

located on private land, entering the Devils River from the northeast, about 2 miles downstream from the Highway 163 bridge (Baker's Crossing). This site is a small spring-fed stream that does not provide surface flow to the Devils River under normal conditions. No information is available to indicate that fishes have ever been sampled from this site in the past. This information provides significant evidence confirming that the Devils River minnow still occurs in the Devils River watershed. Additional surveys are needed to determine the actual status of the species in the Devils River, but the confirmation of the species in the drainage is important in ensuring that those populations have not been lost.

The Service has been working with the Department, in cooperation with local landowners, over the past year in an effort to develop a conservation agreement that would expedite conservation measures needed to ensure the continued existence of the species. Preliminary drafts of the Conservation Agreement (Agreement) were made available to local landowners for comments and a draft version was also distributed at the Public Hearing. The Agreement was signed by the Service, the Department, and the City of Del Rio on September 2, 1998. The Agreement included a Conservation Strategy (Strategy) to describe the specific procedures required for conservation of the Devils River minnow. In making the final listing determination, the Service agreed to consider the ongoing implementation of the conservation actions as described in the Strategy. The Service will consider the effect of those actions on removing threats to the species, as described in the proposed rule, in making a final determination on this listing.

The ten conservation actions that were included in the Strategy are: (1) Determine the current status of the Devils River minnow and monitor changes; (2) Maintain genetically representative, captive populations of Devils River minnow at two fish hatchery facilities for reintroduction, and as insurance against extinction; (3) Reintroduce Devils River minnows, reared in captive populations, in order to reestablish populations in nature; (4) Continue and enhance protection of the San Felipe Creek watershed; (5) Provide technical assistance to landowners on riparian protection and management; (6) Review live bait harvest and selling practices in the Devils River area to develop methods and take appropriate actions (e.g., regulation, education) to prevent the further establishment of exotic, aquatic species within the

historical range of Devils River minnow; (7) Document the abundance and ranges of exotic fish in the Devils River, and San Felipe, Las Moras, and Sycamore creeks; (8) Obtain and analyze changes in flow data for the Devils River, and San Felipe, Las Moras, and Sycamore creeks; (9) With progeny of the captive population, use a simulated environment to determine ecological and life history requirements of the Devils River minnow; and (10) Determine *in situ* predator/prey interactions between smallmouth bass and the Devils River minnow.

The comment period on the proposal will remain open until November 12, 1998. Written comments may be submitted until that date to the Service office in the ADDRESSES section.

Author the primary author of this notice is Nathan Allan (see ADDRESSES section) (telephone 512/490-0057; facsimile 512/490-0974).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 3, 1998.

Geoffrey S. Haskett,

Acting, Regional Director, Fish and Wildlife Service, Region 2.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 970829218-8244-02; I.D. 080597E]

RIN 0648-AK39

Atlantic Swordfish Fisheries; Dealer Permitting and Import Documentation Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing the Atlantic swordfish fishery to prohibit the import into the United States of Atlantic swordfish or Atlantic swordfish pieces, weighing less than 33 pounds dressed weight (lb dw) (15 kg) unless documented as coming from an Atlantic swordfish weighing 33 lb dw or greater; to require dealer permitting and

reporting for importation of swordfish from any source; and to implement a certificate of eligibility (COE) program for all swordfish imports.

These measures are necessary to implement a 1995 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) with respect to controlling the harvest of undersized Atlantic swordfish and to facilitate the collection of information relating to the trade in Atlantic swordfish which may hinder conservation efforts by the United States and ICCAT.

DATES: Comments must be submitted on or before December 7, 1998. See **SUPPLEMENTARY INFORMATION** for times and locations of public hearings.

ADDRESSES: Comments on the proposed rule and on the proposed information collections should be submitted to Rebecca Lent, Highly Migratory Species Management Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the Environmental Assessment / Regulatory Impact Review (EA/RIR) supporting this action are available from Steve Meyers or Jill Stevenson at (301)713-2347 or by writing to the preceding address. See **SUPPLEMENTARY INFORMATION** for the schedule and location of public hearings. Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be sent to Rebecca Lent and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Steve Meyers or Jill Stevenson, 301-713-2347; fax: 301-713-1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and regulations at 50 CFR part 630 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 the International Commission for the Conservation of Atlantic Tunas (ICCAT).

The fishable biomass of the North Atlantic swordfish stock is estimated to have declined 68 percent between 1963 and 1996. The South Atlantic swordfish stock has been under increased fishing

pressure and the biomass of that stock may be declining as well. ICCAT has adopted measures, including catch quotas and minimum size limits, to reduce fishing mortality for both the North and South Atlantic swordfish stocks.

A 1991 ICCAT recommendation established a minimum size for Atlantic swordfish of 79 cm measured from the cleithrum to the keel (125 cm lower jaw fork length (LJFL)) with a discretionary 15-percent per-trip (by number) tolerance for undersized fish. However, even with the 15-percent tolerance, U.S. fishermen continued to catch and discard many undersized fish.

ICCAT recognized that the 15-percent tolerance made it difficult for some Contracting Parties to ensure the effectiveness of the minimum size as a conservation measure to decrease the fishing mortality of swordfish. Because of this ICCAT provided Contracting Parties with the authority to take other appropriate steps within their national jurisdictions to protect small swordfish.

Given these concerns and observations, ICCAT, consistent with advice from the Standing Committee on Research and Statistics that, for decreasing fishing mortality, a lower minimum size prohibition with no tolerance for smaller swordfish would be the functional equivalent of the current minimum size prohibition with a tolerance.

In 1996, under the authority of the ATCA, the United States implemented the lower minimum size limit alternative in order to facilitate domestic enforcement and reduce discards of small swordfish. Section 971e(a) of the ATCA prohibits the purchase or possession of any regulated species taken contrary to recommendations of ICCAT that have been adopted as U.S. regulations, regardless of the citizenship of the person or vessel which took the fish. Given the current regulations applicable to U.S. vessels operating in the Atlantic, no Atlantic swordfish below the minimum size should ever come into possession of a U.S. dealer by way of a U.S. vessel fishing in the Atlantic Ocean. However, because other ICCAT contracting parties have maintained the higher minimum size for Atlantic swordfish with a 15-percent tolerance limit by trip, swordfish smaller than the U.S. minimum size could be taken by vessels of these countries, in accordance with the ICCAT recommendation, and lawfully imported by U.S. dealers, an occurrence which complicates enforcement of the alternative minimum size for U.S. harvested Atlantic swordfish.

NMFS has been concerned that sales of small swordfish in the United States diminish the effectiveness of domestic conservation efforts due to the inability to differentiate in the marketplace between small imported swordfish (currently legal) and small domestic Atlantic swordfish (illegal). Therefore, consistent with the ICCAT recommendation, NMFS has determined it is necessary to prevent the sale in the United States of undersized Atlantic swordfish harvested by non-U.S. vessels and imported to the United States. Import restrictions, coupled with reporting requirements for swordfish importers, would facilitate enforcement of the domestic minimum size for Atlantic swordfish and provide NMFS with additional information on swordfish harvests from all ocean areas. Such information would improve stock assessments and estimates of fishing mortality.

NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) (62 FR 47412, September 9, 1997) to request comments on the issue of monitoring and possibly regulating swordfish imports. The intent of the ICCAT recommendation was to reduce fishing mortality for Atlantic swordfish. However, given the considerable volume of swordfish of Pacific Ocean origin harvested by U.S. vessels and imported swordfish from all ocean areas that is entered into commerce, NMFS considered whether it was necessary to prohibit the sale in the United States of all swordfish less than the ICCAT alternative minimum size, regardless of origin, in order to enhance enforcement of the U.S. regulations implementing the ICCAT alternative minimum size recommendation for Atlantic swordfish.

Complicating factors surrounding this issue were identified in the ANPR and include: (1) the high volume of swordfish imported into the United States from numerous sources; (2) domestic landings and imports of Pacific swordfish; (3) the uncertain impact on foreign exporters and processors of regulations that prohibit the possession of small swordfish or swordfish parts in the United States, and (4) the difficulty of distinguishing between Pacific and Atlantic swordfish. Currently, Atlantic swordfish or swordfish pieces less than the alternative minimum size can be legally imported to the United States; however, it is not known what proportion of international landings comprises swordfish less than the minimum size. Further, swordfish steaks and fillets are frequently imported, and the size of the original swordfish and the ocean area of catch cannot always be readily

determined from the processed product (e.g., steaks, fillets). Information is available from trade organizations concerning the businesses that may be impacted by regulating the swordfish in the United States; however, these businesses evolve rapidly, making it difficult to track their involvement in the swordfish industry.

Comments received in response to the ANPR generally supported establishment of a permitting and reporting system for importers to track swordfish shipments more effectively and to collect information concerning the weight, value, quality, or product form of the swordfish. Some commenters opposed permitting because of the reporting burden to importers. However, NMFS believes that the information that would be collected is necessary for determining the universe of importers and their relative importance in the domestic swordfish market.

Many commenters suggested implementing a COE program for swordfish. A COE program would facilitate the tracking of international swordfish shipments and the enforcement of ICCAT minimum size requirements and would provide information on international swordfish harvesting and trade activities. The ICCAT Advisory Committee Swordfish Species Working Group recommended at its Spring 1998 meeting that NMFS establish a documentation system to track swordfish shipments by flag of harvesting vessel and by exporting nation. This group indicated, however, that the monitoring and administrative burden should be on exporting nations, especially non-Contracting Parties.

Several commenters suggested that other conservation measures are necessary to conserve the overfished swordfish stock. These comments are beyond the scope of the issues raised in the ANPR. NMFS is considering, with the advice of the Highly Migratory Species Advisory Panel, a variety of swordfish rebuilding options, including time/area closures and gear modifications, to reduce bycatch and bycatch mortality of small Atlantic swordfish in the U.S. fishery.

Some commenters suggested that restricting ports of entry for imported swordfish should be a low priority due to food safety concerns and increased burden on dealers. At this time, NMFS cannot quantify the magnitude of secondary impacts (e.g., increased transportation costs and, therefore, increased retail prices) that might result from restricting points of entry. Further evaluation, based on comments received on these proposed measures, may

identify whether there is justification for restricted points of entry. Another commenter suggested implementation of a voluntary program in which swordfish dealers pledge not to import swordfish weighing less than the minimum size. A voluntary program, however, would not meet the requirements of ATCA for NMFS to implement and enforce the ICCAT recommendation.

After considering the issues raised, NMFS proposes to prohibit the import of Atlantic swordfish or Atlantic swordfish pieces weighing less than 33 lb dw (15 kg) into the United States, unless documented as being derived from an Atlantic swordfish weighing at least 33 lb dw (15 kg). Enforcement of this measure would occur up to and including the point of first transaction in the United States, which the rule would define as

the time and place at which the swordfish is filleted, cut into steaks, or processed in any way that physically alters it after being landed in or imported into the United States. All imported shipments containing swordfish would be required to be accompanied by a COE validated by a government official of the exporting nation attesting to the recorded information regarding the flag state of the harvesting vessel and the ocean area of catch. If the shipment contains Atlantic swordfish pieces weighing less than 33 lb (15 kg), a COE indicating that the fish pieces were derived from an Atlantic swordfish weighing greater than 33 lb dw (15 kg) would be required. Swordfish import shipments would have to be accompanied by a COE up to the point of first transaction.

This COE program would enhance collection and verification of data on the volume of swordfish landings from the Atlantic ocean, including country of origin, and to some extent, would improve knowledge of individual fish sizes of imports. As with the ICCAT bluefin tuna Statistical Document Program, such tracking and monitoring programs could enhance the scientific process of ICCAT by improving data on total fishing mortality, as required under the ATCA. As a major importer and consumer of Atlantic swordfish, the United States could play a significant role in monitoring total mortality by fully documenting the ocean area of origin and the size of the swordfish imported into this country.

This regulation is designed to elicit information basically comparable to that currently obtained from domestic fishermen and processors with respect to U.S. vessel landings of swordfish. Current vessel and dealer permitting and reporting requirements are

sufficient to document the source and size of swordfish caught by U.S.-flagged vessels. These reporting systems are enhanced by at-sea observer programs, port inspections, and enforcement. Therefore, this rule would not require that domestic swordfish shipments be accompanied by a COE.

NMFS also proposes to extend dealer permitting and reporting requirements to apply to importers of all swordfish, regardless of ocean area of catch. The dealer report on imported swordfish would be required to contain the following information for each shipment received during the reporting period: dealer number and company name, weight of total swordfish shipment, weight by product form, and price per pound by product form. The report would also be required to indicate, for each shipment of swordfish, the entry number from Customs form 7501 to enable NMFS to cross-check the COE, dealer reports, and Customs data. Dealers would be responsible for maintaining copies of dealer reports and records of swordfish shipments for 2 years from the date of submission to NMFS.

Request for Comments

NMFS is seeking comment on these proposed measures, particularly on the impacts of these proposed measures on small businesses and on the structure and practices of the domestic swordfish market. Public hearings will be scheduled during the comment period. The dates, times and locations of these hearings will be published in the **Federal Register** at a later date.

Classification

This proposed rule is published under the authority of the ATCA. The Assistant Administrator for Fisheries, NOAA, has preliminarily determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT, to gather important trade data and for the domestic 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 as follows:

The proposed rule would prohibit the import into the United States of Atlantic swordfish or Atlantic swordfish pieces, weighing less than 33 lb dressed weight (dw) (15 kg) unless documented as coming from an Atlantic swordfish

weighing 33 lb dw (15 kg) or greater, would require swordfish importers to obtain a dealer permit (annual fee of \$40) and to submit importation reports, and would require that all imports of swordfish be accompanied by a certificate of eligibility. The principal burden would be the time required to keep records, obtain certifications and submit reports. Approximately 1,200 importers and exporters would be affected. The required information is readily available to exporters and importers. Therefore no incremental investments in information processing technologies would be needed. Accordingly, these proposed actions, considered separately or in aggregate, are not expected to have a significant economic impact. Thus, a regulatory flexibility analysis is not required for these actions.

Accordingly, an initial regulatory flexibility analysis was not prepared. The Regulatory Impact Review further discusses the economic effects of the proposed rule.

This proposed rule 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 (PRA) unless that collection of information displays a currently valid OMB control number.

This proposed rule would implement a new collection and restates or revises existing collection-of-information requirements subject to the PRA. Atlantic swordfish dealer permits, required under 50 CFR 630.4(a), are approved under OMB Control Number 0648-0205 and are estimated at 5 minutes per permit action. Dealer reporting and recordkeeping requirements for Atlantic swordfish dealers under § 630.5(b) are currently approved under OMB Control Number 0648-0013 and are estimated at 15 minutes per dealer report and 3 minutes for a negative report. It is proposed that these dealer permitting and reporting requirements be extended to include importers of swordfish. NMFS estimates that approximately 225 importers would be affected.

Additionally, NMFS proposes a new information collection concerning the COE program for swordfish imports. NMFS estimates 6,500 government-validated COEs would enter the United States in a given year based on 1997 and 1998 imports to date. The burden is estimated at one hour per COE.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 50 CFR Part 630

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

Dated: October 6, 1998.

Gary C. Matlock,

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

For the reasons set out in the preamble, 50 CFR part 630 is 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 § 630.2, definitions for “First transaction in the United States” and “Import” are added in alphabetical order and the definition of “Swordfish” is revised to read as follows:

§ 630.2 Definitions.

* * * * *

First transaction in the United States means the time and place at which the swordfish, is filleted, cut into steaks, or processed in any way that physically alters it after being landed in or imported into the United States.

* * * * *

Import, for the purpose of the regulation in this part, means the release of swordfish from a nation’s Customs’ custody and entry into the territory of that nation. Swordfish are imported into the United States upon release from U.S. Customs’ custody pursuant to filing an entry summary document (Customs Form 7501) or any authorized electronic medium. Swordfish destined from one foreign country to another, which transits the United States and for which an entry summary is not required to be filed, are not considered an import under this definition, so long as they remain in customs bond.

* * * * *

Swordfish means a fish of the species *Xiphias gladius*, occurring in, or

harvested from, any ocean area, or any part or product thereof.

* * * * *

3. In § 630.4, paragraph (a)(2) is revised to read as follows:

§ 630.4 Permits and Fees.

(a) * * *

(2) Annual dealer permit. A dealer in the United States who first receives swordfish harvested from the north or south Atlantic swordfish stocks, or who imports swordfish harvested from any ocean area, must have been issued a valid dealer permit under paragraph (e) of this section.

* * * * *

4. In § 630.5, paragraphs (b)(1)(ii) and (iii) are revised to read as follows:

§ 630.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(1) * * *

(ii) For imported swordfish, the dates of import, total weight of the shipments, entry numbers from Customs Form 7501, weight and price per pound or kilogram by product form (round, dressed, steaks, fillets or loins), condition (fresh or frozen), and the information contained on the certificate of eligibility that accompanied the shipment(s) as specified at § 630.42;

(iii) For swordfish landed by vessels of the United States, the dates of receipt and the names and official numbers of fishing vessels from which swordfish were received; and

* * * * *

5. In § 630.7, paragraphs (d) and (g) are revised to read as follows:

§ 630.7 Prohibitions.

* * * * *

(d) As a dealer, purchase, barter, or trade or attempt to purchase, barter, or trade a swordfish from the north or south Atlantic stock, or to import swordfish harvested from any ocean area into the United States without a valid dealer permit, as specified in §§ 630.4(a)(2) and 630.21(c).

* * * * *

(g) Falsify or fail to maintain or submit information required to be maintained or submitted, as specified in § 630.5 (a), (b), and (c).

* * * * *

6. Existing § 630.26 is redesignated as § 630.27 and a new § 630.26 is added to read as follows:

§ 630.26 Compliance monitoring.

Compliance with the minimum size requirements specified at § 630.23(a) and § 630.41 will be determined from the point at which the swordfish is

either landed in or imported into the United States up to and including the point of first transaction in the United States as follows:

(a) A swordfish or part thereof weighing less than 33 lb (15 kg) dressed weight will be deemed to be harvested by a vessel of the United States and in violation of the minimum size requirement specified at § 630.23(a) unless such swordfish or part thereof is accompanied by a certificate of eligibility attesting that the swordfish was imported.

(b) An imported swordfish or part thereof weighing less than 33 lb (15 kg) dressed weight that is imported into the United States will be deemed in violation of the minimum size requirement specified at § 630.41 unless it is accompanied by a certificate of eligibility attesting either that the swordfish was harvested from an ocean area other than the Atlantic or that the fish part was derived from a swordfish harvested from the Atlantic that weighed at least 33 lb (15 kg) dressed weight at harvest.

7. Section 630.40 is revised to read as follows:

§ 630.40 Applicability.

The policies and procedures contained in 50 CFR 285.80 through 285.86, which implement the provisions of section (6)(c) of the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*, with respect to import controls and which specify procedures for the establishment of restrictions on imports of tuna, apply to swordfish taken from the north and south Atlantic stocks.

8. Sections 630.41 and 630.42 are added to subpart C read as follows:

§ 630.41 Minimum size requirement.

To facilitate enforcement of domestic regulations, a swordfish, or part thereof, less than the minimum size specified at § 630.23(a) may not be imported, or attempted to be imported into the United States, unless it is accompanied by the certificate of eligibility specified at § 630.42 attesting either that the swordfish was harvested from an ocean area other than the Atlantic Ocean or that the fish part was derived from a swordfish harvested from the Atlantic that weighed at least 33 lb (15 kg) dressed weight at harvest.

§ 630.42 Certificate of eligibility.

(a) A shipment of swordfish in any form offered for import into the United States, directly or indirectly, from any country is admissible only if accompanied by a certificate of eligibility. Such a certificate is required for swordfish identified by any item

number from the Harmonized Tariff Schedule including but not limited to the following:

(1) Fresh or chilled swordfish, steaks, No. 0302.69.20.41.

(2) Fresh or chilled swordfish, excluding fillets, steaks and other fish meat, No. 0302.69.20.49.

(3) Frozen swordfish, steaks, No. 0302.79.20.41.

(4) Frozen swordfish, excluding fillets, steaks and other fish meat, No. 0302.79.20.49.

(5) Frozen swordfish, fillets, No. 0304.20.60.92.

(b) The certificate of eligibility required under this section must indicate the flag state of the harvesting vessel, the ocean area of harvest and, if the shipment contains swordfish or

parts thereof less than the minimum size specified at § 630.23(a), the reason such swordfish is eligible for entry as specified in § 630.41. The certificate shall be attached to the invoice accompanying the swordfish shipment from the point of import into the United States up to and including the point of first transaction in the United States.

(c) The certificate of eligibility required under this section must include the name and title of a responsible government official of the country exporting the swordfish to the United States and be signed and dated by that official with official government seal affixed, thus validating the information on flag vessel and ocean area of harvest. (d) A certificate of

eligibility may refer to swordfish taken from only one ocean area of harvest (Atlantic, Pacific, Indian) and by vessels under the jurisdiction of only one nation. If a shipment contains swordfish taken from more than one ocean area, or swordfish harvested by several vessels from different flag states, a separate certificate must accompany the shipment for each ocean area of harvest and for each flag nation of the harvesting vessels.

(e) A model certificate of eligibility is available from the Director. An equivalent form may be used provided it contains all the information required under this section.

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