300

Reporting and recordkeeping requirements.

50 CFR Part 635

Fisheries, Fishing, Management, Reporting and recordkeeping requirements, Treaties.

Dated: December 10, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 300 and 635 are amended as follows:

PART—300 INTERNATIONAL FISHERIES REGULATIONS

Subpart M—International Trade Documentation and Tracking Programs for Highly Migratory Species

■ 1. The authority citation for subpart M continues to read as follows:

Authority: Authority: 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 300.185, paragraph (a)(2)(vii) is revised to read as follows:

§ 300.185 Documentation, reporting and recordkeeping requirements for consignment documents and re-export certificates.

(a) * * *

(2) * * *

(vii) For fish or fish products, except shark fins, regulated under this subpart that are entered for consumption, the permit holder must provide correct and complete information, as requested by NMFS, on the original consignment document that accompanied the consignment.

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PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

3. 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.*

■ 4. In § 635.2, the following definition is added within the correct alphabetic order:

§ 635.2 Definitions.

* * * * *

Edges 40 Fathom Contour closed area means a parallelogram-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 28° 51' N. lat., 85° 16' W. long.; 28° 51' N. lat., 85° 04' W. long.; 28° 14' N. lat., 84° 42' W. long.; 28° 14' N. lat., 84° 54' W. long.

* * * * *

■ 5. In § 635.4, paragraph (i) is revised to read as follows:

§ 635.4 Permits and fees.

* * * * *

(i) *Change in application information.* A vessel owner or dealer must report any change in the information contained in an application for a permit within 30 days after such change. The report must be submitted in a manner and/or to a location designated by NMFS. For certain information changes, a new permit may be issued to incorporate the new information, subject to limited access provisions specified in paragraph (l)(2) of this section. NMFS may require supporting documentation before a new permit will be issued. If a change in the permit information is not reported within 30 days, the permit is void as of the 31st day after such change.

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■ 6. In § 635.7, paragraph (f) is added to read as follows:

§ 635.7 At-sea observer coverage.

* * * * *

(f) *Vessel responsibilities.* An owner or operator of a vessel required to carry one or more observer(s) must provide reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(1) Measuring decks, codends, and holding bins.

(2) Providing the observer(s) with a safe work area.

(3) Collecting bycatch when requested by the observer(s).

(4) Collecting and carrying baskets of fish when requested by the observer(s).

(5) Allowing the observer(s) to collect biological data and samples.

(6) Providing adequate space for storage of biological samples.

■ 7. In § 635.8, paragraphs (b)(4) and (5) and (c) (4) and (5) are revised and paragraph (b) (6) is added to read as follows:

§ 635.8 Workshops.

* * * * *

(b) * * *

(4) Only dealers issued a valid shark dealer permit may send a proxy to the Atlantic shark identification workshops.

If a dealer opts to send a proxy, the dealer must designate at least one proxy from each place of business listed on the dealer permit, issued pursuant to § 635.4(g)(2), which first receives Atlantic shark by way of purchase, barter, or trade. The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports as required under § 635.5. Only one certificate will be issued to each proxy. If a proxy is no longer employed by a place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must possess a valid Atlantic shark identification workshop certificate.

(5) A Federal Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for inspection a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy at each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. For the purposes of this part, trucks or other conveyances of a dealer's place of business are considered to be extensions of a dealer's place of business and must possess a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to a place of business covered by the dealer permit. A copy of a valid Atlantic shark identification workshop certificate must be included in the dealer's application package to obtain or renew an Atlantic shark dealer permit. If multiple businesses are authorized to receive Atlantic sharks under the Atlantic shark dealer's permit, a copy of the Atlantic shark identification workshop certificate for each place of business listed on the Atlantic shark dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must be included in the Atlantic shark dealer permit renewal application package.

(6) Persons holding an expired Atlantic shark dealer permit and persons who intend to apply for a new Atlantic shark dealer permit will be issued a participant certificate in their name upon successful completion of the Atlantic shark identification workshop. A participant certificate issued to such persons may be used only to apply for

an Atlantic shark dealer permit. Pursuant to § 635.8(c)(4), an Atlantic shark dealer may not first receive, purchase, trade, or barter for Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. After an Atlantic shark dealer permit is issued to a person using an Atlantic shark identification workshop participant certificate, such person may obtain an Atlantic shark identification workshop dealer certificate for each location which first receives Atlantic sharks by way of purchase, barter, or trade by contacting NMFS at an address designated by NMFS.

(c) * * *

(4) An Atlantic shark dealer may not first receive, purchase, trade, or barter for Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. A valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy must be maintained on the premises of each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to § 635.4(g)(2) unless a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy has been submitted with the permit renewal application. If the dealer is not certified and opts to send a proxy or proxies to a workshop, the dealer must submit a copy of a valid proxy certificate for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade.

(5) A vessel owner, operator, shark dealer, proxy for a shark dealer, or participant who is issued either a protected species workshop certificate or an Atlantic shark identification workshop certificate may not transfer that certificate to another person.

* * * * *

■ 8. In § 635.20, paragraphs (a) and (f) are revised to read as follows:

§ 635.20 Size limits.

(a) *General.* The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas for a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4.

* * * * *

(f) *Swordfish.* (1) For a swordfish that has its head naturally attached, the LJFL is the sole criterion for determining the size of a swordfish. No person shall

take, retain, possess, or land a whole (head on) North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 47 inches (119 cm) LJFL. A swordfish with the head naturally attached that is damaged by shark bites may be retained only if the length of the remainder of the fish is equal to or greater than 47 inches (119 cm) LJFL.

(2) If the head of a swordfish has been removed prior to or at the time of landing, the CK measurement is the sole criterion for determining the size of a swordfish. No person shall take, retain, possess, or land a dressed North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 29 inches (73 cm) CK length. A swordfish with the head removed that is damaged by shark bites may be retained only if the length of the remainder of the carcass is equal to or greater than 29 inches (73 cm) CK length.

(3) No person shall import into the United States an Atlantic swordfish weighing less than 33 lb (15 kg) dressed weight, or a part derived from a swordfish that weighs less than 33 lb (15 kg) dressed weight.

(4) Except for a swordfish landed in a Pacific state and remaining in that Pacific state of landing, a swordfish, or part thereof, not meeting the minimum size measurements specified in § 635.20(f)(1) or (2) will be deemed to be an Atlantic swordfish harvested by a vessel of the United States and to be in violation of the minimum size requirement of this section unless such swordfish, or part thereof, is accompanied by a swordfish statistical document attesting that the swordfish was lawfully imported. Refer to § 300.186 of this title for the requirements related to the swordfish statistical document.

(5) A swordfish, or part thereof, will be monitored for compliance with the minimum size requirement of this section from the time it is landed in, or imported into, the United States up to, and including, the point of first transaction in the United States.

■ 9. In § 635.21, paragraphs (a) (4) (ii) and (iii) are revised and paragraph (a) (4) (v) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(a) * * *

(4) * * *

(ii) From November through April of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson closed

area or the Steamboat Lumps closed area, as defined in § 635.2.

(iii) From May through October of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson or the Steamboat Lumps closed areas except for surface trolling, as specified below under paragraph (a)(4)(iv) of this section.

* * * * *

(v) From January through April of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing

gear in the Edges 40 Fathom Contour closed area, as defined in § 635.2.

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■ 10. In § 635.71, paragraphs (d) (11) and (14) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *
(11) Receive, purchase, trade, or barter for Atlantic sharks without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

* * * * *

(14) Receive, purchase, trade, or barter for Atlantic sharks without making available for inspection, at each of the dealer's places of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, a valid dealer or proxy Atlantic shark identification workshop certificate issued by NMFS to the dealer or proxy in violation of § 635.8(b), except that trucks or other conveyances of the business must possess a copy of such certificate.

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