

recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence.

The Service believes that substantial information exists that threats to the species exist under one or more of the five listing factors. Because so few populations and individuals exist, the species may be especially vulnerable to random natural events.

The petitioners state that many, if not most, insect populations normally experience large fluctuations in size (Ehrlich 1992; Schultz 1998) with weather, predation, and disease potentially causing annual changes in butterfly numbers of an order of magnitude or more. They go on to state that normal population fluctuations, coupled with habitat alteration or loss can result in population extirpations (Hanski *et al.* 1995). Based on this, the petitioners conclude that, with only one known population, this butterfly is extremely vulnerable to extinction.

At the time the petition was written, American Camp was the only area known to be occupied by island marbles. Extensive surveys conducted after the petition was submitted revealed 3 additional areas that were occupied (Miskelly 2005). Fewer than 10 adults were observed in each of these areas (Miskelly 2005). Miskelly (2005) suggests that the three satellite populations found in 2005 may not be self sustaining, and that conservation of the island marble is largely dependent on having a viable population at American Camp.

### Finding

On the basis of our review, we find that the petition and information in our files presents substantial information indicating that listing of the island marble butterfly may be warranted. The small number of individuals remaining and their limited distribution increases extinction risk and makes the species especially vulnerable to threats that may exist under one or more of the five listing factors.

### Public Information Solicited

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available science and commercial information, we are soliciting additional information on the island marble butterfly. We are requesting additional

information, comments, and suggestions concerning the status of the island marble butterfly from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties. We are seeking information regarding the species' historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat.

If you wish to comment or provide information, you may submit your comments and materials concerning this finding to our Western Washington Fish and Wildlife Office (*see ADDRESSES* section above).

Our practice is to make comments and materials provided, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your submission. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (*see ADDRESSES* section above).

### References Cited

A complete list of all references cited is available, upon request, from our Western Washington Fish and Wildlife Office (*see ADDRESSES* section above).

### Author

The primary author of this notice is Ted Thomas, Western Washington Fish and Wildlife Office (*see ADDRESSES* section above).

### Authority

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

Dated: February 3, 2006.

### Marshall P. Jones,

*Deputy Director, Fish and Wildlife Service.*

[FR Doc. E6-1930 Filed 2-10-06; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 060201021-6021-01; I.D. 100405C]

RIN 0648-AT73

#### Atlantic Highly Migratory Species; Atlantic Swordfish Quotas

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

**ACTION:** Proposed rule; request for comments; notice of public hearings.

**SUMMARY:** NMFS proposes to amend the regulations governing the North and South Atlantic swordfish fisheries to modify the North and South Atlantic Swordfish quotas for the 2005 fishing year (June 1, 2005, through May 31, 2006) to account for updated landings information from the 2003 and 2004 fishing years. This action is necessary to ensure that current quotas are based on the most recent landings information and account for any underharvest from previous fishing years, consistent with the regulations at 50 CFR part 635. Additionally, this action proposes to implement a subsequent recommendation by the International Commission for the Conservation of Atlantic Tuna (ICCAT) (Recommendation 04-02), which extends the 2005 North Atlantic swordfish management measures. The recommendation specifies that the extension of the 2005 North Atlantic swordfish quota is through the 2006 fishing year, but this proposed action would extend the 2005 North Atlantic swordfish management measures until ICCAT provides a recommendation for a new U.S. allocation of the North Atlantic swordfish total allowable catch. ICCAT's Standing Committee for Research and Statistics (SCRS) plans to conduct a stock assessment for North Atlantic swordfish in 2006. If the stock assessment is completed as anticipated, ICCAT intends to review the results during the Fall 2006 meeting and develop new management recommendations. In the event that ICCAT does not recommend a new U.S. allocation, this action proposes to extend the 2005 North Atlantic swordfish management measures until such time as ICCAT provides the recommendation.

**DATES:** Written comments on the proposed rule must be received by 5 p.m. on March 30, 2006.

NMFS will hold two public hearings to receive comments from fishery participants and other members of the public regarding the proposed swordfish regulations. Additional public hearings will be considered upon request and must be received by 5 p.m. on March 1, 2006 (see **FOR FURTHER INFORMATION CONTACT**).

The public hearing dates are:  
 1. Monday, March 13, 2006, 4–6 p.m., Silver Spring, MD.  
 2. Friday, March 17, 2006, 2–5:30 p.m., Gloucester, MA.

**ADDRESSES:** The public hearing locations are:

1. Gloucester - Northeast Regional Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930; and  
 2. Silver Spring - National Oceanic and Atmospheric Administration, SSMC IV, NOAA Auditorium, 1301 East West Highway, Silver Spring 20910.

Written comments on the proposed rule or the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Draft EA/RIR/IRFA) may be submitted to Megan Caldwell, Fisheries Management Specialist, Highly Migratory Species Management Division, using any of the following methods:

- Email: [SF1.100405C@noaa.gov](mailto:SF1.100405C@noaa.gov).
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope “Comments on Proposed Rule to Adjust the North and South Atlantic Swordfish Quotas.”
- Fax: 301–713–1917.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Include in the subject line the following identifier: I.D. 100405C.

Copies of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP) and other relevant documents are also available from the Highly Migratory Species Management Division website at <http://www.nmfs.noaa.gov/sfa/hms>.

**FOR FURTHER INFORMATION CONTACT:** Megan Caldwell, by phone: 301–713–2347; by fax: 301–713–1917; or by email: [Megan.Caldwell@noaa.gov](mailto:Megan.Caldwell@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The U.S. Atlantic swordfish fishery is managed under the 1999 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.

#### North Atlantic Swordfish Quota

Prior to the 2002 meeting, ICCAT conducted a stock assessment examining the North Atlantic swordfish population. The Standing Committee on Research and Statistics (SCRS) concluded that the stock could support an increase in the total allowable catch (TAC) of North Atlantic swordfish. According to the stock assessment, the biomass at the start of 2002 was estimated to be 94 percent of the biomass needed to produce maximum sustainable yield (MSY). The SCRS felt that there was a greater than 50-percent chance that a TAC of 14,000 metric tons (mt) whole weight (ww) would allow the stock to rebuild to MSY by the end of 2009. Based on this information, ICCAT recommended a TAC of 14,000 mt ww for 2003, 2004, and 2005, which is an increase from 10,400 mt ww in 2002. Of the 14,000 mt ww, the United States is allowed to catch 3,877 mt ww (2,915.0 mt dressed weight (dw)) in 2003 and 3,907 mt ww (2,937.6 mt dw) in 2004 and 2005 (Recommendation 02–02).

On November 23, 2004, NMFS published a final rule to implement the ICCAT recommendations for the North Atlantic swordfish quotas in 2003, 2004, and 2005 (69 FR 68090). Pursuant to 50 CFR 635.27(c)(3)(ii), total landings below the annual North Atlantic swordfish quota shall be added to the following year's quota. Any carryover is to be apportioned equally between the two semi-annual fishing seasons.

The 2003 preliminary reported landings were 1,509.0 mt dw, resulting in an underharvest of 2,517.8 mt dw. These preliminary landings were previously used to adjust the quota for the 2004 fishing year (November 23, 2004; 69 FR 68090). The final landings for 2003 were 1,822.5 mt dw, thus decreasing the 2003 underharvest to 2,275.1 mt dw.

This action would adjust the total available quota for the 2004 fishing year to account for the final 2003 landings information. The 2004 North Atlantic swordfish baseline quota was 2,937.6 mt dw. The baseline quota plus the final 2003 underharvest would result in a total 2004 quota of 5,212.7 mt dw. The preliminary landings for the 2004 directed and incidental fishery are 1,475.0 mt dw. In addition to these landings, the United States transferred 18.8 mt dw to Canada, resulting in an underharvest of 3,398.5 mt dw for the 2004 fishing year after deducting dead discards.

Under this action, the underharvest from the 2004 fishing year (3,398.5 mt dw) would be added to the 2005 baseline quota (2,937.6 mt dw) for an adjusted 2005 North Atlantic swordfish quota of 6,336.1 mt dw. The reserve category would be allocated 101.5 mt dw, the incidental category would be allocated 300 mt dw, and the remaining quota would be divided into two equal semiannual quotas of 2,967.3 mt dw for the periods of June 1, 2005, through November 30, 2005, and December 1, 2005, through May 31, 2006.

The 2002 ICCAT recommendations included management measures for the North Atlantic swordfish fishery from 2003, 2004, and 2005 with the expectation that a new stock assessment would be reviewed by the SCRS in 2005. The North Atlantic swordfish stock assessment has been postponed until 2006; therefore in 2004, ICCAT recommended that the 2005 North Atlantic swordfish quotas be extended until new stock status information is available (Recommendation 04–02). This action proposes to implement the 2004 ICCAT recommendation. Extending the 2005 North Atlantic swordfish management measures is not expected to have a significant impact on the stock because the quota has been underharvested for the past several years, restrictions on the pelagic longline fleet remain unchanged, and permits and effort continue to be low.

#### South Atlantic Swordfish Quota

The SCRS also conducted a stock assessment of South Atlantic swordfish in 2002. Due to discrepancies between several of the datasets, reliable stock assessment results could not be produced. However, the SCRS noted that the total reported catches have decreased since 1995. ICCAT set a South Atlantic swordfish TAC of 15,631 mt ww in 2003, 15,776 mt ww in 2004, 15,956 mt ww in 2005, and 16,055 mt ww in 2006. Of these amounts, the United States is allocated 100 mt ww (75.2 mt dw) in 2003, 2004, and 2005 and 120 mt ww (90.2 mt dw) in 2006 (Recommendation 02–03).

The November 2004 final rule also implemented the ICCAT recommendations for the South Atlantic swordfish fishery in 2003, 2004, 2005, and 2006 (68 FR 68090). As mentioned above, the regulations also require that landings below the annual South Atlantic quota shall be added to the following year's quota.

The 2004 South Atlantic swordfish landings were below the adjusted 2004 quota. Therefore, this action proposes to carry over the underharvest into the 2005 fishing year. There were no

directed South Atlantic swordfish landings during the 2004 fishing year. The adjusted quota for the 2004 fishing year was 334.3 mt dw (75.2 mt dw baseline plus 259.1 mt dw carried over from the 2003 fishing year). Therefore, this action proposes to combine 2005 baseline quota (75.2 mt dw) with the carryover from 2004 fishing year (334.3 mt dw), increasing the total 2005 South Atlantic swordfish quota to 409.5 mt dw. There is no incidental catch quota for South Atlantic swordfish.

#### Requests for Comments

NMFS will hold two public hearings (see **DATES** and **ADDRESSES**) to receive comments from fishery participants and other members of the public regarding this proposed rule. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Megan Caldwell at 301-713-2347 at least 5 days prior to the hearing date. For individuals unable to attend a hearing, NMFS also solicits written comments on the proposed rule (see **DATES** and **ADDRESSES**).

#### Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. Consistent with 50 CFR 635.27 (c)(3)(ii) and (iii), this action proposes to adjust the 2005 North and South Atlantic swordfish annual quotas to account for the underharvest from previous fishing years. Additionally this action proposes to implement the 2004 ICCAT recommendation, which extends the 2005 North Atlantic swordfish management measures. The proposed quota for the North Atlantic swordfish fisheries would be apportioned equally between the two semi-annual fishing seasons in the North Atlantic region. The Assistant Administrator for Fisheries, NOAA, has preliminarily determined that the regulations contained in this rule are necessary to ensure continued progress toward the conservation goals of ICCAT, the Magnuson-Stevens Act, ATCA, and the FMP for Atlantic Tunas, Swordfish, and Sharks.

The measures proposed in this rule are not expected to alter fishing practices or fishing effort significantly and therefore should not have any further impacts on endangered species, marine mammals, or critical habitat beyond those considered in the June 2001 Biological Opinion (BiOp) on Atlantic HMS Fisheries and the June 2004 BiOp for the HMS pelagic longline (PLL) fisheries. In the June 2001 BiOp, it was determined that the continued operation of the Atlantic HMS rod and

reel fishery is not likely to jeopardize the continued existence of the right whale, humpback, fin, or sperm whales, or Kemp's ridley, green, loggerhead, hawksbill, or leatherback sea turtles. The June 2004 BiOp determined that the continued operation of the PLL fishery is not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but is likely to jeopardize the continued existence of leatherback sea turtles.

NMFS has since promulgated regulations required by the 2004 BiOp to avoid jeopardy of leatherback sea turtles, such as sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with PLL gear onboard. 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. NMFS has also implemented several time/area closures between 1999 and 2002, which in combination with the previously mentioned restrictions have contributed to the quota underages for both the North and South Atlantic swordfish quotas since 2000. In 2004, there were 390 commercial swordfish directed and incidental permit holders, but only 142 vessels reported commercial swordfish landings. Because NMFS is not altering the current restrictions on the PLL fishery, the increased quota is not expected to increase effort.

An additional short term consideration is the impact of Hurricanes Katrina and Rita on the pelagic longline fishing industry in the Gulf of Mexico. The effort in this area is not likely to increase during the 2005 fishing year.

Thus, NMFS feels that the current level of incidental takes of protected species is not likely to be impacted by this proposed change. Accordingly, no irreversible or irretrievable commitment of resources is expected from this proposed action as this proposed rule is not expected to adversely affect protected species.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on

a substantial number of small entities. This action proposes to modify the North and South Atlantic swordfish quotas for the 2005 fishing year to account for the underharvest in previous fishing years. Additionally, this action proposes to extend the 2005 North Atlantic swordfish management measures pursuant to a 2004 ICCAT (Recommendation 04-02). These actions are necessary to comply with the recommendations of ICCAT, the requirements of the Magnuson-Stevens Act and ATCA, and the measures in the FMP for Atlantic tunas, sharks, and swordfish.

The commercial swordfish fishery is composed of fishermen who hold a swordfish directed, incidental, or handgear permit and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities. In 2004, there were 390 commercial permit holders and 142 vessels reported landing swordfish commercially. About 90 percent of the vessels reporting commercial swordfish landings used pelagic longline gear. In 2005, the commercial swordfish permit holders declined to 372 permits for directed, incidental, and handgear permits. In 2004, there were also 24,843 HMS Angling permit holders who could land swordfish recreationally (i.e., not for profit), and 4,113 charter/headboat permit holders authorized to land swordfish. Other sectors of highly migratory species fisheries, such as dealers, processors, bait houses, and gear manufacturers, could be indirectly affected by the final regulations.

The proposed increased quota 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 2004, the North Atlantic swordfish fishery had an underharvest of 3,398.5 mt dw and the South Atlantic swordfish fishery had an underharvest of 334.2 mt dw. The proposed action would result in a quota that is greater than current catches. Thus, NMFS does not believe that the net benefits and costs would change significantly as a result of the proposed quota increases.

In the Final Regulatory Flexibility Analysis for the November 24, 2004, final rule (69 FR 68090), the criteria used to evaluate the 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 increase, 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 by 3,398.5 mt dw could increase ex-vessel revenues by as much as \$23.5 million if the entire adjusted quota were caught; and increasing the South Atlantic swordfish quota by 334.3 mt dw could increase the ex-vessel revenues by \$2.3 million. Based on existing regulations, including time/area closures, minimum sizes, and permit restrictions, it is unlikely that there will be an increase in effort in the fishery. If effort is increased, U.S. fishermen would potentially experience positive benefits as a result of this proposed rule.

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

NMFS has determined preliminarily that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic, Gulf of Mexico,

and Caribbean that have approved coastal zone management programs. Letters have been sent to the relevant states asking for their concurrence.

**List of Subjects in 50 CFR Part 635**

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

Dated: February 7, 2006.

**William T. Hogarth,**  
*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be 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)(i)(A) is revised to read as follows:

**§ 635.27 Quotas.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) A swordfish from the North Atlantic 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 each fishing year beginning June 1, 2004. 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.

\* \* \* \* \*

[FR Doc. E6-1980 Filed 2-10-06; 8:45 am]

**BILLING CODE 3510-22-S**