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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 140207123-4657-02]

RIN 0648-BD96

Atlantic Highly Migratory Species; North and South Atlantic 2014 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 2014 fishing season quotas for North and South Atlantic swordfish based upon 2013 commercial quota underharvests and international quota transfers consistent with the International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendations 13-02 and 13-03. Additionally, this final rule modifies the regulations to comply with upcoming changes to the North Atlantic swordfish underharvest carryover limits, which become effective in 2015. This final rule affects 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 on September 21, 2014.

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 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 Alexis Jackson by phone at 301-427-8503 or Steve Durkee by phone at 202-670-6637.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

The U.S. 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. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement ICCAT recommendations.

For North Atlantic swordfish, this final action maintains the U.S. baseline quota of 2,937.6 metric tons (mt) dressed weight (dw), implements an ICCAT-recommended quota transfer of 18.8 mt dw from the United States to Mauritania, and discontinues the 112.8 mt dw quota transfer to Morocco, consistent with removal of the measure in the ICCAT recommendation. Additionally, this final rule modifies the regulations to comply with the ICCAT-recommended reduced underharvest carryover limit, which becomes effective in 2015 and thus will apply to any underharvest accrued in 2014 and beyond, pursuant to ICCAT

Recommendation 13-02. 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 75.1 mt dw of 2013 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, consistent with ICCAT Recommendation 13-03. Information regarding the quota calculations can be found below. Additional details regarding the quotas and other actions in this rule and their impacts can be found in the proposed rule (79 FR 27553, May 14, 2014).

#### North Atlantic Swordfish Quota

Based on the 2013 ICCAT Standing Committee on Research and Statistics (SCRS) stock assessment, North Atlantic swordfish are fully rebuilt and not experiencing overfishing. At the 2013 ICCAT annual meeting, Recommendation 13-02 was adopted, maintaining the overall North Atlantic swordfish total allowable catch (TAC) of 10,301 metric tons (mt) dressed weight (dw) (13,700 mt whole weight (ww)) through 2016. Of this TAC, the United States' baseline quota is 2,937.6 mt dw (3,907 mt ww) per year. ICCAT Recommendation 13-02 also includes an 18.8 mt dw (25 mt ww) annual quota transfer from the United States to Mauritania, discontinues the 112.8 mt dw quota transfer to Morocco, consistent with removal of the measure in the ICCAT recommendation, and limits allowable 2013 underharvest carryover to 25 percent of a contracting party's baseline quota. Underharvest accrued in 2014 and beyond is limited to 15 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 2013 and add it to the 2014 baseline quota. This final rule adjusts the U.S. baseline quota for the 2014 fishing year to account for the annual quota transfer to Mauritania and the 2013 underharvest. Additionally, this final rule modifies the regulations to comply with the reduced underharvest carryover limit,

which becomes effective in 2015 and thus will apply to underharvest accrued in 2014 and beyond.

The 2014 North Atlantic swordfish baseline quota is 2,937.6 mt dw (3,907 mt ww). The North Atlantic swordfish underharvest for 2013 was 1,391.8 mt dw (1,851.1 mt ww) which exceeds the maximum carryover cap of 734.4 mt dw (976.8 mt ww). This updated estimate, while lower than that estimated in the proposed rule, is still lower than the maximum allowable underharvest carryover. Thus, as proposed, NMFS is carrying forward the same maximum amount allowed per ICCAT Recommendation 13-02. The baseline quota would be reduced by the 18.8 mt dw (25 mt ww) annual quota transfer to Mauritania and increased by the underharvest carryover maximum of 734.4 mt dw (976.8 mt ww), resulting in an adjusted quota of 3,653.2 mt dw (4,857.8 mt ww) for the 2014 fishing year. From that final adjusted quota, per § 635.27(c)(1)(i), the directed category quota of 3,303.2 mt dw (4,393.3 mt ww) is split equally into two seasons (January through June, and July through December), the reserve category quota is 50 mt dw (66.5 mt ww), and the incidental category quota, which includes recreational landings and catch by incidental swordfish permit holders, is 300 mt dw (399 mt ww) (Table 1).

#### South Atlantic Swordfish Quota

In 2013, ICCAT Recommendation 13-03 established the South Atlantic swordfish TAC at 11,278.2 mt dw (15,000 mt ww) for 2014, 2015, and 2016. Of this, the United States' baseline quota is 75.2 mt dw (100 mt ww). ICCAT Recommendation 13-03 limits the amount of South Atlantic swordfish underharvest that can be carried forward. For South Atlantic swordfish, the United States may carry forward underharvest up to 100 percent of its baseline quota (75.2 mt dw). Recommendation 13-03 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.

In 2013, U.S. fishermen landed 0.1 mt dw of South Atlantic swordfish and there were no dead discards. Therefore, 75.1 mt dw of underharvest is available to be carried over to 2014 and added to the baseline quota. That combined quota will then be reduced by the 75.2 mt dw of annual international quota transfers outlined above, resulting in an adjusted quota of 75.1 mt dw (100 mt ww) for South Atlantic swordfish (see Table 1) for 2014.

Table 1. 2014 North and South Atlantic Swordfish Quotas

<b>North Atlantic Swordfish Quota (mt dw)</b>		<b>2013</b>	<b>2014</b>
Baseline Quota		2,937.6	2,937.6
International Quota Transfer		(-)112.8 (to Morocco)	(-)18.8 (to Mauritania)
Total Underharvest from Previous Year <sup>+</sup>		814.1	1,391.8
Underharvest Carryover from Previous Year <sup>+</sup>		(+)734.4	(+)734.4
Adjusted Quota		3,559.2	3,653.2
Quota Allocation	Directed Category	3,209.2	3,303.2
	Incidental Category	300	300
	Reserve Category	50	50
<b>South Atlantic Swordfish Quota (mt dw)</b>		<b>2013</b>	<b>2014</b>
Baseline Quota		75.2	75.2
International Quota Transfers*		(-)75.2	(-)75.2
Total Underharvest from Previous Year <sup>+</sup>		75.2	75.1
Underharvest Carryover from Previous Year <sup>+</sup>		75.2	75.1
Adjusted quota		75.2	75.1

+ 2013 underharvest carryover is capped at 25 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic. Starting in 2015, for the North Atlantic only, underharvest carryover will be capped at 15 percent of the baseline quota allocation.

\* Under Recommendation 13-03, 100 mt ww of the U.S. underharvest and baseline quota 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).

During the proposed rule comment period, NMFS received two written comments, one of which was directly related to the proposed rule. A summary of the relative comment on the proposed rule is shown below with NMFS' response. The second comment suggested banning harvest of all swordfish, which was outside the scope of the current rulemaking. All written comments submitted during the comment period can be found at <http://www.regulations.gov/> by searching for NOAA-NMFS-2014-0054.

Comment: NMFS should apportion some of commercial underharvest to allow for recreational harvest and sale of swordfish caught in the Florida Swordfish Management Area, considering landings of Atlantic swordfish are below the established quotas.

Response: Currently, in the Atlantic, Gulf of Mexico, and Caribbean, recreationally caught swordfish (i.e., those caught on U.S. vessels possessing the HMS Angling permit or the HMS Charter-Headboat permit when on a for-hire trip) may not be sold. Only permit holders that hold commercial permits may sell swordfish. Those commercial permit holders are required to sell to permitted dealers; except that individuals issued a valid HMS Commercial Caribbean Small Boat permit and operating in the U.S. Caribbean may sell swordfish to non-dealers (see 50 CFR 635.31(d)).

Given the rebuilt status of the North Atlantic swordfish stock and their resulting increased availability, NMFS has made efforts to provide additional harvest opportunities that will allow both recreational and commercial fishermen to more fully utilize the U.S. swordfish quota allocation. Management measures have included increasing retention limits, reducing the minimum cleithrum to caudal keel (CK) length, raising vessel upgrade limits on limited access commercial permits, creating two new commercial permits (the HMS Commercial Caribbean Small Boat permit, which is specific to the U.S. Caribbean, and the Swordfish General

Commercial permit), and modifying the HMS Charter-Headboat permit to allow for commercial retention of swordfish when on a non-for hire trip.

The Swordfish General Commercial permit and modified HMS Charter-Headboat permit were first implemented in 2014 after finalization of Amendment 8 to the 2006 Consolidated HMS FMP (Amendment 8). Both of these permits allow for commercial retention of swordfish using rod and reel, handline, bandit gear, harpoon, and green-stick gear (the same gears authorized for the Atlantic Tunas General category permit). Amendment 8 also established swordfish management regions (including the Florida Swordfish Management Area), established default regional retention limits, and allowed for the adjustment of the regional retention limits during a fishing season from zero to six swordfish based on certain criteria (e.g., dealer reports, landing trends, available quota, etc). The default regional swordfish retention limit varies depending on the specific region; for the Florida Swordfish Management Area, the default regional swordfish retention limit is zero. Please refer to the final rule for Amendment 8 for additional details (78 FR 52012, August 21, 2013).

The swordfish retention limit in the Florida Swordfish Management Area is currently set to zero fish for vessels with a Swordfish General Commercial Permit or an HMS Charter-Headboat permit when on a non-for hire trip, as NMFS is taking a cautious approach at this time while issuing the new open-access commercial swordfish permit for the first time. This cautious approach is particularly important off the southeast coast of Florida, where the Florida Swordfish Management Area was implemented to conserve juvenile swordfish habitat in a region where fishing grounds are easily accessible to a large number of fishermen. The initial retention limit of zero swordfish was implemented in part upon consideration of public comments on Amendment 8, including a comment from the Florida Fish and Wildlife Conservation

Commission indicating a high potential for the rapid growth of a commercial fishery in the Florida Swordfish Management Area.

Currently, NMFS is observing the patterns of harvest, including how fishing for swordfish changes throughout the fishing year in different regions, and seeing how changes in patterns of harvest relate to other portions of the U.S. fishery in overall landings. NMFS does not feel that the low harvest levels to date indicate a need to adjust the regional retention limits at this time. NMFS will continue to monitor the fishery and, based upon the inseason adjustment criteria specified at 50 CFR 635.24 (b)(4)(iv), will consider whether to adjust regional retention limits in the future.

#### Changes from the Proposed Rule

The final rule contains no changes from the proposed rule, except for minor landings updates based on more recent 2013 landings reports and dead discard estimates.

#### 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.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

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

Dated: August 18, 2014.

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Samuel D. Rauch III,

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

For 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 § 635.27, paragraph (c)(3)(ii) is revised to read as follows:

§ 635.27 Quotas.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(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 adjustments may be apportioned to fishing categories and/or to the reserve. Carryover adjustments for the North Atlantic shall be limited to 25 percent of the baseline quota allocation through 2014. Starting in the 2015 fishing year, carryover adjustments shall be limited to 15 percent of the annual baseline quota allocation. Carryover adjustments for the South Atlantic shall be limited to 100 mt ww (75.2 mt dw). 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.

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