

# Rules and Regulations

Federal Register

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 070307055-7099-02; I.D. 022607F]

RIN 0648-AV25

#### Atlantic Highly Migratory Species (HMS); U.S. Atlantic Billfish Tournament Management Measures

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

**ACTION:** Final rule.

**SUMMARY:** This final rule suspends mandatory circle hook requirements for participants in Atlantic billfish fishing tournaments through December 31, 2007. Circle hook requirements will be reinstated unchanged effective 12:01 a.m., January 1, 2008. The suspension is intended to increase post-release survival rates of Atlantic billfish in the long-term by providing an additional phase-in period during which Atlantic billfish tournament anglers can become more proficient and familiar with circle hooks and their ecological benefits, respectively.

**DATES:** In this final rule, § 635.21, paragraph (e)(2)(iii), is suspended from [insert date of publication in the FEDERAL REGISTER] to December 31, 2007, and is revised effective January 1, 2008.

**ADDRESSES:** Copies of the Final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (Final EA/RIR/FRFA) are available from the Highly Migratory Species Management Division website at [www.nmfs.noaa.gov/sfa/hms](http://www.nmfs.noaa.gov/sfa/hms) or can be obtained by contacting Russell

Dunn or Randy Blankinship (see FOR FURTHER INFORMATION CONTACT).

**FOR FURTHER INFORMATION CONTACT:** Russell Dunn or Randy Blankinship, by phone: 727-824-5399; by fax: 727-824-5398.

**SUPPLEMENTARY INFORMATION:** The U.S. recreational fishery for Atlantic billfish is managed under the Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP). Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*), and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*).

#### Background

NMFS recently finalized a Consolidated HMS FMP (October 2, 2006; 71 FR 58058) that consolidated and replaced previous FMPs for Atlantic Billfish and Atlantic Tunas, Swordfish, and Sharks. The Consolidated HMS FMP is implemented by regulations at 50 CFR part 635.

Prior to January 1, 2007, the recreational Atlantic billfish fishery was subject to regulations that required fishing permits, limited allowable gears to rod and reel only, established minimum legal size limits, specified landing form of retained billfish, mandated reporting of billfish landings, required registration of all recreational HMS fishing tournaments and reporting by tournaments that are selected for reporting, prohibited the retention of longbill spearfish, and prohibited sale of any billfish, among other measures. The final rule implementing the Consolidated HMS FMP implemented additional regulations that applied to the Atlantic recreational billfish fishery.

Effective January 1, 2007, these regulations require anglers fishing from HMS permitted vessels and participating in Atlantic billfish tournaments to use only non-offset circle hooks when deploying natural baits or natural bait/artificial lure combinations. The regulations allow the use of J-hooks (the hook-type traditionally used in this fishery) with artificial lures in tournaments, and do not impose hook requirements on recreational fishermen fishing outside of Atlantic billfish tournaments. Additionally, the final rule limits U.S.

landings of Atlantic blue and white marlin to 250 individual fish, combined, on an annual basis.

In response to continuing public input on the Atlantic billfish tournament circle hook regulations, NMFS released a draft environmental assessment and published a proposed rule on March 15, 2007 (72 FR 12154), that included a preferred alternative to suspend Atlantic billfish tournament circle hook requirements through December 31, 2007. The EA considered three alternatives. Information regarding these alternatives was provided in the proposed rule and is not repeated here.

#### Response to Comments

The public comment period for the proposed rule was open from March 15, 2007 to March 30, 2007. During that time, NMFS held three public hearings and received comments from 111 individuals or organizations. A summary of the major comments received, along with NMFS' responses are provided below.

**Comment 1:** Several commenters in favor of Alternative 1, the no action alternative (status quo), stated that the existing measure is necessary to protect Atlantic white marlin stocks and promote rebuilding. Similarly other commenters felt that maintaining the circle hook requirement would be beneficial in reducing the likelihood of listing white marlin as endangered or threatened under the Endangered Species Act.

**Response:** NMFS agrees that maintaining the circle hook requirement would continue to provide post-release hooking mortality benefits; however, given the short duration of the circle hook suspension, NMFS projects that it will result in a one-time limited number of additional white marlin post-release mortalities that would not adversely affect the Atlantic wide stock in a measurable way. NMFS believes that the provision of an additional phase-in period during which anglers can become more proficient, comfortable, and accepting of circle hooks will, in the long-term, offset the short-term increase in mortalities by resulting in greater long-term compliance with circle hook regulations. The white marlin listing review, conducted under the Endangered Species Act, is currently underway. The biological review team conducting the review may consider the impacts of all fishery management

measures in effect including circle hook requirements when making its recommendations. NMFS cannot predict the outcome of the review team's deliberations or the direct impact that any particular regulation may have on the outcome of such deliberations.

*Comment 2:* NMFS received comment in support of Alternative 1, the no action alternative (status quo), because commenters felt there are many different ways of rigging baits with circle hooks that have been tested and proven to work.

*Response:* NMFS received similar comment during and following development of the circle hook requirement from anglers stating that successful methods of rigging baits with circle hooks exist and are practiced. NMFS agrees that appropriate rigging techniques for circle hooks exist which allow anglers to successfully catch Atlantic billfish. Further, Prince et al. 2002, found no statistical difference between catch rates between circle hooks and J-hooks using both natural dead bait trolling and live bait drifting/kite fishing techniques. Additionally, several popular articles have been published in major sportfishing magazines that highlight some of these methods. However, NMFS believes that an improved long-term ecological benefit can be achieved by allowing an additional phase-in period for the reasons discussed in the response to Comment 1.

*Comment 3:* The Maryland Department of Natural Resources (MDNR) expressed support for alternative 1, the no action alternative (status quo). MDNR cited its work with the recreational fishing community and the billfish tournament directors in Maryland to educate anglers regarding the conservation benefits of circle hook use and stated that the major billfish tournaments in Maryland anticipated the circle hook requirement and prepared for it. MDNR cited success with implementation of circle hook requirements in Maryland's special catch and release fishery for striped bass in the Chesapeake Bay and stated that suspending the circle hook requirement for Atlantic billfish tournaments would send the wrong message to recreational anglers.

*Response:* NMFS appreciates the conservation efforts of the MDNR. The suspension of the circle hook requirement in Atlantic billfish tournaments is a temporary measure with the purpose of providing additional time for anglers to become more familiar with techniques for rigging and fishing with circle hooks in Atlantic billfish tournaments, thus

resulting in improved long-term compliance with the circle hook requirement upon reimplemention. NMFS has worked to increase awareness among anglers of the benefits of circle hooks and will continue to do so during and following the temporary suspension.

*Comment 4:* NMFS received comment in support of alternative 1, the no action alternative (status quo), because of the lack of time for tournament operators to get the word to all potential participants about what gear is allowed.

Alternatively, NMFS received comment in support of the preferred alternative so that tournament rules would not have to be rewritten this year as some tournaments may have published their rules using 2006 regulations.

*Response:* NMFS received comment from multiple tournament operators indicating that some tournaments prepared for the circle hook requirement when it was implemented on January 1, 2007, while others were unaware or did not prepare. NMFS appreciates the concerns of tournament operators and anglers regarding the need to know what gear configurations are available for use in advance. NMFS also appreciates those constituents that were aware of and prepared for the requirement and regrets that tournament rules may need to be reprinted as a result of the temporary suspension of the regulation. NMFS also points out that tournaments in some areas of the Atlantic and Gulf of Mexico have voluntarily implemented circle hook requirements in recent years and the temporary suspension of the requirement does not prevent this. NMFS encourages anglers and tournament operators to stay informed of HMS management issues and actions by visiting <http://www.nmfs.noaa.gov/sfa/hms/> and signing up for the electronic bulletin, *Atlantic HMS News*.

*Comment 5:* NMFS received comment in support of the preferred alternative, temporarily suspend the Atlantic billfish circle hook requirement, that expressed a desire for NMFS to use the suspension period to accomplish several tasks. These suggestions include: improve the circle hook definition; investigate the availability of circle hooks for the recreational billfishing tackle market; investigate the post-release hooking mortality rates of J-hook and circle hook rigged natural and natural bait/artificial lure combination baits trolled at high speed such as is used frequently when targeting blue marlin; investigate the possibility of a minimum size J-hook that could be allowed when high speed trolling for blue marlin; investigate post-release

mortality of billfish when lures with double hooks are used; investigate how the circle hook requirement affects tournaments with mixed target species; investigate whether the circle hook requirement would accomplish its intended objective or not; and investigate post-release hooking mortality differences between different presentations of J-hooks with live baits.

*Response:* NMFS agrees that information from studies such as some of those mentioned during public comment may be useful for refining management of the billfish fishery in the future as additional data become available. NMFS is working on a number of these issues including improving the definition of circle hooks and the potential for additional post-release mortality studies examining various gear and technique configurations.

*Comment 6:* NMFS received comment in favor of the preferred alternative, temporarily suspend the Atlantic billfish circle hook requirement; however, commenters expressed a desire for modifications to the circle hook requirement upon reimplementation. Commenters indicated that these modifications are popular for use when targeting blue marlin and are less damaging to all billfish than J-hooks used with live or dead natural baits on light tackle. Some commenters making this suggestion stated that some of these modifications would help reduce the impact to anglers fishing in mixed species tournaments. Some commenters stated that these modifications would allow the continuation of North Carolina's historic and traditional method of fishing for blue marlin using heavy tackle and/or lure/bait combinations rigged with J-hooks and trolled at high speed. Suggested modifications included creating an exemption to the circle hook requirement to allow J-hook use with heavy tackle and/or lure/bait combinations trolled at high speed and creating an exemption to the circle hook requirement to allow J-hook use if the main line is less than 50 lb. test, less than 80 lb. test, leader size is less than 200 lb. test, hook is at least a certain size that cannot be swallowed easily by a billfish (hook size suggestions were 9/0, 10/0, 11/0 and 12/0), or some combination of these criteria.

*Response:* NMFS acknowledges that limited information from the few blue marlin tagged with pop-off satellite archival tags (PSATs) (9 fish) in the study by Graves et al. (2001) shows relatively low rates of post-release mortality for blue marlin caught on J-hooks when certain gear configurations

and techniques are employed. However, the sample size of this one study is limited and no information exists on the impacts of combination baits with J-hooks on white marlin and other billfish species. NMFS implemented the regulations requiring circle hooks on natural baits and natural bait/artificial lure combinations based on a number of considerations that are detailed in the Final Environmental Impact Statement (FEIS) for the Consolidated HMS FMP. The basis for that decision included, but was not limited to: the post-release survival benefits of circle hooks for billfish and many other species identified in a number of studies, comparable catch rates of billfish between circle hooks and J-hooks identified in available studies, the poor stock status of some Atlantic billfish species, the limited amount of available data on various gear configurations, and enforcement issues. NMFS will consider new information on the effects of the fishing methods mentioned above on fish condition and post-release mortality as it becomes available. NMFS acknowledges that the circle hook requirement in Atlantic billfish tournaments may have impacts on secondary fisheries including wahoo, king mackerel, dolphin, tunas, and other fisheries and has limited these impacts to the extent feasible in the creation of the circle hook requirement by applying it narrowly to only HMS permitted vessels participating in tournaments with award categories for Atlantic billfish. NMFS will consider new information on ways to limit impacts of HMS requirements on non-HMS fisheries as it becomes available. NMFS acknowledges that a traditional recreational fishery exists for blue marlin in the Atlantic and Gulf of Mexico that utilizes different fishing techniques in different locations and situations. The fishing technique of using heavy tackle and/or lure/bait combinations rigged with J-hooks and trolled at high speed is used in several locations throughout the Atlantic and Gulf of Mexico. The fishery management strategy employed to reduce post-release hooking mortality of Atlantic billfish through the circle hook requirement in Atlantic billfish tournaments is a modification of the techniques used in this fishery. NMFS received public comment during and following development of the circle hook requirement from anglers that successful methods of rigging baits with circle hooks exist and are practiced. Additionally, several articles have been published in major sportfishing magazines that highlight some of these

methods. NMFS believes that through this and other fishery management strategies, the traditional recreational fishery for blue marlin and other Atlantic billfish may be improved by promoting stock rebuilding.

*Comment 7:* NMFS received comment from the North Carolina Division of Marine Fisheries (NCDMF) indicating their support for the preferred alternative, temporarily suspend the Atlantic billfish circle hook requirement. NCDMF stated that the current rule may negatively impact angler's ability to catch blue marlin. Concern was expressed over the impacts of mandating circle hook use for natural baits and natural bait/combinations for all tackle sizes. NCDMF encouraged NMFS to explore the circle hook definition, conduct research on release mortality of billfish released on heavy tackle with J-hooks, research the difference in catch rates of circle and J-hooks for non-billfish species targeted in tournaments, and explore recently raised questions concerning post-release mortality of billfish caught on double hooked lures. NCDMF expressed concern that a shortage of large non-offset circle hooks to supply the billfish fishery may exist.

*Response:* NMFS appreciates the comments of the NCDMF. The purpose of the temporary suspension of the circle hook requirement in Atlantic billfish tournaments is to allow additional time for anglers to become more familiar with techniques for rigging and fishing with circle hooks in Atlantic billfish tournaments, thus resulting in improved long-term compliance with the requirement upon reimplementation. As discussed in the response to Comment 6, NMFS received comment during and following development of the circle hook requirement from anglers stating that successful methods of rigging baits with circle hooks exist and are practiced. Additionally, several articles have been published in major sportfishing magazines that highlight some of these methods.

Regarding the application of the circle hook requirement for all tackle sizes, NMFS developed the requirement with consideration for several different concerns which included application to the targeted fishery and the ease of enforcement, as well as other considerations identified in the response to Comment 6 and discussed in detail in the FEIS for the Consolidated HMS FMP. NMFS believes that the requirements for the use of circle hooks by permitted HMS fishermen when natural bait and natural bait/artificial lures are deployed in

billfish tournaments improve its enforceability. Related to application of the requirement to all tackle sizes and researching post-release mortality for various tackle types, NMFS will consider new information on the effects of the fishing methods on fish condition and post-release hooking mortality, as it becomes available. NMFS has not received information indicating that a shortage of large non-offset circle hooks exists other than that contained in NCDMF's comment. The circle hook requirement was finalized in October 2006 and became effective January 1, 2007, providing time for circle hook manufacturers and retail stores to increase inventory. The Atlantic billfish tournament season is protracted and peaks in the late spring and summer months, thereby providing additional time for manufacturers and retailers to prepare for demand. The preferred alternative to temporarily suspend the circle hook requirement in Atlantic billfish tournaments may dampen the peak in demand for circle hooks in 2007 as anglers will not be required to use circle hooks, but may still desire to practice with them in preparation for reimplementation of the requirement on January 1, 2008. However, as mentioned, NMFS has received no information from anglers, distributors, tackle shops, tournament operators, or manufacturers that a real or potential shortage of hooks exists.

*Comment 8:* NMFS received comment in favor of non-preferred alternative 3, remove Atlantic billfish tournament circle hook requirements, for various reasons including: insufficient data to implement a circle hook requirement in billfish tournaments; voluntary use of circle hooks should continue to be encouraged; fear that similar requirements will be imposed in all offshore trolling for any species to reduce billfish post-release mortality; concerns that circle hooks lodging in the corner of the jaw actually are the most painful and cause long-term damage to the fish resulting in a decreased ability of the fish to feed and increased rates of death relative to billfish caught with J-hooks.

*Response:* NMFS disagrees that there is insufficient data to implement a circle hook requirement in billfish tournaments. NMFS has relied on publicly available peer-reviewed scientific papers and available recreational data sets in developing its analyses. The assumptions made to support the use of circle hooks are clearly articulated in Chapter 4 of the Consolidated HMS FMP. NMFS agrees that voluntary circle hook use in HMS fisheries outside of Atlantic billfish

tournaments should be encouraged. Voluntary use of circle hooks was promoted in the years prior to implementation of the circle hook regulation on January 1, 2007; however, this voluntary promotion only achieved limited success in transitioning recreational anglers to circle hooks in the Atlantic billfish fishery. NMFS does not anticipate that continued promotion of voluntary circle hook use alone by tournament anglers would result in achieving the maximum conservation benefit possible of reduced post-release mortality of Atlantic billfish relative to the no action alternative. NMFS acknowledges that requiring circle hooks in all HMS fisheries could have impacts on secondary fisheries, including tunas, sharks, dolphin, wahoo, king mackerel, etc., and other inshore fisheries and has taken steps to minimize these impacts, as discussed under the response to comment 6. NMFS disagrees that circle hooks lodging in the corner of the jaw are more damaging to fish in the long-term and result in fish death more frequently than with J-hooks. This comment is not supported by peer reviewed scientific literature showing lower post-release mortality of white marlin when caught with circle hooks in comparison with J-hooks and showing less damaging hook location in sailfish and blue marlin when caught with circle hooks in comparison with J-hooks.

*Comment 9:* NMFS received comment from lure manufacturers stating that rigging circle hooks with hard headed artificial lures and natural baits is an ineffective method of catching billfish and has resulted in substantial loss of lure sales. One manufacturer stated that the combined economic impact from Central American circle hook requirements and the domestic circle hook requirement implemented in January 2007, the requirement was large enough to cause his company to go out of business. Similarly, another lure manufacturer stated that hard headed lures with nylon skirts are designed to be trolled at high speed in conjunction with natural baits and J-hooks resulting in almost all fish being hooked in the mouth. One manufacturer expressed support for alternative 3, removal of Atlantic billfish tournament circle hook requirements, and another requested that NMFS further investigate an exemption for artificial lure/natural bait combinations rigged with J-hooks and trolled at high speed.

*Response:* NMFS appreciates the comment that economic impacts may have occurred as a result of previous rulemaking to implement the circle hook requirement on January 1, 2007.

As discussed in the response to Comment 6, NMFS received comment during and following development of the circle hook requirement from anglers stating that successful methods of rigging baits with circle hooks exist and are practiced. Additionally, several articles have been published in major sportfishing magazines that highlight some of these methods including methods to rig and fish with hard headed lures with nylon skirts used in combination with natural baits. NMFS acknowledges that investigating questions about certain gear and rigging types such as that mentioned above may provide additional useful information in the future and will consider these issues when identifying future research priorities.

*Comment 10:* NMFS received comment that no data exists to support application of the circle hook requirement to blue marlin fishing methods that employ circle hook rigged baits trolled at high speed. These comments stated that the damage to billfish when J-hooks are used in baits trolled at high speed is less than when J-hooks are used with dead or live natural baits on light tackle. These comments also stated that no data exists to support the concept of the circle hook requirement that large baits, lures, or artificial/natural combination baits rigged with circle hooks and trolled at high speed result in an adequate hook-up rate.

*Response:* As discussed in the response to Comment 6, NMFS developed the circle hook requirement in Atlantic billfish tournaments with consideration for several different concerns, including but not limited to: the post-release survival benefits of circle hooks for multiple billfish species and other species identified in a several studies, comparable catch rates of various billfishes between circle hooks and J-hooks as identified in available studies, the poor stock status of some Atlantic billfish species, and enforcement issues. Accordingly, the rule applies to natural and natural/artificial combination baits. NMFS acknowledges that limited information from the few blue marlin tagged with PSATs (9 fish) in the study by Graves et al. (2001) shows relatively low rates of post-release mortality for blue marlin caught on J-hooks when certain gear configurations and techniques are employed. No information exists, however, on the impacts of this fishing technique on white marlin and other billfish species. With this uncertainty of impacts in particular to white marlin, the regulation was developed in a manner to provide additional protection

to severely overfished Atlantic billfishes. NMFS will consider new information on the effects of the fishing methods mentioned above on fish condition and post-release hooking mortality, as it becomes available. As discussed in the response to Comment 6, NMFS received comment during and following development of the circle hook requirement from anglers that successful methods of rigging baits with circle hooks exist and are practiced. Additionally, several articles have been published in major sportfishing magazines that highlight some of these methods including methods to rig and fish with hard headed lures with nylon skirts used in combination with natural baits.

*Comment 11:* NMFS received comment suggesting that fees be assessed on all HMS recreational permits and HMS registered tournaments to fund PSAT tagging for post-release mortality comparisons between circle hooks and J-hooks.

*Response:* NMFS appreciates the suggestion as funding for continued post-release mortality studies in Atlantic billfish fisheries is needed. Suggestions for research funding will be considered as future research needs are assessed.

*Comment 12:* NMFS received comment that the existing circle hook requirement is not compatible with mixed species tournaments and will reduce the ability of anglers to catch wahoo, dolphin, tuna, and others.

*Response:* NMFS understands that the circle hook requirement in Atlantic billfish tournaments will affect anglers in HMS permitted vessels targeting species other than Atlantic billfish. Many pelagic fish species are found in the same areas as Atlantic billfish and feed on similar prey. Atlantic billfish may be caught in many areas using the same fishing methods employed for other pelagic species such as wahoo, dolphin, tuna, king mackerel, and others; therefore, circle hooks are necessary in that portion of the tournament fishery. NMFS sought to minimize the impacts on secondary species by limiting the applicability of circle hook regulations as discussed in the response to Comment 6.

*Comment 13:* NMFS received comment that the existing circle hook requirement is not enforceable and relies on tournament operators as the only enforcement agent. NMFS also received public comment that the circle hook requirement would be enforceable.

*Response:* The requirements for the use of circle hooks by permitted HMS fishermen when natural bait and natural bait/artificial lures are deployed in

billfish tournaments can be adequately enforced by NOAA Enforcement and the United States Coast Guard. As most tournament's rules require anglers to comply with all applicable state and federal regulations, NMFS believes that an important incentive for anglers to comply with regulations is the potential to have a prize-winning fish disqualified for not deploying a circle hook when required.

*Comment 14:* NMFS received comment that all fishing tournaments should be banned.

*Response:* NMFS disagrees. Atlantic HMS tournaments represent an important component of a robust recreational fishery and provide substantial socio-economic benefits to many communities. Further, tournaments represent an essential mechanism for obtaining significant amounts of data on many species that are incorporated into fish population assessments and management decisions.

*Comment 15:* NMFS received comment that tournaments are venues that could provide a large number of interactions with marlin and should be used to collect data to answer the post-release hooking mortality questions for blue and white marlin.

*Response:* NMFS appreciates the interest in collecting post-release hooking mortality information and agrees that tournaments can provide, for some fishery management issues, a venue for collecting fisheries information via appropriately designed data collection protocols. Such situations have been and continue to be valuable for collecting billfish information such as through the Recreational Billfish Survey and other life history studies. Such activity is not affected by this rulemaking.

*Comment 16:* NMFS received comment that the recreational fishing mortality level for billfish does not compare to the much larger pelagic longline mortality level thus the circle hook requirement in Atlantic billfish tournaments is directed at the wrong mortality source.

*Response:* The United States is responsible for approximately 4.5 percent of reported white marlin catches in the Atlantic. As explained in Appendix C of the 2006 Consolidated HMS FMP, average annual fishing mortality levels imposed by the domestic pelagic longline fishery and the recreational tournament fishery on Atlantic white marlin are roughly comparable. Based on pelagic longline logbook data and data from the Recreational Billfish Survey, the level of billfish mortality imposed by U.S. recreational billfish tournament

fishermen is estimated to be approximately 71% of levels imposed by the U.S. pelagic longline fishery. While the post-release mortality rate of Atlantic white marlin is estimated to be lower in recreational fisheries than in the pelagic longline fishery, the size of the recreational tournament fishery is large enough to generally offset the difference in mortality rates.

*Comment 17:* NMFS received several comments that the preferred alternative, suspend Atlantic billfish tournament circle hook requirements through the close of 2007, is not favorable. These include: the proposed rule is not precautionary; compliance with the already established rule would be 100 percent; the proposed rule is not supported by the record; there is a lack of parity with this proposed rule as an extended phase-in period is proposed for recreational anglers, but there was no grace period for commercial fishermen when circle hooks were required; the timing of proposed rule is bad as tournaments are in May and June and anglers should be practicing with circle hooks already.

*Response:* NMFS appreciates the comment that temporary suspension of the circle hook rule is not precautionary and that compliance would be 100 percent. NMFS disagrees that temporary suspension of the circle hook requirement is not supported by the record as the rule will be re-implemented January 1, 2008. NMFS agrees that maintaining the circle hook requirement would continue to provide post-release hooking mortality benefits; however, given the short duration of the circle hook suspension, NMFS projects that it will result in a one-time limited number of additional white marlin post-release mortalities that would not affect the Atlantic wide stock in a measurable way. NMFS believes that the provision of an additional phase-in period during which anglers can become more proficient, comfortable, and accepting of circle hooks will, in the long-term, offset the short-term increase in mortalities by resulting in greater long-term compliance with circle hook regulations. NMFS disagrees that there is a lack of parity between implementation of the circle hook requirement in Atlantic billfish tournaments and the circle hook requirement for the pelagic longline (PLL) fishery because the bases for the two actions are different. The circle hook requirement in Atlantic billfish tournaments is a domestic measure intended to aid in rebuilding Atlantic billfish stocks by reducing post-release fishing mortality to the extent practicable at this time. The circle hook

requirement in the Atlantic PLL fishery responds to issuance of the 2004 Biological Opinion which determined that continued operation of the pelagic longline fishery without changes in fishing gears or techniques would jeopardize the existence of leatherback sea turtles. Per the Endangered Species Act, the Agency was required to implement changes in the way the pelagic longline operated. Rapid implementation of the circle hook requirement for PLL was necessary for the fishery to continue operating. This rulemaking is intended to reduce post-release mortality of Atlantic billfish in the long-term by temporarily suspending the circle hook requirement in Atlantic billfish tournaments to allow tournaments and tournament anglers additional time to become more familiar with techniques for rigging and fishing with circle hooks.

*Comment 18:* NMFS received comment that circle hook specifications should be defined and field tested. Commenters also stated that circle hook rigging workshops should be held or videos should be developed. NMFS also received comment that 3 different circle hooks were used in recent research and all 3 worked well in reducing post-release mortality even with differences in their general design. Additionally, comment was received that it is important to stay consistent with what the international community is using as a definition of circle hooks because of tackle manufacturing and to reduce confusion.

*Response:* NMFS appreciates the numerous comments received about circle hook definition issues and is involved in discussions with hook manufacturers and gear experts to address many of these concerns. Further, NMFS is not aware of an internationally accepted definition of circle hooks. The Agency may consider this issue in future rulemaking, as appropriate.

#### **Changes from the Proposed Rule**

There are no changes from the proposed rule.

#### **Classification**

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* NMFS has determined that this final rule is consistent with the national standards of the Magnuson-Stevens Act, other provisions of the Act, and other applicable laws.

Pursuant to 5 U.S.C. 553(d)(1), the Assistant Administrator finds that this final action relieves a restriction and therefore may be made effective upon its

filing with the Office of the Federal Register. Specifically, the final action relieves a restriction for persons fishing from HMS permitted vessels in Atlantic billfish tournaments to fish only with non-offset circle hooks when using natural or natural/artificial combination baits. Without this action, NMFS would continue to require anglers to use non-offset circle hooks when using natural or natural/artificial combination baits in Atlantic billfish tournaments and would not afford anglers an additional time to become more proficient with methods used to rig and fish with circle hooks and these baits. NMFS expects that this action will improve expertise and familiarity with methods for rigging and fishing with circle hooks in Atlantic billfish tournaments. As a result, NMFS expects improved long-term compliance with the regulation to use circle hooks in billfish tournaments when it goes back into effect on January 1, 2008. This final rule has been determined to be not significant for purposes of Executive Order 12866.

In compliance with 5 U.S.C. 604, a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA analyzes the anticipated impacts of the preferred alternative and any significant alternatives to the final rule that could minimize significant economic impacts on small entities. Each of the statutory requirements of section 604 has been addressed, and a summary of the FRFA is provided below.

Section 604(a)(1) requires the Agency to state the objective and need for the rule. As stated in the preamble of the proposed rule, the objective of this final rule is to increase post-release survival of Atlantic billfishes by improving long-term compliance with billfish tournament non-offset circle hook regulations. Maximizing post-release survival of Atlantic billfishes is an important facet of rebuilding overfished Atlantic billfish stocks.

Section 604(a)(2) requires the Agency to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS received numerous comments on the proposed rule and draft EA during the public comment period. A summary of these comments and the Agency's responses is included in this final rule. NMFS did not receive any comments specific to the IRFA, but did receive one comment related to economic issues and concerns. Specifically, one fishing gear manufacturer stated that the combined

impacts of a circle hook requirement imposed by a Central American country and the U.S. Atlantic billfish tournament circle hook requirement implemented domestically in January 2007 (cited previously) cost his company and others several hundred thousand dollars in lost revenues which was large enough to cause his company to go out of business. As such, this commenter supported a repeal of the circle hook regulations.

NMFS appreciates that economic impacts may have occurred as a result of previous rulemaking to implement the circle hook requirement on January 1, 2007; however, as noted by the commenter, these impacts resulted from a combination of foreign regulations and a previous domestic rulemaking. This comment is responded to fully with other comments (see Comment 9). The preferred alternative in this final rule could have minor short-term positive impacts on the sales of fishing lures used in conjunction with natural baits by temporarily allowing anglers to utilize J-hooks. While the final rule has the effect of temporarily allowing anglers to utilize J-hooks, the circle hook suspension was not made as a result of this comment.

Section 604(a)(3) of the Regulatory Flexibility Act requires the Agency to describe and provide an estimate of the number of small entities to which the rule will apply. NMFS considers all HMS permit holders to be small entities because they either had gross receipts less than \$4.0 million for fish-harvesting, gross receipts less than \$6.5 million for charter/party boats, or 100 or fewer employees for wholesale dealers. These are the Small Business Association size standards for defining a small versus large business entity in these industries. As of January 29, 2007, the potential universe of affected anglers included: 24,664 HMS Angling category permit holders; 4,140 HMS Charter/Headboat category permit holders, and 4,345 General category permit holders. All of the aforementioned permit holders are eligible to participate in registered Atlantic-HMS tournaments.

Section 604(a)(4) of the Regulatory Flexibility Act requires the Agency to describe the projected reporting, record keeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the alternatives considered for this final rule would result in additional reporting, recordkeeping, and compliance requirements.

Section 604(a)(5) of the Regulatory Flexibility Act requires the Agency to

describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. NMFS believes that this final rule minimizes impacts on small entities by temporarily suspending circle hook requirements for HMS tournaments, to allow participants additional time to become proficient in the use of circle hooks and familiar with their ecological benefits. The alternative to permanently suspend the circle hook requirement would not achieve MSA rebuilding objectives for these fisheries.

As described below, NMFS considered three alternatives in this final rulemaking and provides justification for selection of the preferred alternative to achieve the desired objective.

The alternatives considered included: maintain existing non-offset circle hook requirements for anglers fishing from HMS permitted vessels and participating in Atlantic billfish tournaments (alternative 1, No Action); suspend non-offset circle hook requirements for anglers fishing from HMS permitted vessels and participating in Atlantic billfish tournaments through December 31, 2007 (alternative 2, preferred alternative); and, remove Atlantic billfish tournament circle hook requirements and promote voluntary use of circle hooks by tournament anglers (alternative 3).

Alternative 1 is considered the no action alternative since it would maintain unchanged the Atlantic billfish circle hook regulations that were implemented on January 1, 2007. This alternative is not preferred because, in part, it is less likely to improve long-term compliance with circle hook regulations, and thus be less likely to maximize post-release survival of Atlantic billfish than the preferred alternative because it does not provide adequate time for anglers to familiarize themselves with circle hooks and increase angler's acceptance of them. Alternative 1, the No Action alternative, would have no new economic impacts beyond those that were included in previous rulemaking. Alternative 2 could result in a minor short-term increase in billfish tournament participation given the perceptions held by many anglers that J-hooks may increase the odds of landing a billfish. No additional costs for billfish tournament participants are likely because NMFS anticipates that anglers already possess J-hook related tackle, as this was the standard gear used in the fishery prior to January 1, 2007, and is still authorized for use outside of billfish tournaments.

Alternative 3 was considered, but not fully analyzed in the Environmental Assessment because voluntary promotion of circle hook use in the years prior to implementation of the circle hook regulation on January 1, 2007, did not achieve a high percentage of recreational angler use of circle hooks in the Atlantic billfish fishery. As such, NMFS does not anticipate that continued promotion of voluntary circle hook use alone by tournament anglers would result in achieving the maximum conservation benefit possible of reduced post-release mortality of Atlantic billfish relative to the no action alternative. Alternative 3 could result in minor short-term increases in angler consumer surplus and/or willingness to pay, as anglers may perceive that their short-term catch rates of Atlantic billfish may increase with the use of J-hooks. However, alternative 3 would not be expected to increase either consumer surplus or willingness to pay in the long-term as it would result in an increase in post-release hooking mortality and thus be less likely to contribute to rebuilding of Atlantic billfish populations. For the reasons discussed above, this alternative was not selected as the preferred alternative.

Alternative 2 may result in minor increases in printing and distribution costs to tournament operators if

tournament rules need to be reprinted and redistributed. Tournaments could avoid additional printing costs if they voluntarily chose to maintain an all circle hook tournament format, which some tournaments have notified NMFS that they will do. There may be a long-term increase in angler consumer surplus resulting from rebuilding efforts through either alternatives 1 or 2, and therefore resulting in a potential increase in demand for billfish tournament participation. However, these benefits may be realized sooner under alternative 2, should it lead to increased acceptance and use of circle hooks. As such, and based on the analysis included in the EA for this rulemaking, alternative 2 was selected the preferred alternative.

#### List of Subjects in 50 CFR Part 635

Fish, Fisheries, Fishing, Fishing vessels, Management.

Dated: May 8, 2007.

William T. Hogarth

Assistant Administrator for Fisheries,  
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 § 635.21, paragraph (e)(2)(iii) is suspended from [insert date of publication in the FEDERAL REGISTER] to December 31, 2007, and is revised effective January 1, 2008, to read as follows:

#### § 635.21 Gear operation and deployment restrictions.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(iii) After December 31, 2007, persons who have been issued or are required to be issued a permit under this part and who are participating in a "tournament", as defined in § 635.2, that bestows points, prizes, or awards for Atlantic billfish must deploy only non-offset circle hooks when using natural bait or natural bait/artificial lure combinations, and may not deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination.

\* \* \* \* \*

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