



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 635**

**[Docket No. 120627194-3657-02]**

**RTID 0648-XA629**

#### **Atlantic Highly Migratory Species; North Atlantic Swordfish Fishery**

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

**ACTION:** Temporary rule; inseason Swordfish General Commercial permit retention limit adjustment.

**SUMMARY:** NMFS is adjusting the Swordfish General Commercial permit retention limits for the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions for January through June of the 2021 fishing year, unless otherwise later noticed. The Swordfish General Commercial permit retention limit in each of these regions is increased from the regulatory default limit (either two or three fish) to six swordfish per vessel per trip. The Swordfish General Commercial permit retention limit in the Florida Swordfish Management Area will remain unchanged at the default limit of zero swordfish per vessel per trip, as discussed in more detail below. These adjustments apply to Swordfish General Commercial permitted vessels and to Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial endorsement when on a non-for-hire trip. This action is based upon consideration of the applicable inseason regional retention limit adjustment criteria.

**DATES:** The adjusted Swordfish General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions are effective from January 1, 2021, through June 30, 2021.

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**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of North Atlantic swordfish by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. North Atlantic swordfish quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and implemented by the United States into two equal semi-annual directed fishery quotas; an annual incidental catch quota for fishermen targeting other species or catching swordfish recreationally, and a reserve category, according to the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated Atlantic HMS FMP) (71 FR 58058, October 2, 2006), as amended, and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The increase in the retention limit will help provide a reasonable opportunity to harvest available quota. The current annual U.S. baseline quota is 2,937.6 mt dressed weight (dw) (3,907 mt whole weight (ww)). Under § 635.27(c)(3)(ii), and consistent with the applicable ICCAT recommendation, NMFS may carry over underharvest from 2020, limited to 15 percent of the 2020 annual baseline quota, which is a maximum of 440.6 mt dw (586.0 mt ww). With underharvest as expected in 2020, NMFS anticipates carrying over the maximum underharvest allowed, which would result in an adjusted North

Atlantic swordfish quota for the 2021 fishing year of 3,378.2 mt dw (2,937.6 + 440.6 = 3,378.2 mt dw). As in past years, NMFS anticipates allocating 50 mt dw from the adjusted quota to the Reserve category for inseason adjustments/research and allocating 300 mt dw to the Incidental category, which includes recreational landings and landings by incidental swordfish permit holders, consistent with § 635.27(c)(1)(i)(D) and (B). This would result in a final adjusted quota of 3,028.2 mt dw for the directed fishery, which would be split equally (1,514.1 mt dw) between the two semi-annual periods in 2021 (January through June, and July through December).

For additional context and information on a related matter, NMFS notes that earlier this year, NMFS published a proposed rule to modify the North Atlantic swordfish and shark retention limits for certain permit holders and add inseason adjustment authorization criteria (85 FR 23315, April 27, 2020). Relevant to swordfish, the proposed rule would modify retention limits for highly migratory species (HMS) Commercial Caribbean Small Boat (CCSB) permit holders, Swordfish General Commercial permit holders, and HMS Charter/Headboat permit holders with a commercial endorsement on a non-for hire (*i.e.*, commercial) trip, and add inseason adjustment criteria to the CCSB permit. NMFS anticipates that the proposed rule would streamline HMS regulations to align retention limits for commercial swordfish permits established for HMS CCSB permit holders under Amendment 4 with those established in Amendment 8 to the 2006 Consolidated HMS FMP for Swordfish General Commercial permit holders. If the rule were to be finalized as proposed, NMFS anticipates that it would no longer be necessary to increase the default swordfish retention limit through inseason adjustment for Swordfish General Commercial permit holders and HMS Charter/Headboat permit with a commercial endorsement on a commercial trip to provide additional fishing opportunities for these permit holders. The ability to reduce the default retention limit through inseason adjustment to account for possible quota overages would remain in effect.

## **Adjustment of Swordfish General Commercial Permit Vessel Retention Limits**

The 2021 North Atlantic swordfish fishing year will begin on January 1, 2021. Regional default retention limits for the Swordfish General Commercial permit have been established and are automatically effective from January 1 through December 31 each year, unless changed based on the inseason regional retention limit adjustment criteria at § 635.24(b)(4)(iv). The Swordfish General Commercial permit default retention limits are: 1) Northwest Atlantic region – three swordfish per vessel per trip; 2) Gulf of Mexico region – three swordfish per vessel per trip; 3) U.S. Caribbean region – two swordfish per vessel per trip; and, 4) Florida Swordfish Management Area – zero swordfish per vessel per trip. The default retention limits apply to Swordfish General Commercial permitted vessels and to HMS Charter/Headboat permitted vessels with a commercial endorsement when fishing on non-for-hire trips. Permitted vessels may not possess, retain, or land any more swordfish than is specified for the region in which the vessel is located.

Under § 635.24(b)(4)(iii), NMFS may increase or decrease the Swordfish General Commercial permit vessel retention limit in any region within a range from zero to a maximum of six swordfish per vessel per trip. Any adjustments to the retention limits must be based upon a consideration of the relevant criteria provided in § 635.24(b)(4)(iv). NMFS has considered these criteria as discussed below and their applicability to the Swordfish General Commercial permit retention limit in all regions for January through June of the 2021 North Atlantic swordfish fishing year.

NMFS must consider the effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments. See § 635.24(b)(4)(iv)(D). The objective is to provide opportunities to harvest the full North Atlantic directed swordfish quota without exceeding it, and the goal, based upon the 2006 Consolidated Atlantic HMS FMP, is to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with

respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems. This action will help preserve the swordfish handgear fishery (rod and reel, handline, harpoon, bandit gear, and greenstick). Although this action does not specifically provide recreational fishing opportunities, it will have a minimal impact on the recreational sector because recreational landings are counted against a separate incidental swordfish quota.

NMFS has examined dealer reports and landing trends and determined that the information obtained from biological sampling and monitoring of the North Atlantic swordfish stock is useful. See § 635.24(b)(4)(iv)(A). Regarding the estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year, § 635.24(b)(4)(iv)(B), NMFS reviewed electronic dealer landings data, which indicates that sufficient directed swordfish quota should be available for the January through June 2021 semi-annual quota period if recent swordfish landings trends continue. The directed swordfish quota has not been fully harvested for several years and, based upon current landing trends, is not likely to be harvested or exceeded in 2021. Based upon recent landings rates from dealer reports, an increase in the vessel retention limits to six fish for Swordfish General Commercial permit holders and Charter/Headboat permit holders with a commercial endorsement (when on a non-for-hire trip) in three regions is not likely to cause quotas for other categories of the fishery to be exceeded. See § 635.24(b)(4)(iv)(C). Similarly, regarding the criteria about the effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota, § 635.24(b)(4)(iv)(F), NMFS expects there to be sufficient swordfish quota for the entirety of the 2021 fishing year. Thus, increased catch rates in these three regions as a result of this action would not be expected to preclude vessels in the other region (*e.g.*, the buoy gear fishery in the Florida Swordfish Management Area) from having a reasonable opportunity to harvest a

portion of the overall swordfish quota.

In making adjustments to the retention limits, NMFS must also consider variations in seasonal distribution, abundance, or migration patterns of swordfish, and the availability of swordfish on the fishing grounds. See § 635.24(b)(4)(iv)(E) and (G). With regard to swordfish abundance, the 2020 report by ICCAT's Standing Committee on Research and Statistics indicated that the North Atlantic swordfish stock is not overfished and overfishing is not occurring. Increasing retention limits for the General Commercial fishery is not expected to affect the swordfish stock status determination because any additional landings would be within the ICCAT-recommended U.S. North Atlantic swordfish quota allocation, which is consistent with conservation and management measures to prevent overfishing on the stock. Increasing opportunities by increasing retention limits from the default levels beginning on January 1, 2021, is also important because of the migratory nature and seasonal distribution of swordfish. In a particular geographic region, or waters accessible from a particular port, the amount of fishing opportunity for swordfish may be constrained by the short amount of time that the swordfish are present in the area as they migrate.

NMFS has determined that the retention limit for the Swordfish General Commercial permit will remain at zero swordfish per vessel per trip in the Florida Swordfish Management Area at this time. As described in Amendment 8 to the 2006 Consolidated Atlantic HMS FMP (78 FR 52011, August 21, 2013), the area off the southeastern coast of Florida, particularly the Florida Straits, contains oceanographic features that make the area biologically unique. It provides important juvenile swordfish habitat, and is essentially a narrow migratory corridor containing high concentrations of swordfish located in close proximity to high concentrations of people who may fish for them. Public comment on Amendment 8 indicated concern about the resultant high potential for the improper rapid growth of a commercial fishery, increased catches of

undersized swordfish, the potential for larger numbers of fishermen in the area, and the potential for crowding of fishermen, which could lead to gear and user conflicts. These concerns remain valid. NMFS continues to collect information to evaluate the appropriateness of the retention limit in the Florida Swordfish Management Area and other regional retention limits.

The directed swordfish quota has not been fully harvested for several years and, based upon current landing trends, is not likely to be harvested or exceeded during 2021. In 2020, a six swordfish per vessel trip limit was in effect for Swordfish General Commercial permit holders in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions for the entire fishing season. As of October 31, 2020, this limit resulted in total annual directed swordfish landings of approximately 760.1 mt dw, or 25.1 percent of the 3,028.2-mt dw annual adjusted directed quota for 2020, which includes landings under the six-fish trip limit. This information indicates that sufficient directed swordfish quota should be available from January 1 through June 30, 2021, at the higher retention levels, within the limits of the scientifically-supported Total Allowable Catch (TAC) and consistent with the goals of the 2006 Consolidated Atlantic HMS FMP as amended, ATCA, and the Magnuson-Stevens Act, and are not expected to negatively impact stock health.

Given that 2020 swordfish directed landings will likely fall well below the available 2020 quota, and that 2021 landings will likely follow a similar trend, and in consideration of the inseason regional retention limit adjustment criteria above, NMFS has determined that the Swordfish General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions applicable to persons issued a Swordfish General Commercial permit or HMS Charter/Headboat permit with a commercial endorsement (when on a non-for-hire trip) should be increased from the default levels that would otherwise automatically become effective on January 1, 2021, to

six swordfish per vessel per trip from January 1 through June 31, 2021. These are the same limits that were implemented through an inseason adjustment for the period July 1 through December 31, 2020 (85 FR 38091, June 25, 2020). Given the rebuilt status of the stock and the availability of quota, increasing the Swordfish General Commercial permit retention limits in three regions to six fish per vessel per trip will increase the likelihood that directed swordfish landings will approach, but not exceed, the available annual swordfish quota, and increase the opportunity for catching swordfish during the 2021 fishing year.

### *Monitoring and Reporting*

NMFS will continue to monitor the swordfish fishery closely during 2021 through mandatory landings and catch reports. Dealers are required to submit landing reports and negative reports (if no swordfish were purchased) on a weekly basis.

Depending upon the level of fishing effort and catch rates of swordfish, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure that the available quota is not exceeded or to enhance fishing opportunities. Subsequent actions, if any, will be published in the **Federal Register**. In addition, fishermen may access <https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-highly-migratory-species-landings-updates> for updates on quota monitoring.

### **Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 635, which was issued pursuant to section 304(c), and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated Atlantic HMS FMP, as amended, provide for inseason retention limit adjustments to respond to changes in swordfish landings, the availability of swordfish on the fishing grounds, the migratory nature of this species, and regional variations in the fishery. Based on available swordfish quota, stock abundance, fishery performance in recent years, and the availability of swordfish on the fishing grounds, among other considerations, adjustment to the Swordfish General Commercial permit retention limits from the default levels of two or three fish to six swordfish per vessel per trip as discussed above is warranted, while maintaining the default limit of zero-fish retention in the Florida Swordfish Management Area. Analysis of available data shows that adjustment to the swordfish retention limit from the default levels would result in minimal risk of exceeding the ICCAT-allocated quota.

Delays in temporarily increasing these retention limits caused by the time required to publish a proposed rule and accept public comment would adversely and unnecessarily affect those Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial endorsement (when on a non-for-hire trip) that would otherwise have an opportunity to harvest more than the otherwise applicable lower default retention limits of three swordfish per vessel per trip in the Northwest Atlantic and Gulf of Mexico regions, and two swordfish per vessel per trip in the U.S. Caribbean region. Limiting opportunities to harvest available directed swordfish quota may have negative social and economic impacts for U.S. fishermen. Adjustment of the retention limits needs to be effective on January 1, 2021, to allow Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial endorsement (when on a non-for-hire trip) to benefit from the adjustment during the relevant time period, which could pass by for some fishermen who have access to the fishery during a short time period because of seasonal fish migration, if the action

is delayed for notice and public comment. Furthermore, the public was given an opportunity to comment on the underlying rulemakings, including the adoption of the North Atlantic swordfish U.S. quota, and the retention limit adjustments in this action would not have any additional effects or impacts since the retention limit does not affect the overall quota. Thus, there would be little opportunity for meaningful input and review with public comment on this action. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 1, 2020.

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