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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 121101598-3455-02]

RIN 0648-XC334

Atlantic Highly Migratory Species; North and South Atlantic 2013 Commercial Swordfish Quotas

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

ACTION: Final rule.

SUMMARY: This final rule adjusts the 2013 fishing season quotas for North and South Atlantic swordfish based upon 2012 commercial quota underharvests and international quota transfers consistent with the International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendations 11-02 and 12-01. This final rule will affect commercial and recreational fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action implements ICCAT recommendations, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective from June 15, 2013 through December 31, 2013.

ADDRESSES: Copies of the supporting documents—including the 2012 Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) for North Atlantic swordfish, the 2007 EA, RIR, and FRFA for South Atlantic

swordfish, and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP)—are available from the HMS Management Division website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Steve Durkee by phone at 202-670-6637 or Jennifer Cudney by phone at 301-427-8503.

FOR FURTHER INFORMATION CONTACT: Steve Durkee by phone at 202-670-6637, Jennifer Cudney by phone at 301-427-8503, or by fax: 301-713-1917.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Atlantic North and South Atlantic swordfish fisheries are managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.* The United States implements ICCAT recommendations under ATCA, through regulations as may be necessary and appropriate.

For North Atlantic swordfish, this final action maintains the U.S. baseline quota of 2,937.6 metric tons (mt) dressed weight (dw) for North Atlantic swordfish, implements the quota transfer of 112.8 mt dw from the United States to Morocco, and carries over the maximum 2012 underharvest pursuant to Recommendation 11-02. For South Atlantic swordfish, this action maintains the U.S. South Atlantic swordfish quota at 75.2 mt dw (100 mt whole weight (ww)), carries over 75 mt dw of 2012 underharvest, and authorizes the transfer of 50 mt ww (37.6 mt dw) to Namibia, 25 mt ww (18.8 mt dw) to Côte d'Ivoire, and 25 mt ww (18.8 mt dw) to Belize as required by ICCAT recommendation.

North Atlantic Swordfish Quota

At the 2011 ICCAT annual meeting, Recommendation 11-02 was adopted, maintaining the North Atlantic swordfish total allowable catch (TAC) of 10,301 mt dw (13,700 mt ww) through 2013. Of this TAC, the United States baseline quota is 2,937.6 mt dw (3,907 mt ww) per year. ICCAT Recommendation 11-02 also includes a 112.8 mt dw (150 mt ww) annual quota transfer from the United States to Morocco and limits allowable underharvest carryover to 25 percent of a contracting party's baseline quota. Therefore, the United States may carry over a maximum of 734.4 mt dw (976.8 mt ww) of underharvest from the previous year (2012) to be added to the 2013 baseline quota. This final rule adjusts the U.S. baseline quota for the 2013 fishing year to account for the annual quota transfer to Morocco and the 2012 underharvest.

The 2013 North Atlantic swordfish baseline quota is 2,937.6 mt dw (3,907 mt ww). As of February 28, 2013, the North Atlantic swordfish underharvest for 2012 was 1,169.2 mt dw (1,555.6 mt ww), which exceeds the maximum carryover cap of 734.4 mt dw (976.8 mt ww). Therefore, we are carrying forward the maximum amount allowed per ICCAT Recommendation 11-02. The 2,937.6 mt dw (3,907 mt ww) baseline quota is reduced by the 112.8 mt dw (150 mt ww) annual quota transfer to Morocco and increased by the underharvest carryover maximum of 734.4 mt dw (976.8 mt ww), resulting in 3,559.2 mt dw (4,733.7 mt ww), which is the adjusted North Atlantic swordfish quota for the 2013 fishing year. From that adjusted quota, we are allocating the directed category 3,209.2 mt dw (4,268.2 mt ww), which is split equally into two seasons (January through June, and July through December). Fifty mt dw (66.5 mt ww) from the adjusted quota is allocated to the reserve category for inseason adjustments and research, and 300 mt dw (399 mt ww) from the adjusted quota is allocated to the incidental category, which includes recreational landings and catch by incidental swordfish permit holders, for the 2013 fishing season, per HMS regulations at 50 C.F.R. § 635.27(c)(1)(i)(B) (see Table 1).

The underharvest carryover noted above was calculated based on a landings estimate, which is based on commercial dealer reports and reports by anglers in the HMS Non-Tournament Recreational Swordfish and Billfish Landings Database and the Recreational Billfish Survey received as of February 28, 2013, and does not include an estimate of dead discards. The dead discard estimate is calculated using observer sampling data and logbook reported effort levels and is generally not available until the summer of each year. However, we do not expect the final dead discard estimate to be large enough to change the total underharvest carryover. For the dead discard estimate to change the underharvest carryover, the estimate would have to exceed 435.2 mt dw. Since 2007, the average annual dead discard estimate is 113 mt dw and, in 2011, dead discards were estimated to equal 101.5 mt dw. Thus, because these estimates are significantly lower than 435.2 mt dw and because there has not been a significant change in the manner in which swordfish are fished, we do not believe the 2012 dead discard estimate will be large enough to change the total underharvest carryover available or the resulting adjusted quota. If the dead discard estimate exceeds 435.2 mt dw, we will take additional action to either adjust the 2013 quota accordingly or adjust the 2014 quota, as appropriate.

South Atlantic Swordfish Quota

In 2006, ICCAT Recommendation 06-03 established the South Atlantic swordfish TAC at 17,000 mt ww for 2007, 2008, and 2009. Of this, the United States received 75.2 mt dw (100 mt ww). As with the North Atlantic swordfish recommendation, ICCAT Recommendation 06-03 limited the amount of underharvest that can be carried forward. For South Atlantic swordfish, the United States may carry forward up to 100 percent of the baseline quota (75.2 mt dw). In 2009, Recommendation 09-03 reduced the South Atlantic swordfish TAC to 15,000 mt ww but

maintained the U.S. quota share of 75.2 mt dw (100 mt ww) and underharvest carryover limit through 2012. Recommendation 09-03 also included a total of 75.2 mt dw (100 mt ww) of quota transfers from the United States to other countries. These transfers were: 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Côte d'Ivoire, and 18.8 mt dw (25 mt ww) to Belize. ICCAT Recommendation 12-01 extended the U.S. baseline quota, underharvest carryover limit, and international quota transfer amounts and provisions through 2013.

In 2012, U.S. fishermen did not land any South Atlantic swordfish as of reports received by February 28, 2013. Therefore, 75.2 mt dw (100 mt ww) of underharvest is available to carry over to 2013 and can cover the entire 75.2 mt dw (100 mt ww) of annual international quota transfers outlined above. As a result, the 2013 adjusted quota for South Atlantic swordfish is 75.2 mt dw (100 mt ww) (see Table 1).

The landings estimates for South Atlantic swordfish are based on dealer reports received as of February 28, 2013, and do not include dead discards. We do not expect dead discard estimates to change the 2013 adjusted quota since estimates over the past several years have equaled 0 mt dw. If dead discards estimates necessitate a need to further adjust the quota, we would take additional action at that time.

Impacts

Impacts resulting from the 2013 North Atlantic swordfish specifications were analyzed in the EA, RIR, and IRFA that were prepared for the 2012 Swordfish Quota Specifications Final Rule (July 31, 2012; 77 FR 45273). The impacts resulting from the 2013 South Atlantic swordfish specifications were analyzed in the EA, RIR, and IRFA that were prepared for the 2007 Swordfish Quota Specification Final Rule (October 5, 2007; 72 FR 56929). The quota adjustments in this final rule will not increase overall quotas and are not expected to increase

fishing effort, protected species interactions, or environmental effects beyond those considered in the 2012 and 2007 EAs. Therefore, because there would be no changes to the North or South Atlantic swordfish management measures in this final rule, or the affected environment or any environmental effects that have not been previously analyzed, we have determined that the North and South Atlantic swordfish specifications and impacts to the human environment as a result of the quota adjustments do not require additional NEPA analysis beyond that discussed in the 2012 and 2007 EAs.

Table 1. 2013 North and South Atlantic Swordfish Quotas

North Atlantic Swordfish Quota (mt dw)		2012	2013
Baseline Quota		2,937.6	2,937.6
Quota Transfer to Morocco		(-)112.8	(-)112.8
Total Underharvest from Previous Year ⁺		1,388.5	1,169.2
Underharvest Carryover from Previous Year ⁺		(+)734.4	(+)734.4
Adjusted Quota		3,559.2	3,559.2
Quota Allocation	Directed Category	3,209.2	3,209.2
	Incidental Category	300	300
	Reserve Category	50	50
South Atlantic Swordfish Quota (mt dw)		2012	2013
Baseline Quota		75.2	75.2
International Quota Transfers*		(-)75.2	(-)75.2
Total Underharvest from Previous Year ⁺		75.2	75.2
Underharvest Carryover from Previous Year ⁺		75.2	75.2
Adjusted quota		75.2	75.2

+ Underharvest carryover is capped at 25 percent of the baseline quota allocation for the North Atlantic and 100 percent of the baseline quota allocation for the South Atlantic. 2012 underharvest data current as of February 28, 2013; does not include dead discards.

* Under Recommendation 12-01, 100 mt ww of the U.S. underharvest and base quota, as necessary, was transferred to Namibia (37.6 mt dw, 50 mt ww), Côte d'Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

While this action only implements this year's adjusted quota, other management actions related to Atlantic swordfish quotas are expected later this year. At its November annual meeting, ICCAT will renegotiate a North Atlantic swordfish recommendation, including quota levels, because Recommendation 11-02 expires this year. Additionally, in February, NMFS published a

proposed rule for Amendment 8 to the HMS FMP, considering ways to increase access to available North Atlantic swordfish quota, including a new open access permit that would allow the retention and sale of swordfish caught with certain handgears. The comment period for this action closed on May 8, 2013.

Response to Comments

We received two comments, but they were not directly related to the proposed rule.

Changes from the Proposed Rule

The final rule contains no changes from the proposed rule, except for minor landings updates based on more recent 2012 landings reports.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, 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.

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

Dated: May 13, 2013.

Alan D. Risenhoover, Director, Office of Sustainable Fisheries,
performing the functions and duties of the Deputy Assistant Administrator
for Regulatory Programs, National Marine Fisheries Service.

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