

corrected paragraph B.(15) of the General Instructions of Form 40–F is corrected to read as follows:

“(ii) Interactive Data File is not required to be submitted to the Commission under subparagraph (a) of this paragraph (15).”

§ 249.306 [Corrected]

■ 21. On page 6820, in the second column, the amendatory language for amendment 32, is corrected to read as follows:

“32. Amend Form 6–K (referenced in § 249.306) by revising paragraph (5) and adding paragraph (6) to General Instruction C to read as follows:”.

■ 22. Beginning on page 6820 in the third column and continuing on page 6821 in the first and second columns, correct paragraphs (6)(a), introductory text, (6)(a)(ii), (6)(a)(iii), and (6)(b)(ii) to General Instruction C of Form 6–K to read as follows:

“(6) * * *

(a) *Required to be submitted and posted.* Required to be submitted to the Commission and posted on the registrant’s corporate Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) and, as submitted, listed as exhibit 101, if the registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) and is described in subparagraph (a)(i), (ii), or (iii) of this paragraph (6), except that an Interactive Data File: first is required for a periodic report on Form 10–Q (§ 249.308a of this chapter), Form 20–F (§ 249.220f of this chapter) or Form 40–F (§ 249.240f of this chapter), as applicable; and is required for a Form 6–K (§ 249.306 of this chapter) only when the Form 6–K contains either of the following: audited annual financial statements that are a revised version of financial statements that previously were filed with the Commission that have been revised pursuant to applicable accounting standards to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments or a change in accounting principle; or current interim financial statements included pursuant to the nine-month updating requirement of Item 8.A.5 of Form 20–F, and, in either such case, the Interactive Data File would be required only as to such revised financial statements or current interim financial statements regardless of whether the Form 6–K contains other financial statements:

* * * * *

(i) A large accelerated filer not specified in subparagraph (a)(i) of this paragraph (6) that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(iii) A filer not specified in subparagraph (a)(i) or (ii) of this paragraph (6) that prepares its financial statements in accordance with either generally accepted accounting

principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(b) * * *

(ii) Interactive Data File is not required to be submitted to the Commission under subparagraph (a)(i) of this paragraph (6).”

■ 23. On page 6821, second column, paragraph “(iii)” designation is corrected to read paragraph “(c)”.

Dated: April 1, 2009.

Elizabeth M. Murphy,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 080404529–81598–02]

RIN 0648–AW61

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 would adjust the North and South Atlantic swordfish quotas for the 2008 fishing year (January 1, 2008, through December 31, 2008) to account for 2007 underharvests, to the extent allowable, and transfer 18.8 metric tons (mt) dressed weight (dw) to Canada per the 2006 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 06–02 and 06–03. The North Atlantic 2008 directed baseline quotas plus the 2007 underharvest would be divided equally between the semiannual periods of January through June, and July through December. The adjustment of the swordfish quotas, to account for underharvests is administrative in nature and does not require a change to regulatory text.

DATES: This rule is effective on May 7, 2009.

ADDRESSES: For copies of the supporting documents, including the proposed rule (73 FR 68398, November 18, 2008); the 2007 Environmental Assessment (EA), 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 LeAnn Southward Hogan.

FOR FURTHER INFORMATION CONTACT:

LeAnn Southward Hogan or Karyl Brewster–Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

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 as necessary and appropriate.

NMFS published a proposed rule on November 18, 2008 (73 FR 68398), announcing the proposed adjustment of the 2008 North and South Atlantic swordfish baseline quotas for the 2008 fishing year to account for 2007 underharvests per 50 CFR 635.27(c) and ICCAT recommendations, and to conduct the annual reserve transfer of 18.8 metric ton (mt) dressed weight (dw) to Canada. The proposed rule also proposed modifications to the vessel chartering regulations. On December 11, 2008, NMFS published a notice (73 FR 75382) extending the public comment period until January 16, 2009, to give the public more time and opportunities to comment on the proposed rule. Information regarding the proposed rule can be found in the preamble of the proposed rule and are not repeated here.

1. Swordfish Quota

a. North Atlantic

The final rule adjusts the total available quota for the 2008 fishing year to account for the 2007 underharvests to the maximum extent allowable, consistent with ICCAT recommendation 06–02. The 2008 North Atlantic swordfish baseline quota is 2,937.6 mt dw. The total North Atlantic swordfish underharvest for 2007 was 3,220.1 mt dw, which exceeds the maximum carryover cap of 1,468.8 mt dw. Therefore, NMFS is carrying forward the maximum allowable capped amount during the defined management period (2007–2008) per ICCAT recommendation 06–02. 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 2008 fishing year. Per regulations at 50 CFR 635.27(c)(3), the directed category would be allocated 3,620.7 mt dw, the incidental category would be allocated 300 mt dw, and the reserve category would be reduced from a quota of 504.5 mt dw to 485.7 due to the transfer of 18.8 mt dw to Canada (Table 1).

b. South Atlantic

As with the North Atlantic swordfish recommendation, ICCAT recommendation 06–03 establishes a cap on the amount of underharvest that can be carried forward during the defined management period (2007–2009). For South Atlantic swordfish, the United States is limited to carrying forward 100 mt ww (75.2 mt dw). The 2008 South Atlantic swordfish baseline

quota is 75.2 mt dw. The total South Atlantic swordfish underharvest for 2007 was 150.4 mt dw, which exceeds the maximum carryover cap of 75.2 mt dw. Therefore, NMFS is carrying forward the capped amount per ICCAT recommendation 06–03. 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 2008 fishing year (Table 1).

TABLE 1 — LANDINGS AND QUOTAS FOR THE ATLANTIC SWORDFISH FISHERIES (2005 – 2008)

| North Atlantic Swordfish Quota (mt dw) | | 2005 | 2006 | 2007 | 2008 preliminary |
|--|----------------------------|----------------|----------------|----------------|-----------------------------|
| Baseline Quota | | 2,937.6 | 2,937.6 | 2,937.6 | 2,937.6 |
| Quota Carried Over | | 3,359.1 | 4,691.2 | 1,468.8 | 1,468.8 |
| Adjusted quota | | 6,296.7 | 7,628.8 | 4,406.4 | 4,406.4 |
| Quota Allocation | Directed Category | 5,895.2 | 7,246.1 | 3,601.9 | 3,620.7 |
| | Incidental Category | 300.0 | 300.0 | 300.0 | 300.0 |
| | Reserve Category | 101.5 | 82.7 | 504.5 | 485.7 |
| Utilized Quota | Landings | 1,471.8 | 1,291.5 | 1,167.5 | 1,576.4 as of Dec. 31, 2008 |
| | Reserve Transfer to Canada | 18.8 | 18.8 | 18.8 | 18.8 |
| Total Underharvest | | 4,806.1 | 6,318.5 | 3,220.1 | 2,811.2 |
| Dead Discards | | 114.9 | 154.9 | 149.2 | TBD |
| Carryover Available+ | | 4,691.2 | 1,468.8 | 1,468.8 | TBD |
| South Atlantic Swordfish Quota (mt dw) | | 2005 | 2006 | 2007 | 2008 preliminary |
| Baseline Quota | | 75.2 | 90.2 | 75.2 | 75.2 |
| Quota Carried Over | | 319.3 | 394.5 | 75.2 | 75.2 |
| Adjusted quota | | 394.5 | 484.7 | 150.4 | 150.4 |
| Landings | | 0.0 | 0.0 | 0.0 | 0.0 to date |
| Carryover Available+ | | 394.5 | 75.2 | 75.2 | 75.2 |

2. Vessel Chartering

The proposed rule (73 FR 68398, November 18, 2008) proposed to modify regulations regarding vessel chartering, consistent with ICCAT recommendation 02–21, potentially to allow Atlantic HMS limited access permit (LAP) holders to charter foreign vessels of ICCAT Contracting Parties, non-Contracting Cooperating Parties, Entities and Fishing Entities (CPC) under a chartering arrangement to fish on the high seas, where catches taken would count against U.S. Atlantic HMS quotas. The proposed chartering regulations would have established a process and

criteria for NMFS's evaluation of proposed chartering arrangements and established certain limitations that would be placed on such chartering arrangements. As described below in the response to comments, NMFS has decided not to finalize the proposed changes to the chartering regulations.

3. Response to Comments

Comments on the proposed rule are summarized below, together with NMFS' responses.

Comment 1: NMFS received several comments in support of and in opposition to the adjustment of the 2008 North and South Atlantic swordfish

quotas to account for 2007 underharvests.

Response: The 2008 annual specifications are necessary to implement the 2006 ICCAT quota recommendations, as implemented domestically under ATCA, and to achieve domestic management objectives under the Magnuson–Stevens Act. ICCAT recommendation 06–02 limits the amount of North Atlantic swordfish underharvest that can be carried forward by all CPCs to 50 percent of that entity's baseline quota allocation for 2007 and 2008. This action is in accordance with the

framework procedures set forth in the 2006 Consolidated Atlantic HMS FMP, and is supported by the analytical documents prepared for the 2006 Consolidated HMS FMP and for the 2007 North and South Atlantic swordfish quota specifications.

Comment 2: NMFS received several comments opposing the proposed modifications to the vessel chartering regulations. These comments asserted that the proposed modification would only benefit inactive permit holders and would disadvantage the historic and active commercial swordfish fleet and wholesalers because they believe an influx of imported swordfish product would result causing the domestic ex-vessel prices to decrease and a market glut would occur.

Response: The proposed chartering regulations would have allowed all Atlantic HMS LAP holders the ability to enter into a chartering arrangement with an ICCAT CPC. In response to public requests to modify regulations allowing chartering of foreign vessels, NMFS proposed to allow this type of chartering arrangement as a way to help utilize Atlantic HMS quotas and facilitate flexibility within the vessel chartering program, which in turn could enhance quota management within the Atlantic HMS fisheries. The proposed regulations described a process and criteria for NMFS to approve or deny each request for a chartering arrangement considering the ecological, economic, and social impacts of the specific chartering request. Additionally under the proposed process, NMFS would have evaluated whether the proposed chartering arrangement provided adequate benefit to the United States, the Atlantic HMS fishery participants, and the Atlantic HMS quota management. However, upon further review of the potential socioeconomic impacts and due to the concerns expressed by the public, including concerns from constituents who originally requested that HMS modify the chartering regulations, NMFS has decided not to finalize the proposed vessel chartering regulatory modifications.

Comment 3: NMFS received a comment stating that NMFS has not put enough effort into revitalizing the swordfish fishery and that the vessel chartering modifications would serve as a distraction from other necessary revitalization efforts.

Response: NMFS has initiated and implemented a number of regulatory and non-regulatory swordfish fishery revitalization efforts. In June 2007, NMFS published a final rule (72 FR 31688) that amended vessel upgrading

restrictions for pelagic longline (PLL) vessels, removed a one-time upgrade restriction for all LAP holders, and among other things, increased incidental and recreational swordfish retention limits. In July 2008, NMFS published a final rule (73 FR 38144) to allow Atlantic tunas longline LAPs that had been expired for more than one year to be renewed by the most recent permit holder of record to allow increased use of swordfish permits by making available more of the required associated permits. NMFS has also been involved with development of the FishWatch website, including swordfish outreach materials for the website, <http://www.nmfs.noaa.gov/fishwatch/>, participation at regional and international seafood shows, development of swordfish fact sheets, meetings with state representatives and industry constituents to discuss marketing outreach strategies, and development of a swordfish revitalization film clip for the Smithsonian Sant Ocean Hall exhibit. In January 2008, NMFS issued exempted fishing permits to conduct research in the East Coast and Charleston Bump PLL closed areas to evaluate existing bycatch reduction measures and collect baseline data under current fishery conditions. NMFS plans more to work with state partners, the swordfish industry, and other constituents to continue to revitalize the swordfish fishery.

Comment 4: NMFS received a comment stating that NMFS did not include enough detail in the proposed rule regarding limitations that need to be imposed on chartering arrangements, such as a sunset provision, quota allocations, and seasonal closures.

Response: The proposed chartering regulations described a process and criteria for NMFS's evaluation of each potential chartering request, as well as a detailed list of specific information required to be included in any chartering arrangement request. The proposed regulations stated that NMFS would have considered each chartering request on a case-by-case basis. If NMFS decided to authorize a chartering arrangement, the written notification from NMFS would have included the vessel chartering requirements and the terms and conditions of the chartering arrangement, including expiration date, data submission requirements, and quota allocations. Thus, the commenter's concerns would have been addressed.

Comment 5: NMFS received a comment stating that the proposed chartering modifications would have violated National Standard Four of the

Magnuson-Stevens Act because of the proposal to limit chartering arrangements to commercial fishermen with an Atlantic HMS LAP.

Response: National Standard 4 requires that conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, cooperation, or other entity acquires an excessive share of such privileges. NMFS proposed to allow all Atlantic HMS LAP holders who are authorized to commercially harvest Atlantic HMS from the U.S. EEZ and on the high seas the ability to charter a foreign vessel of an ICCAT CPC. With regard to chartering, the proposed regulations would have only allowed such activities on the high seas. The Atlantic HMS LAP holders who are currently authorized to commercially harvest HMS on the high seas would have been chartering vessels to, essentially, exercise that harvesting privilege on their behalf. In addition, under the proposed regulations, foreign vessel owners who entered into a chartering arrangement with an Atlantic HMS LAP holder would have been required to follow all U.S. regulations that would have otherwise applied to the Atlantic HMS LAP holder. This approach was aimed at keeping any resulting chartering arrangements within the scope of the existing analyzed effects of utilizing Atlantic HMS quotas on the high seas and does not violate National Standard 4. However, as NMFS is not finalizing the proposed vessel modifications, the concerns have been addressed.

4. Changes from the Proposed Rule

Upon further review of potential socioeconomic impacts and concerns that the proposed regulatory modifications would only benefit inactive permit holders and would disadvantage the historic and active commercial swordfish fleet and because of the opposition from the public regarding the proposed modifications to the vessel chartering regulations, NMFS has decided not to implement the proposed regulatory modifications in the final rule. Therefore, the current vessel chartering regulations at 50 CFR 635.5(a)(5) and 635.32(e) remain unchanged.

5. Classification

The Acting Assistant Administrator has determined that this final rule is consistent with the 2006 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.

Dated: April 1, 2009.

Samuel D. Rauch III,

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

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