

(7) For birds of species on the Federal List of Threatened or Endangered Wildlife, provided at 50 CFR 17.11(h), you may need a Federal threatened or endangered species permit before removing the birds (see 50 CFR 17.21 and 50 CFR 17.31).

(8) You must have a permit from your Regional migratory bird permits office to remove a bald eagle or a golden eagle from a building (see 50 CFR Part 22).

(9) Your action must comply with State and local regulations and ordinances. You may need a State, Tribal, or Territorial permit before you can legally remove the bird or birds.

(10) If an active nest with eggs or nestlings is present, you must seek the assistance of a federally permitted migratory bird rehabilitator in removing the eggs or nestlings. The rehabilitator is then responsible for handling them properly.

(11) If you need advice on dealing with a trapped bird, you should contact your closest Fish and Wildlife Service office or your State wildlife agency.

Dated: September 4, 2007.

**David M. Verhey,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 020607C]

RIN 0648-AV10

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations governing the North and South Atlantic swordfish fisheries to implement two recommendations by the International Commission for the Conservation of Atlantic Tuna (ICCAT) (Recommendations 06-02 and 06-03). These recommendations establish baseline quotas for North and South Atlantic swordfish, respectively, and set caps on underharvest carryover. Additionally, recommendation 06-02 allows a contracting party (CPC) with a total allowable catch (TAC) allocation to make a transfer within a fishing year of

up to 15 percent of its baseline allocation to other CPCs with TAC allocations, as long as the transfer is conducted in a manner that is consistent with domestic obligations and conservation considerations. This final rule will transfer 15 percent of the North Atlantic swordfish baseline quota into the reserve category which would allow it to be transferred to other CPCs with TAC allocations. In addition, this final rule modifies the North and South Atlantic swordfish quotas for the 2006 fishing year to account for updated landings information from the 2004 and 2005 fishing years. Finally, this final rule includes the option of an internet website as an additional method for complying with the Atlantic Highly Migratory Species (HMS) Angling or Atlantic HMS Charter/Headboat category(s) 24 hour reporting requirement. Currently, reporting is by telephone only. This rule will remain in effect until ICCAT provides new recommendations for the U.S. swordfish fisheries.

**DATES:** This rule is effective on November 5, 2007.

**ADDRESSES:** For copies of the Final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA), please write to Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910, or at 301-713-1917 (fax). Copies are also available from the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/>.

**FOR FURTHER INFORMATION CONTACT:** Heather Ann Halter or Karyl Brewster-Geisz by phone: 301-713-2347 or by fax: 301-713-1917.

#### SUPPLEMENTARY INFORMATION:

##### Background

The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS Fishery Management Plan (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.

Currently, baseline quotas for North and South Atlantic swordfish are 2,937.6 metric tons (mt) dressed weight (dw) for the North Atlantic and 90.2 mt dw for the South Atlantic. Baseline quotas for the United States are established by implementing recommendations from the International Commission for the Conservation of

Atlantic Tunas, or ICCAT. Each fishing year, quotas are adjusted by carrying over the entire under harvest or deducting overharvest from the previous fishing year. Thus, the entire under harvest is added to the next year(s) baseline quota. Finally, no additional quota has been added to the reserve category since it was created in 2002 and it continues to decrease each year because 18.8 mt dw is transferred to Canada annually from the reserve.

On June 18, 2007 (72 FR 33436), NMFS published a proposed rule that examined alternatives for implementing 2006 ICCAT recommendations 06-02 and 06-03. Among the topics explored in the alternatives were North and South Atlantic swordfish quotas and underharvest carryovers, as well as alternatives exploring mechanisms for a permissible 15 percent North Atlantic baseline quota transfer to other CPCs with TAC allocations. Information regarding these alternatives was provided in the preamble of the proposed rule and is not repeated here.

#### *Final Quotas, Underharvest Carryover Caps, and Transfer Allocation for North and South Atlantic Swordfish*

The final 2007 and 2008 baseline quotas for North and South Atlantic swordfish are 2,937.6 mt dw and 75.2 mt dw, respectively. In addition, final 2007 and 2008 carryover caps will be 50 percent of the original baseline allocation for the North Atlantic (1,468.8 mt dw) and 100 percent of the original baseline allocation for the South Atlantic (75.2 mt dw). The 100 percent cap for the South Atlantic will also apply to 2006 carryover. The final mechanism for possible 15 percent transfer to other CPCs will be placement of 15 percent of the 2007 North Atlantic baseline quota allocation (440.6 mt dw) into the 2007 reserve category. The final North and South Atlantic 2007 and 2008 swordfish quotas, carryover caps, and transfer mechanism to the North Atlantic reserve category are provided in Table 1. These baselines and carryovers will continue until ICCAT issues new recommendations for the United States. Both the North and South Atlantic swordfish fisheries are open unless closed per 50 CFR 635.28(c)(1).

TABLE 1 — FINAL NORTH AND SOUTH ATLANTIC SWORDFISH BASELINE QUOTAS, CARRYOVER CAPS, AND NORTH ATLANTIC RESERVE CATEGORY QUOTA

North Atlantic Swordfish Quota (mt dw)	2006	2007	2008
Directed Quota	2,554.9	2,114.3	2,133.1
Incidental Quota	300.0	300.0	300.0
Reserve Quota	82.7	523.3	504.5
Baseline Quota	2,937.6	2,937.6	2,937.6
Carry-over Cap	no cap	1,468.8	1,468.8
South Atlantic Swordfish Quota (mt dw)	2006	2007	2008
Baseline Quota	90.2	75.2	75.2
Carry-over Cap	75.2	75.2	75.2

*Final Addition to Atlantic HMS Angling or Atlantic HMS Charter/Headboat Category 24 hour reporting requirement*

NMFS will include the option of an internet website as an additional method for complying with the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category(s) 24 hour reporting requirement. Previously, reporting was by telephone only.

**Response To Comments**

NMFS conducted three public hearings to receive comments on the proposed rule. The comment period ended on July 18, 2007. Comments on the proposed rule (June 18, 2007; 72 FR 33436) are summarized below, together with NMFS' responses.

*Comment 1:* NMFS received several comments in support of the addition of an internet reporting option for the HMS angling and charter/headboat 24 hour reporting requirement. Comments noted that reporting a landing using the internet is very helpful, easy, and is less frustrating than calling in a landing.

*Response:* NMFS will implement the internet option for the HMS angling and charter/headboat 24 hour reporting

requirement to provide fishermen with more flexibility in satisfying the requirement. Those who prefer to report by phone may still do so, and those that prefer reporting by internet may choose that option in lieu of telephone reporting.

*Comment 2:* NMFS received several comments in support of the preferred alternative 1b, following ICCAT recommendations for quotas and underharvest carryover caps.

*Response:* Implementation of alternative 1b will establish baseline quotas and carryover caps consistent with ICCAT recommendations 06–02 and 06–03 and the Atlantic Tunas Convention Act.

*Comment 3:* NMFS received comments in support of preferred alternative 2b, which will introduce the transfer provision in ICCAT recommendation 06–02 by transferring 15 percent of the 2007 North Atlantic swordfish U.S. baseline quota (440.6 mt dw) into the reserve category which would allow it to be transferred to other CPCs with TAC allocations.

Additionally, NMFS received a comment opposing preferred alternative 2b, which will transfer 15 percent of the 2007 North Atlantic swordfish U.S. baseline quota (440.6 mt dw) into the reserve category which would allow it to be transferred to another CPC. This comment favored alternative 2c, which would take the allowable 15 percent transfer (if it were to be made) to another CPC from the directed quota at the time of request.

*Response:* NMFS will implement alternative 2b in order to replenish a reserve quota that has not been increased since its creation in 2002 and also to create a reliable directed fishery quota at the start of a given fishing season. If alternative 2c were implemented, a 15 percent transfer (if it were made) out of the directed quota would not allow swordfish vessel owners and directed permit holders to adequately plan for the upcoming fishing year due to sudden directed quota loss.

*Comment 4:* NMFS received several comments stating that, if NMFS eventually decides to transfer 15 percent of the North Atlantic swordfish quota to one or more CPCs, NMFS should choose a transfer to Canada over a transfer to Mexico. These statements were due to the belief that Canada(s) fishing practices are more environmentally friendly than those of Mexico. In addition, NMFS received a comment opposing any transfer of quota to a CPC at this time.

*Response:* NMFS has not, at this time, decided to transfer 15 percent of the North Atlantic swordfish quota to any

given CPC. If requested in the future, NMFS would consider implementing the transfer under a separate action. Such an action would consider the ecological and economic impacts of transferring quota to that CPC. This is consistent with ICCAT recommendation 06–02 regarding quota transfer to another CPC, which states that a country which decides to implement the 15 percent quota transfer may do so consistent with domestic obligations and conservation considerations.

*Comment 5:* NMFS received comments that Canadian fishermen undergo feast or famine practices in order to catch their full quota at the end of the summer, which drops the U.S. catch. These comments stated that it would be better if NMFS could give Canada the 18.8 mt dw annual transfer a little at a time in order to spread their landings out and prevent these feast or famine practices.

*Response:* Under recommendation 06–02, ICCAT provides Canada 18.8 mt dw annually from the U.S. baseline quota. That transfer is for Canada to use as it sees fit. This rulemaking will not modify the 18.8 mt dw annual transfer to Canada nor influence Canadian fishing practices.

**Changes to the Proposed Rule**

NMFS did not make any changes from the June 18, 2007, proposed rule (72 FR 33436).

**Classification**

NMFS has determined that this action is consistent with the conservation goals of ICCAT, the Magnuson-Stevens Act, ATCA, the Consolidated HMS FMP, and other applicable law.

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

In compliance with section 604 of the Regulatory Flexibility Act, a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA analyzes the anticipated economic impacts of the preferred actions and any significant alternatives to the final rule that could minimize economic impacts on small entities. Each of the statutory requirements of Section 604 of the Regulatory Flexibility Act has been addressed, and a summary of the FRFA is below. The full FRFA and analysis of economic and ecological impacts, are available from NMFS (see ADDRESSES).

Section 604(a)(1) of the Regulatory Flexibility Act requires the Agency to state the objective and need for the rule. The objective of this rule is, consistent with the Magnuson-Stevens Act and the Atlantic Tunas Convention Act, to comply with ICCAT recommendations

in establishing U.S. quotas, capping the amount of carryover from 2006 for both North and South Atlantic swordfish, and establishing a mechanism for transferring up to 15 percent of the U.S. swordfish allocation to other ICCAT CPCs. NMFS needs to implement this action in order to comply with ICCAT recommendations and the ATCA.

Section 604(a)(2) of the Regulatory Flexibility Act requires the Agency to summarize significant issues raised by the public comment in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the Agency's assessment of such issues, and a statement of any changes made as a result of the comments. The IRFA was done as part of the draft EA for the proposed rule of this action. NMFS did not receive any comments specific to the IRFA or the economic impacts of the proposed alternatives.

Section 604(a)(3) of the Regulatory Flexibility Act requires the Agency to describe and provide an estimate of the number of small entities to which the rule will apply. This rule could directly affect commercial and recreational swordfish fishermen in the Atlantic Ocean in the United States. The commercial swordfish fishery is composed of fishermen who hold a swordfish directed, incidental, or handgear limited access permit, all of which NMFS considers to be small entities. There are also related industries including processors, bait houses, and equipment suppliers, but these industries are not directly affected by this rule. As of February 2006, there were 365 commercial swordfish permit holders for directed, incidental, and handgear permits. Also as of February 2006, there were 25,238 HMS angling permit holders who could land swordfish recreationally (i.e., not for profit), and 4,173 charter/headboat permit holders authorized to land swordfish. More information regarding the numbers of small entities involved in the swordfish fishery can be found in Chapter 6 of the EA (see **ADDRESSES**).

Section 604(a)(4) of the Regulatory Flexibility Act requires the Agency to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the alternatives considered for this final rule would result in additional reporting, recordkeeping, and compliance requirements.

Section 604(a)(5) of the Regulatory Flexibility Act requires the Agency to describe the steps taken to minimize the significant economic impact on small

entities consistent with the stated objectives and applicable statutes. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)-(4)) lists four general categories of "significant" alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage for small entities.

NMFS considers all permit holders in the swordfish fishery to be small entities. In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act and ATCA, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above). NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act and ATCA. As described below, NMFS analyzed five different alternatives in this final rulemaking and provides justification for selection of the preferred alternative to achieve the desired objective.

The alternatives included: maintaining current baseline quotas for North and South Atlantic swordfish (alternative 1a, no action), implementing North and South Atlantic swordfish quotas and underharvest provisions as outlined in ICCAT recommendations 06-02 and 06-03 (alternative 1b), allocating no additional swordfish quota to the reserve category (alternative 2a, no action), transferring 15 percent (440.6 mt dw) of the 2007 baseline North Atlantic swordfish allocation to the reserve category (alternative 2b), and establishing procedures for possible implementation of the transfer provision outlined in ICCAT recommendation 06-02 (alternative 2c). Implementing North and South Atlantic swordfish quotas and underharvest provisions as outlined in ICCAT recommendations 06-02 and 06-03 (alternative 1b) and transferring 15 percent (440.6 mt dw) of the 2007 baseline North Atlantic swordfish

allocation to the reserve category (alternative 2b) are the preferred alternatives.

#### *Alternatives Considered for Quotas and Underharvest Carryovers*

Alternative 1a is considered the no action alternative since it would maintain existing baseline quotas for North and South Atlantic swordfish, as well as carryover entire underharvests in future fishing years (e.g., 2007 and beyond). This alternative is not preferred because it would fail to comply with international obligations under ICCAT and ATCA.

Maintaining existing baseline quotas would fail to decrease the South Atlantic recommended baseline quota from 90.2 mt dw to 75.2 mt dw. Furthermore, failing to cap overharvests consistent with ICCAT recommendations 06-02 and 06-03 would result in carryover that would more than double what is recommended by ICCAT.

Alternative 1b, the preferred alternative, which will implement North and South Atlantic swordfish quotas and underharvest provisions as outlined in ICCAT recommendations 06-02 and 06-03, complies with ICCAT recommendations. North Atlantic underharvest carryover will be capped at 50 percent of the 2007 and 2008 baseline quota allocations (1,468.8 mt dw). South Atlantic underharvest carryover will be capped at 100 percent of the 2007 and 2008 baseline quota allocations (75.2 mt dw) and South Atlantic underharvest carryover for 2006 will be capped at 100 mt dw (75.2 mt dw). In addition, alternative 2b will allow for 2,022.56 mt dw of the U.S. 2005 North Atlantic underharvest to be redistributed among other CPCs in 2007 (1,011.28 mt dw) and 2008 (1,011.28 mt dw), consistent with ICCAT recommendation 06-02.

By applying caps and baseline quotas in ICCAT recommendations 06-02 and 06-03 for 2007, prices for fully realized quota harvests can be calculated in order to compare the application of alternative 1a versus 1b. Application of alternative 1b versus 1a may result in a loss of \$45.3 million for the North Atlantic swordfish fishery in 2007 if harvests are fully realized. Application of alternative 1b versus 1a may result in a loss of \$0.14 million for the South Atlantic swordfish fishery in 2007 if harvests are fully realized. However, baseline quotas for the North and South Atlantic have not been fully realized in recent years. The pelagic longline fleet has not caught the entire U.S. swordfish quota, causing significant amounts of swordfish quota to be carried over in

past fishing years. For example, the amount of total underharvest in the North Atlantic during years 2004–2006 was 3,528.8 mt dw, 4,806.1 mt dw, and 6,905.9 mt dw, respectively. In recent years, there have been no landings of swordfish in the South Atlantic. A reduction in the growth of underharvest carryovers, and the June 7, 2007, final rule (72 FR 31688) to help revitalize the swordfish industry, would increase the ability of the vessel owners and permit holders in the pelagic longline fleet to catch their full quota. In conclusion, maintaining the North Atlantic baseline quota, decreasing the South Atlantic baseline quota, and capping underharvest carryovers in both swordfish fisheries would not have adverse impacts on a large number of small entities.

#### *Alternatives Considered for Quota Transfers*

Alternative 2a is considered the no action alternative since it would maintain the reserve category whereby no new quota allocations would replenish the reserve. This alternative is not preferred because the 18.8 mt dw per year transfer to Canada would eventually deplete the reserve. Consistent with § 635.27(c)(1)(i)(D), the reserve has four stated uses. Quota in the reserve category may be used for inseason adjustments to other fishing categories, to compensate for projected or actual overharvest in any category, for fishery independent research, or for other purposes consistent with management objectives. The status quo alternative does not create any new economic burdens on the North Atlantic commercial swordfish fishery, however, if the reserve were to be completely depleted in future fishing years, its four stated uses could not be implemented. For example, other swordfish quota categories could not be supplemented through transfers from the reserve, overharvests could not be covered, and valuable data could not be obtained by using quota for fishery independent research.

Alternative 2b, the preferred alternative, will transfer 15 percent (440.6 mt dw) of the 2007 baseline U.S. North Atlantic swordfish allocation to the reserve category. This will replenish the reserve and make it available for its four stated uses.

Alternative 2c would establish procedures for possible implementation of the transfer provision outlined in the 2006 ICCAT recommendation 06–02 to handle transfer requests or offers by other CPCs. This alternative differs from alternative 2b in that 2c would not place 15 percent of the North Atlantic

baseline quota directly into the reserve. Rather, if the situation arose for a needed transfer, a transfer of up to 15 percent would be made from the directed quota category.

Alternative 2b is preferred over 2c because placing 15 percent of the North Atlantic baseline quota directly into the reserve would replenish the reserve and also create a reliable directed fishery quota at the start of a given fishing season. If 2c were implemented, a 15 percent transfer (if it were made) out of the directed quota may not allow the fishery to adequately prepare for the upcoming year, since the directed quota would suddenly decrease during a season in which a transfer might be made. The industry might prepare and purchase such things as equipment for an upcoming season and lose revenue due to this quota reduction.

Alternative 2b would replenish a reserve that would otherwise become depleted in future fishing years through the annual 18.8 mt dw transfer to Canada. This creates four options (previously mentioned) for use of the 15 percent (440.6 mt dw) allocated reserve quota. Placing 15 percent of the 2007 and 2008 baseline quota directly into the reserve would provide for a directed fishery quota that would not be reduced due to an in-season transfer, as well as provide opportunity to cover other U.S. North Atlantic swordfish quota categories should the situation arise.

Implementing alternative 2b, transferring 15 percent of the U.S. baseline quota to the reserve, amounts to 3,601.9 mt dw for the North Atlantic directed swordfish fishery and 504.5 mt dw for the reserve during the 2007 fishing year. If alternative 2b is not implemented, the North Atlantic directed swordfish fishery would have a larger quota of 4,042.5 mt dw and a smaller reserve of 63.9 mt dw. The implementation of alternative 2b would therefore result in a potential loss in revenue of \$3.7 million to the North Atlantic directed swordfish fishery when compared to the status quo. However, NMFS does not expect fishing effort to increase in the short term to the extent that this loss would be realized. U.S. fishermen have not caught their full swordfish quota since 2000, resulting in large underharvest carryovers which, in turn, made for large adjusted quotas. Therefore, NMFS believes that the caps, and the June 7, 2007, final rule (72 FR 31688) to revitalize the swordfish industry, would help the fishery harvest the swordfish quota without the large carryovers which have occurred in the past. Furthermore, as previously stated, one of the four possible uses of the reserve

would be to transfer quota back to the directed swordfish category if needed, which may also prevent this potential economic loss from being realized. Therefore, alternative 2b is preferred over 2c because it minimizes any economic impact and complies with international obligations.

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

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

Dated: October 1, 2007.

#### **Samuel D. Rauch III**

*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 § 635.5, paragraph (c)(2) is revised to read as follows:

#### **§ 635.5 Recordkeeping and reporting.**

\* \* \* \* \*

(c) \* \* \*

(2) The owner, or the owner(s) designee, of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, and Atlantic sailfish, and all non-tournament and non-commercial landings of North Atlantic swordfish to NMFS by telephone to a number designated by NMFS, or electronically via the internet to an internet website designated by NMFS, or by other means as specified by NMFS, within 24 hours of that landing. For telephone landing reports, the owner, or the owner(s) designee, must provide a contact phone number so that a NMFS designee can call the vessel owner, or the owner(s) designee, for follow up questions and to confirm the reported landing. Regardless of how submitted, landing reports submitted to NMFS are not complete unless the vessel owner, or the owner(s) designee, has received a confirmation number from NMFS or a NMFS designee.

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■ 3. In § 635.27, paragraphs (c)(1)(i)(A) and (D), (c)(1)(ii), and (c)(3)(i) and (ii) are 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 or is required to be 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. After December 31, 2007, the annual quota is subdivided into two equal semi-annual quotas of 1,468.8 mt dw: one for January 1 through June 30, and the other for July 1 through December 31.

\* \* \* \* \*

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

\* \* \* \* \*

(ii) *South Atlantic Swordfish.* The annual directed fishery quota for the South Atlantic swordfish stock is 75.2 mt dw. After December 31, 2007, the annual quota is subdivided into two equal semi-annual quotas of 37.6 mt dw: one for January 1 through June 30, and the other for July 1 through December 31. The entire quota for the South Atlantic swordfish stock is reserved for vessels with pelagic longline gear onboard and that have been issued a directed fishery permit for swordfish. No person may retain swordfish caught incidental to other fishing activities or with other fishing gear in the Atlantic Ocean south of 5 degrees North latitude.

\* \* \* \* \*

(3) \* \* \*

(i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Consolidated Highly Migratory Species Fishery Management Plan.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year(s) quota for that area. As necessary to meet

management objectives, such carryover adjustments may be apportioned to fishing categories and/or to the reserve. Carryover adjustments for the North Atlantic shall be limited to 50 percent of the baseline quota allocation for that year. Carryover adjustments for the South Atlantic shall be limited to 100 mt ww (75.2 mt dw) for that year. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication any adjustment or apportionment made under this paragraph.

\* \* \* \* \*

■ 4. In § 635.28, paragraph (c)(2) is revised to read as follows:

**§ 635.28 Closures.**

\* \* \* \* \*

(c) \* \* \*

(2) *Incidental catch closure.* When the annual incidental catch quota specified in § 635.27(c)(1)(i) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure. From the effective date and time of such notification until additional incidental catch quota becomes available, no swordfish may be landed in an Atlantic coastal state, or be possessed or sold in or from the Atlantic Ocean north of 5° N. lat. unless the directed fishery is open and the appropriate permits have been issued to the vessel. In the event of a directed and incidental North Atlantic swordfish category closure, South Atlantic swordfish may be possessed in the Atlantic Ocean north of 5° N. lat. and/or landed in an Atlantic coastal state on a vessel with longline gear onboard, provided that the harvesting vessel does not fish on that trip in the Atlantic Ocean north of 5° N. lat., the fish were taken legally from waters of the Atlantic Ocean south of 5° N. lat., and the harvesting vessel reports positions with a vessel monitoring system as specified in § 635.69.

[FR Doc. E7-19715 Filed 10-4-07; 8:45 am]

**BILLING CODE 3510-22-S****DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 070213033-7033-01]

RIN 0648-XD14

**Fisheries of the Economic Exclusive Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands**

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

**ACTION:** Temporary rule; modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for Pacific cod by catcher vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully use the 2007 total allowable catch (TAC) of Pacific cod specified for catcher vessels using pot gear in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 2, 2007, through 2400 hrs, A.l.t., December 31, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 17, 2007.

**ADDRESSES:** You may submit comments, identified by [0648-XD14], by any one of the following methods:

- Mail to: P.O. Box 21668, Juneau, AK 99802

- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

- FAX to 907-586-7557, Attn: Ellen Sebastian

- Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the