

APPENDIX B

REGULATIONS

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 630

(Docket No. 50581-5127)

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement the Fishery Management Plan for the Atlantic Swordfish Fishery (FMP). This rule provides for (1) the framework for closing areas for specific times, and (2) the establishment of a data collection program in the Caribbean. The intended effect of the final rule is to maintain high landings in the form of larger fish that are preferred in the market, prevent growth overfishing, provide a buffer against possible recruitment overfishing, and obtain the information necessary to monitor the fishery and refine the management regime.

EFFECTIVE DATE: This rule is effective September 18, 1985 (except for § 630.4 which becomes effective January 1, 1986) through December 31, 1987. This rule is being issued prior to approval by the Office of Management and Budget (OMB) of the information collection requirements in § 630.5. When OMB approval is received, a notice will be published in the Federal Register making this section effective on September 18, 1985.

ADDRESS: A copy of the combined final regulatory impact review/regulatory flexibility analysis (RIR/RFA) may be obtained from Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Regional Director, Southeast Region, NMFS, initially approved the fishery management plan for the Atlantic Swordfish Fishery on July 19, 1985, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Proposed

regulations to implement the FMP, prepared by the South Atlantic Fishery Management Council in cooperation with the Caribbean, Gulf of Mexico, Mid Atlantic, and New England Councils (Councils) were published on May 31, 1985 (50 FR 23159). Comments on the FMP and proposed rule were invited through July 12, 1985. The preamble to the proposed rulemaking contained a description of the swordfish fishery, the condition of the stocks, and fishing practices within the commercial and recreational sectors. Also discussed were problems in the fishery (i.e. increasing number of small fish in the landings and possible growth overfishing). These discussions are not repeated here.

Comments and Responses

Eighteen written comments were received addressing 45 issues. The sources of the comments were State natural resource agencies, the Department of State, a sports fishing organization, a foreign fishing association, Fishery Management Councils, a commercial fisherman's organization, law firms, a fishing tackle company, two members of Congress, and seven individuals.

Fishery Permits for Rod and Reel Fishermen

One state marine resource agency recommended that the requirement for rod and reel fishermen to possess fishing permits and report their catch in the Mid-Atlantic area (§ 630.4(a)(2) in the proposed rule) be extended to apply to rod and reel fishermen in all areas. Application of these requirements to rod and reel fishermen in only one area was considered inequitable, and because the Councils are considering implementing a comprehensive data gathering program, these requirements are unnecessary and NOAA has omitted them in the final rule. The same state agency suggested that these rod and reel permits remain valid until the permit owner requests otherwise or the vessel is sold. It was also recommended these permits be added to the bluefin tuna permit. Since the requirements for rod and reel permits and reporting by recreational fishermen have been deleted, these suggestions also are not applicable.

Prohibition of Imports

A law firm cited the need for import restrictions. The FMP provided for import restrictions during the variable season closure (VSC); however, that measure was disapproved, because it was not in compliance with Executive Order 12291, i.e. benefits and costs were not evaluated adequately. This measure

may be readdressed and submitted for approval in the future.

A State marine resource agency recommended that the time period for the prohibition of imports after a variable season closure be the same (10 days) for all areas instead of varying from seven to 11 days. Because NOAA has deleted this measure, the agency's comments are not applicable.

Entanglement Nets

One recreational fishermen's organization questioned the authorization of the use of entanglement nets in the fishery. They expressed the opinion that the use of this gear would give a select few fishermen an excessive part of the resource and the non-selectivity of the gear would be harmful to other species such as marlin and sailfish. NOAA is gathering information on the effect of this gear. However, because of the lack of scientific information at this time regarding entanglement nets, no further restrictions on the use of this gear are proposed at this time.

Regional Director Authority

The same sportsmen's organization objected to the Regional Director's (RD), Southeast Region, authority to review and approve or disapprove recommendations made by the Councils under § 630.21(c). In their opinion, this allows the RD to disapprove the Councils' recommendations at his discretion, thereby denying the Secretary of Commerce (Secretary) the opportunity to review them. The RD has been delegated the authority to approve or disapprove FMPs by the Secretary and as such acts as the Secretary's designee. In addition, the RD may not arbitrarily disapprove a recommendation submitted by the Councils. To disapprove a recommendation, the RD must find that the recommendation is inconsistent with the objectives of the FMP, the Magnuson Act or other applicable law. Therefore, this measure is implemented as proposed.

Time Restrictions for Longliners

Restricting the fishing of longlines to the period 1800 hours to 0500 hours throughout the year was recommended by a recreational fishermen's group to mitigate the bycatch of billfish. However, to do so for other pelagic fisheries during the variable season closures would defeat the purpose of the measure because most swordfish are caught during these hours and to do so during the remainder of the year would

cause an unjustifiable restriction on the swordfish fishery.

Foreign Fishing Restrictions

The Department of State and one foreign tuna fishing association objected to the restriction for foreign tuna longline vessels in the proposed regulations. The Department of State and the association recommended deletion of the prohibition of nighttime pelagic longline fishing by foreign vessels, the cap on the foreign longline incidental catch of swordfish and the closure of the south Atlantic portion of the FCZ. They considered the prohibition of nighttime longline fishing during the VSC by foreign fishermen to be excessively burdensome for the Japanese fishing fleet which operates far from its home base and to operate efficiently must fish 24 hours a day. In addition, they pointed out that only 20 swordfish were caught by the Japanese during 1984 in the area north of Cape Hatteras that was scheduled to be closed for 24 days under the VSC. With regard to the cap on the incidental take of swordfish, the State Department noted that the FMP does not provide statistical or other justification to illustrate how this measure will contribute directly to the objective of controlling the harvest of small swordfish. Also, the bycatch of swordfish by the Japanese longline fleet has dropped from 8,074 swordfish in 1980 to 402 swordfish in 1984. It was also indicated that in its opinion the closure of the southern portion of the FCZ was unnecessary because of the reduced effort by the Japanese fleet in the area in recent years and the corresponding decline in conflicts. NOAA concurs with the Department of State and the tuna association and the measures in the amendment to the Foreign Fishing Regulations at 50 CFR 611.60 and 611.61 disapproved by NOAA are omitted in this final rule.

Definition of Rod and Reel

A representative of one State agency recommended that the definition of rod and reel fishermen be modified to read "means any individual using a hand-held fishing rod with a manually operated reel attached." This would exclude the option of using rods with electrically operated reels. The commenter suggested that electric reels are not currently used but could be used to violate the proposed regulations. NOAA believes that this additional restriction would not be consistent with the intent of the Councils to exempt all legitimate rod and reel fishing from the closure.

Advance Notification

Representatives of two state agencies and one commercial fisherman commented that the requirement of a 10-day advance notification of departure for vessels selected to carry an onboard technician was impractical and unnecessary. They suggested that the notice period be reduced substantially. NOAA has disapproved the mandatory observer program for swordfish and § 630.5 as published in the proposed rule is modified in the final rule to reflect this disapproval. Therefore, these comments are no longer appropriate.

Fishing Outside Western North Atlantic Stocks

A representative of one State agency indicated that U.S. vessels occasionally fish for swordfish "outside the area identified as the Western North Atlantic Swordfish stock (zone)" and asked if fish from those areas could be possessed or landed during a closure. In a closed area (shoreward of the seaward boundary of the FCZ) swordfish could not be possessed at sea or landed during a closure. This same commenter asked if it was the intent of the FMP to force U.S. fishermen to land their catch in another country. This is not the intent of the FMP. The FMP is designed to reduce the harvest of swordfish less than 50 pounds dressed weight by closing areas at times when these small fish are predominate. These closures in the FCZ are also intended to encourage compliance among any fishermen fishing on the Western North Atlantic stock of swordfish. Any fishing effort applied during a closure to the same stock of swordfish would diminish the effectiveness of the FMP closures and, therefore, the benefits to the fishermen.

This commenter also asked how swordfish from the Western North Atlantic stock will be distinguished from the Eastern North Atlantic stock. There is no mechanism for differentiating these fish at this time. It is, in fact, this inability that underscores the necessity of prohibiting the possession at sea or landing of all swordfish in a closed area. An exception for swordfish harvested from other than the Western North Atlantic could easily preclude effective enforcement of a closure. NOAA believes that the need for effective enforcement of the closures outweighs the potential burden on the relatively few fishermen who occasionally fish beyond the boundary of the Western North Atlantic. Therefore, this regulation is implemented as proposed.

Fishery Management Councils Comments

The New England Council requested that the Secretary implement the Swordfish FMP without the harpoon cap provision. The Council noted that this measure: (1) Does not contribute to any of the FMP's objectives; (2) is not necessary to enhance enforcement as implied; and (3) would result in unnecessary and excessive costs and burdens associated with recordkeeping. Further, the harpoon fishery selectively harvests large fish and is, therefore, consistent with the primary objective of the plan. NOAA concurs with these comments and has disapproved the measure on the basis that it is inconsistent with section 303(a)(1)(A) of the Magnuson Act and Executive Order 12291.

This Council also stated that in southern New England many recreational boats regularly use harpoons to take swordfish, billfish, and tuna and under § 630.5(a) could be required to accommodate an onboard technician. NOAA has disapproved the mandatory observer program. Therefore, these comments are no longer applicable.

The South Atlantic Council suggested a number of technical corrections to the proposed rule. The Council stated that the numerical expression of ~~opinion~~ yield, i.e. number of swordfish under 50 pounds dressed weight that can be harvested, should be changed from 33,750 to 30,250. The published number was incorrect because of an error in the original calculation. NOAA agrees that the revised number, 30,250, is accurate and reflects the Councils' intent of using the number of swordfish less than 50 pounds harvested in 1980 and has made the appropriate corrections in the final rule. A slight modification in the definition of "gangion" was also recommended, i.e. changing "ground line" to "main line." This change has been incorporated in the final rule. The Council suggested that under § 630.4(b)(9) wording can be added to require anyone indicating that he/she could not accommodate a technician to provide an explanation. This comment is no longer applicable because of NOAA's disapproval of the mandatory observer program.

The South Atlantic Council also questioned the wording added by NOAA to § 630.21(c)(6) that provided a 15-day public comment period after publication of the Federal Register notice implementing modifications to the VSC. In addition to the Council recommended that the wording of

§ 630.21(c)(5) be changed to read "Changes in the starting date and resulting lengths of closures as determined by the most recent year's data, and any other changes to the FMP must be approved by all five Councils". In § 630.21, paragraph (c) *Adjustments* has been reserved to comply with disapproval of the provision requiring concurrence of all five Councils to establish or adjust the closures under the VSC. NOAA has designated the South Atlantic Council as the responsible Council for the management and Amendment of the FMP. The management measures to implement the closures under paragraph (c) as well as other necessary procedures will be implemented when the FMP has been amended to reflect this change in management responsibility. Therefore, the South Atlantic Council's comments are not appropriate.

The Council also requested that the wording in the first sentence of § 630.4(a)(1) be changed from commercial fishing vessel to . . . commercial longline fishing vessel and that corresponding language in the preamble be changed also. These changes are in the final rule. The Council further recommended that language be added to the preamble to indicate that existing data collection for the bycatch of swordfish by the foreign squid trawl fishery be continued as the U.S.-squid fishery shifts from joint ventures to ultimately a domestic fishery. Finally, the Council suggested minor modifications to the wording in sections of the proposed rule relating to foreign fishing measures and import restrictions. These comments are not applicable because these measures were disapproved and are deleted from the final rule.

Observer Requirements

A legal firm representing two commercial fishermen, a representative of a commercial fishermen's organization, and two members of Congress have expressed concerns about requiring observers aboard domestic vessels. All three commenters raised the issue of the vessel captain's liability regarding observers and stated that the government should bear the cost of necessary insurance and other associated costs. These commenters also noted that in some cases vessels lack sufficient space to accommodate observers and might be forced to reduce their customary crew size. This would reduce efficiency and could jeopardize safe working conditions. NOAA believes that there are legitimate reasons for concern about space, safety, liability, and crew size. Until these

problems are resolved NOAA has disapproved implementation of the mandatory observer program.

The legal firm and the commercial fishermen's organization suggested that the observer program for entanglement nets is inconsistent with Executive Order 12291 and National Standard 7. The commenters also suggested that less costly alternatives for data collection, i.e. use of data collection forms, should be adopted. These comments are no longer appropriate since NOAA has disapproved implementation of the mandatory observer program and deleted it from the final rule.

Variable Season Closure

Comments on the VSC were received from nine sources including seven commercial fishermen, one law firm, and a representative of a fishing tackle company. The law firm suggested that the FMP and the variable season closure were based on insufficient data. The VSC was based on a combination of NMFS swordfish landings data and size frequency data provided by fishermen and dealers. The size frequency data were available for 1962-1984, with most emphasis on the period from 1930-1984. More than 8,400 trip sheets and 270,000 individual carcass weights from all areas of the fishery were analyzed. NOAA has concluded that the VSC and the FMP are based on the best scientific information available. The firm also recommended closing different areas at different times as opposed to the overlapping closures proposed in the FMP. The best available information indicates that the fall months are when most of the small fish are caught. Further, the fall closures would achieve the necessary reduction of small fish while minimizing the loss (delay) of total landings, and fall is the season of lowest value per pound. Staggered closures would encourage shifts in fishing effort to avoid closures and thereby reduce effectiveness of the closure and complicate enforcement. This same commenter suggested that fishermen know where and when small fish are concentrated and that an economic disincentive would deter the take of small fish. The VSC is an economic disincentive. To the extent that fishermen can voluntarily avoid small fish, the closure would be reduced and could be eliminated if the take of small fish did not exceed the 1980 level.

Five commercial fishermen stated that the proposed closure, based on 1984 data, would create an economic hardship for them, and four fishermen suggested that the shorter closure, based on 1983 data, be implemented. Implementation of the 1983 based

closure would not result in achievement of optimum yield and would not be based on the best scientific information available and would, thus, violate national standards 1 and 2. Setting the closure during the fall months would minimize, to the extent possible, the reduction (delay) in total landings. The FMP also allows daytime longlining for tuna during the VSC to mitigate the short-term impacts of the closure.

One fisherman suggested that exempting harpoon fishermen from the VSC was unfair. The harpoon sector was exempted because it can and does selectively harvest large swordfish and, therefore, does not contribute to the problem of increasing harvest of small fish which necessitated the closure.

The representative of the fishing tackle company recommended that a minimum size be imposed instead of a seasonal closure. The Councils considered a minimum size limit but concluded, on the basis of a preliminary analysis by the Southeast Fisheries Center, that until mortality of small fish can be reduced significantly there would be no substantial benefit. Benefits would accrue only if fishermen would forgo trips where significant numbers of small fish would be encountered or if survival rates of small fish hooked and released were sufficiently high. Neither of these conditions currently would be met. The analysis indicated that too few trips would be avoided to reduce mortality. This commenter also stated that long closures in areas with primarily large fish defeats the economic objective of the plan. Such closures are less efficient than closures of areas with a higher ratio of small to large fish; however, the delay in harvest will produce overall gains.

The fisherman suggested that basing the closure on where small fish were landed rather than where they were caught is inappropriate. NOAA agrees, in principle, with this comment, but believes that the potential for error is minimal. The defined areas are very large thus minimizing the likelihood that vessels would fish in more than one area on a given trip. Further, much of the data supplied indicated area fished, e.g. logbooks, and area fished was determined by interviews with fishermen or dealers when possible.

Another fisherman stated that it was unfair to impose a closure in an area where the percentage of small fish landed had declined. NOAA disagrees. The effectiveness of the plan depends on reducing the total number of small fish landed. In the case cited by the commenter, the percentage of small fish landed declined slightly, but the total

number of small fish landed increased significantly. The swordfish stock is affected by the number of small fish killed, not by their percentage relative to total landings.

Two fishermen claimed that the proposed closures were in the wrong place at the wrong time. The Councils analyzed a substantial amount of landings and size frequency data from all areas of the fishery to determine the most appropriate closure dates. These data indicated that relatively more small fish were caught during the fall months in all areas. Also, the fall closures would minimize the length of the closure needed to achieve a given reduction in catch of small fish. Although some variation in individual's catch patterns would be expected, NOAA believes the available data support the Councils' decision for fall closures. Landings data will be updated and reevaluated annually.

Three fishermen and a representative of a tackle company suggested that closures should be increased in the southern areas or that some southern areas should be closed completely because of the preponderance of small fish. Even though the percentage of small fish was higher in the southern areas, large numbers of small fish were landed in all areas. As previously indicated, the stock is affected by the numbers of small fish landed, not necessarily the percentages. Closures in the southern areas were shorter because the landings of small fish were more concentrated within a discrete time period. The Councils are, however, considering options that would place more emphasis on closures in areas with higher ratios of small to large fish, i.e. the southern areas. The concept of total closures in some areas was rejected by the Councils. Since all areas landed substantial numbers of small fish, it was determined that all areas should contribute to the necessary reduction. Total closures would also have severe impacts on shore-based facilities and smaller, less mobile boats. Based on the available information, NOAA concurs with the Councils' determinations.

Comments relative to the proposed VSC closure dates are not applicable since no closure dates are implemented in the final rule. Any future closure dates will be implemented by publication of a notice in the Federal Register. A 15-day public comment period will be provided prior to implementation.

Changes From the Proposed Rule

The final rule differs from the proposed rule in the following respects, for the reasons discussed above and to

clarify other minor aspects of the regulations:

Part 611

The amendment to Part 611 has been deleted to eliminate the additional requirements for the foreign fleet fishing for tuna and squid in the FCZ.

Part 630

Table of Contents is modified by omitting §§ 630.24 and 630.25 and numbering "§ 630.26 Specifically authorized activities" as § 630.24.

Section 630.2

The definition for rod and reel fishermen is clarified by including the phrase "(includes rod-holder)."

The definition for gangion is revised for clarification.

Definition of technician is deleted as the result of NOAA's disapproval of the mandatory observer program.

Section 630.4

In paragraph (a), the word "longline" is inserted between the words "commercial" and "vessel" to clarify the specific requirements for having a permit aboard a vessel.

Paragraph (a)(2) requiring permits for rod and reel fishermen in the Mid-Atlantic area is deleted.

Paragraph (b)(9) is deleted to conform with the disapproval of mandatory observer program.

Section 630.5

Paragraph (a) has been deleted as a result of NOAA's disapproval of the mandatory observer program.

Paragraph (c) requiring twenty percent of all swordfish fishermen (including commercial and recreational) to provide additional data by questionnaire is deleted. This corresponds with the deletion of the requirement of permits for rod and reel fishermen in the Mid-Atlantic area.

Paragraph (d) requiring dealers to make available records for harpoon harvested swordfish is deleted. This corresponds with the deletion of the harpoon quota § 630.24.

Section 630.7

Paragraph (a)(1) is modified to conform with the revision of § 630.4 regarding the deletion of the requirement of permits for rod and reel fishermen in the Mid-Atlantic area.

Paragraph (a)(3) is deleted to conform with NOAA's disapproval of the mandatory observer program.

Paragraph (a)(10) is deleted to correspond with the deletion of § 630.25 Quotas.

Paragraph (a)(11) is deleted to reflect the deletion of § 630.25 Import restrictions. Paragraphs (a)(4) through (a)(20) are renumbered as (a)(3) through (a)(17).

Section 630.21

Paragraph (a) of this section has been revised to delete reference to the dates of variable seasonal closures until they are implemented by notice action under paragraph (c). This modification is necessary due to a lack of agreement among Councils for initially establishing closure dates based on available data.

In paragraph (b)(1) the wording "if the closure occurs between June and October" was deleted to conform with the deletion of § 630.24 Quota (harpoon quota).

Paragraph (c) is reserved pending amendment to the FMP described under "Fishery Management Councils' comments".

Classification-

The Regional Director determined that the approved portions of the FMP are necessary for the conservation and management of the Atlantic swordfish fishery and that they are consistent with the Magnuson Act and other applicable law.

The Councils prepared a final environmental impact statement for this FMP; a notice of availability was published on August 9, 1985; 50 FR 32306.

The NOAA Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. A summary was published at 50 FR 23161, May 31, 1985.

The Councils prepared a final regulatory flexibility analysis which describes the effects this rule will have on small entities. You may obtain a copy of this analysis at the address listed above.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648-0149. The collection of information requirements subject to the PRA at § 630.5 has been submitted for approval by OMB.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of all the affected States. This determination was submitted for review by the responsible State agencies under section 307 of the

Coastal Zone Management Act. The State agencies agreed with this determination.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 19, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble Chapter VI of 50 CFR is amended as follows:

PART 611—[AMENDED]

1. The authority citation for 50 CFR Part 611 continues to read as follows:

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

2. Section 611.60 is amended by adding a new paragraph (a)(3) to read as follows:

§ 611.60 General provisions.

(a) * * *

(3) Regulations governing fishing for swordfish in the same geographical area by vessels of the United States are published as Part 630 of this chapter.

3. Section 611.61 is amended by adding a new paragraph (b)(3) to read as follows:

§ 611.61 Atlantic billfish and shark fishery.

(b) * * *

(3) *Gulf of Mexico*. [Reserved]

4. Part 630 is revised to read as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

Subpart A—General Provisions

Sec.

630.1 Purpose and scope.

630.2 Definitions.

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630.4 Vessel permits.

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630.6 Vessel identification.

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Subpart B—Management Measures

630.20 Fishing year.

630.21 Seasonal closures.

630.22 Harvest limitations.

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Sec.

630.24 Specifically authorized activities.

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

Subpart A—General Provisions

§ 630.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Atlantic Swordfish Fishery prepared by the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils under the Magnuson Act.

(b) This part regulates fishing for swordfish by persons fishing on vessels of the United States shoreward of the seaward boundary of the fishery conservation zone (FCZ) in the Atlantic, Gulf of Mexico, and Caribbean.

(c) Regulations governing fishing by vessels other than vessels of the United States are published at 50 CFR Part 611, Subpart A and §§ 611.60 and 611.61.

§ 630.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meaning:

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Carcass means a fish that has been gutted and the head and fins have been removed (dressed).

Center Director means the Center Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149; Telephone 305-361-5761, or a designee.

Commercial fisherman means a person who sells, trades, or barter any part of his or her catch of fish.

Councils means the following Regional Fishery Management Councils:

(a) South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, South Carolina 29407-4699, telephone, 803-571-4366;

(b) New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, Massachusetts 01906;

(c) Mid-Atlantic Fishery Management Council, Federal Building, Room 2115,

North and New Streets, Dover, Delaware 19901;

(d) Caribbean Fishery Management Council, Suite 1108 Banco de Ponce Building, Hato Rey, Puerto Rico 00918; and

(e) Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

Dressed weight (carcass weight) means the weight of a carcass after the fish is gutted and the head and fins are removed.

Fish in these regulations refers to the swordfish, *Xiphias gladius*.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Gangion means one of the lines that bear hooks and which is attached at intervals along the main line of a longline. (Synonymous with leader.)

Gill net or *drift entanglement net* means a flat net suspended vertically in the water having meshes that entangle the head or other body parts of fish that attempt to pass through the net.

Handline gear means a fishing line set and pulled by hand that remains attached to the boat during fishing.

High flyer means a vertical pole that projects above the water attached to a longline that serves to mark its location.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

NMFS means the National Marine Fisheries Service.

Official number means the official documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means—

(a) Any person who owns that vessel in whole or in part;

(b) Any character of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraphs (a), (b), or (c) of this definition.

Pelagic longline means a type of fishing gear consisting of a length of line suspended horizontally in the water column above the bottom from lines attached to surface floats and to which gangions and hooks are attached.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Radio buoy means a buoy attached to a longline which transmits a radio signal for purposes of marking its location.

Regional Director means the Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone, 813-893-3141, or a designee.

Rod and reel fisherman means any individual using a hand-held (includes rod-holder) fishing rod with a manually or electrically operated reel attached.

Secretary means the Secretary of Commerce or a designee.

Swordfish means a fish of the species *Xiphias gladius*.

U.S. fish processors means facilities located within the United States for, and vessels of the United States, used for or equipped for, the processing or distribution of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any foreign or

domestic fishery regulated under the Magnuson Act.

Variable season closure (VSC) means the annual periods of closure for swordfish fishing in the five management areas as defined at § 630.21(a).

Vessel of the United States means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than five net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

Western North Atlantic swordfish stock means those swordfish in Food and Agricultural Organization statistical reporting areas 21 and 31. This area is bounded on the west by the North, Central, and South American land masses and on the east by a line running from the eastern coast of South America at 5°00' N. latitude out to 40°00' W. longitude, north to 36°00' N. latitude, west to 42°00' W. longitude, north to 59°00' N. latitude, west to 44°00' W. longitude, and continuing north to Greenland.

Whole fish means a fish that is not gutted and the head and fins are intact.

§ 630.3 Relation to other laws.

Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities. Certain responsibilities relating to enforcement and data collection may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 630.4 Vessel permits.

(a) **General.** Effective January 1, 1986, a vessel of the United States fishing for, possessing, retaining, or landing swordfish for sale, trade, or barter, or any commercial longline fishing vessel of the United States with a bycatch of swordfish, whether or not retained for sale, trade, or barter, operating in the Atlantic, Gulf of Mexico, or Caribbean FCZ must have onboard at all times the permit required by this part. Vessels fishing handline gear in the Caribbean and any vessels fishing rod and reel gear in the FCZ are exempt.

(b) **Application.** An application for a fishing vessel permit under this section must be submitted by the vessel owner or operator on an appropriate form obtained from the Regional Director. The application must be submitted to

the Regional Director and must contain the following information:

(1) Owner's name, mailing address, and telephone number;

(2) Vessel name, net tons, and length;

(3) Home port;

(4) State registration or Coast Guard documentation number;

(5) Target species;

(6) Gear type(s);

(7) Average trip length (in days); and

(8) Monthly distribution of fishing by area (e.g., Gulf of Mexico).

(c) **Issuance.** (1) Upon receipt of a properly completed application, the Regional Director will issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following date of notification, the application will be considered abandoned.

(d) **Expiration.** A permit expires on December 31 of each year.

(e) **Duration.** A permit is valid until it expires or is revoked, suspended, or modified under Subpart D of 15 CFR Part 904.

(f) **Alteration.** Any permit which has been altered, erased, or mutilated is invalid.

(g) **Replacement.** Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(h) **Transfer.** Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel and vessel owner for which it is issued.

(i) **Display.** Any permit issued under this part must be carried aboard the fishing vessel at all times. The permit must be prominently displayed in the pilot house or offered for inspection upon request of any authorized officer.

(j) **Sanctions.** Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this part. As specified in Subpart D, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Magnuson Act or by this part; or if a civil penalty or criminal penalty imposed under the Magnuson Act has not been paid.

(k) **Fees.** No fee is required for any permit under this part.

(l) **Change in application information.** Any change in the information specified in paragraph (b) of this section, such as the vessel owner or gear type, must be reported to the Regional Director within

15 days of the change. If there is a change in vessel owner, the vessel may not fish for swordfish until a new permit has been issued.

(Approved by the Office of Management and Budget under OMB control number 0648-0149.)

§ 630.5 Reporting requirements.

Owners or operators of vessels of the United States who have been issued a permit under § 630.4 to fish for swordfish in the Caribbean and land swordfish in Puerto Rico or the U.S. Virgin Islands must report their catch to the Center Director by individual carcass weight by providing copies of their weigh-out sheets for all swordfish landed.

§ 630.6 Vessel identification.

(a) *Official number.* A vessel of the United States engaged in the commercial swordfish fishery shoreward of the seaward boundary of the FCZ in the Atlantic Ocean, Gulf of Mexico or Caribbean Sea must—

(1) Display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the documentation number issued by the Coast Guard for documented vessels, or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) The official number must be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels.

(4) The official number must be permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, its fishing gear, or anything carried aboard obstructs the view of the official number from any enforcement vessel or aircraft.

§ 630.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Fish for, possess, retain, or land swordfish without a valid permit required under § 630.4 aboard the vessel;

(2) Purchase, sell, barter, or trade any swordfish taken by a vessel that does

not have a valid permit required under § 630.4;

(3) Falsify or fail to report information required to be submitted or reported as specified in § 630.5;

(4) Falsify or fail to affix and maintain vessel markings as required by § 630.6;

(5) Fish for, possess at sea shoreward of the outer boundary of the FCZ, or land swordfish in closed areas specified in § 630.21(a), except as provided in § 630.21(b);

(6) Land swordfish harvested in the commercial fishery except as specified under § 630.22;

(7) Fish in closed areas with pelagic longlines at times other than as specified in § 630.23(a);

(8) Possess swordfish in a closed area during a seasonal closure specified in § 630.21(a) aboard a vessel having gear other than harpoons, rod and reel, or (in the Caribbean area only) handlines capable of taking swordfish;

(9) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any fish taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(10) Fail to comply immediately with enforcement and boarding procedures specified in § 630.8;

(11) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(12) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part;

(13) Interfere with, obstruct, delay, or prevent in any manner the seizure of illegally taken swordfish or the disposition of such swordfish through the sale of the swordfish;

(14) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (a)(11) of this section;

(15) Resist a lawful arrest for any act prohibited by this part;

(16) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part; or

(17) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested swordfish to any foreign fishing vessel, while such vessel is in the FCZ, unless the foreign fishing vessel has been issued a permit under section

204 of the Magnuson Act which authorizes the receipt by such vessel of U.S.-harvested swordfish.

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 630.8 Facilitation of enforcement.

(a) *General.* The operators or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signs, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessels signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop instantly.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to allow an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must—

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

