

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 000629197-2192-03; I.D. 032900A]

RIN 0648-AN06

**Atlantic Highly Migratory Species; Monitoring of Recreational Landings; Retention Limit for Recreationally Landed North Atlantic Swordfish**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to amend regulations governing Atlantic billfish and North Atlantic swordfish recreational fisheries to implement recommendations adopted at the 2000 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and enhance management programs for these species. This rule implements a mandatory recreational landings self-reporting system for Atlantic blue marlin, Atlantic white marlin, west Atlantic sailfish, and North Atlantic swordfish; establishes a recreational retention limit for North Atlantic swordfish; adds handlines as an authorized gear for North Atlantic swordfish; clarifies language concerning applicability of recreational retention limits for sharks, yellowfin tuna, and North Atlantic swordfish; clarifies language regarding the Billfish Certificate of Eligibility (COE); and makes the criterion for determining the size and/or size class the same for both vessels commercially permitted for swordfish and recreational vessels. In addition, NMFS will promote voluntary use of circle hooks within the recreational swordfish fishery via an outreach program. The intent of these actions is to improve monitoring and conservation of overfished Atlantic billfish and North Atlantic swordfish stocks.

**DATES:** Effective March 2, 2003.

**ADDRESSES:** Copies of the supporting documents including the Environmental Assessment/Regulatory Impact Review (EA/RIR) may be obtained from the Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910. The EA/RIR may also be viewed on the Highly Migratory Species (HMS) Management Division website at [www.nmfs.noaa.gov/sfa/hmspg.html](http://www.nmfs.noaa.gov/sfa/hmspg.html). Send comments on any

ambiguity or unnecessary complexity arising from the language in this final rule to the same address. Comments regarding the collection of information requirements contained in the final rule should be sent to: the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer.)

**FOR FURTHER INFORMATION CONTACT:** Russell Dunn or Rick Pearson, 727-570-5447.

**SUPPLEMENTARY INFORMATION:** The background and rationale for this final rule were contained in the preamble to the proposed rule published in the **Federal Register** on December 26, 2001 (66 FR 66386), and are not repeated here. Additional background is contained in the EA/RIR for this action (see **ADDRESSES**).

This final rule revises 50 CFR 635.5 to establish an enhanced monitoring program for non-tournament recreational landings of Atlantic sailfish, blue and white marlin, and swordfish through a self-reporting method based on a toll-free telephone call-in system. North Carolina and Maryland are exempted from reporting non-tournament billfish/swordfish landings since these states have modified their large pelagic/bluefin tuna catch card reporting programs to include these species. To avoid duplication, landings reported through a registered HMS tournament are exempt from the telephone call-in requirement.

This final rule also revises regulations at 50 CFR 635.22 to implement a recreational retention limit for swordfish of one swordfish per person, up to three swordfish per vessel, per trip; revises 50 CFR 635.21(d)(4) to include handlines as authorized gear in the recreational swordfish fishery to clarify the consolidated regulatory text; revises 50 CFR 635.22 to apply the daily recreational retention limits for all HMS species to vessels that are HMS Charter/Headboat (CHB) permit holders; revises 50 CFR 635.31 to clarify the consolidated regulatory text in the Billfish COE regulations; and revises 50 CFR 635.20(a) to apply the same standard of measurement to both recreational vessels and commercial vessels that have been issued a limited access swordfish permit.

**Comments and Responses**

NMFS held three public hearings and received written comments during the comment period on the proposed rule. Public hearings were held in Mobile, AL, on January 14, 2002; in Manteo, NC, on January 22, 2002; and in Ft.

Lauderdale, FL, on January 23, 2002. Comments were submitted by recreational and commercial organizations, state agencies, conservation groups, and the general public. All comments were considered and responded to as follows:

**Mandatory Self-reporting Call-in system**

*Comment 1:* Several commenters supported the call-in system, but some raised concerns about verifying the validity of reports and enforcement of reporting.

*Response:* NMFS is implementing the call-in system because it provides a system to collect non-tournament billfish/swordfish landings reports (patterned after the bluefin tuna call-in reporting system) and it closes a gap in data collection when applied in concert with other programs. Also see response to comment 3.

*Comment 2:* One fishing group representative supported use of a call-in system for private recreational fishermen only, and using logbooks for CHB vessels.

*Response:* Owners of HMS Angling permitted vessels and CHB operators are responsible for reporting all non-tournament billfish/swordfish landings because not all CHB are selected to submit logbooks as specified under 50 CFR 635.5(a). Those CHB operators that are selected to submit logbooks will also have to report non-tournament billfish/swordfish landings through the call-in system. NMFS will examine response rates and work with vessel operators to reduce the reporting burden and avoid duplication.

*Comment 3:* Several commenters did not support the call-in system and expressed concern that there was no way to verify false reports or ensure that all non-tournament catches were reported.

*Response:* In the initial call-in, the caller will be asked by the automated system for the caller's phone number. NMFS personnel will then call back every angler as part of the overall system to identify the catch by boat or documentation number and avoid duplicate reporting. During the call back, the angler will be given a confirmation number. To ensure that catches are reported, NMFS will inform the public of the reporting requirement. For example, NMFS will advertise the call-in number in angler publications and distribute fliers to ports where billfish and swordfish have historically been landed, and will publicize that failure to report is unlawful.

*Comment 4:* Several comments, including one from a representative from a fishing club and another from a

representative of a conservation group, expressed concern that the call-in system would adversely affect goodwill existing between fishermen and scientists by imposing additional governmental paperwork. The conservation group representative suggested that NMFS duplicate the Gulf of Mexico RBS system throughout the Atlantic and implement a landing tag system to better meet international requirements.

*Response:* The RBS collects tournament data in the Gulf of Mexico, Atlantic, and Caribbean. The RBS at one time (before 1994) systematically sampled non-tournament sites; however, currently RBS only collects tournament data. Non-tournament data is voluntarily phoned into the RBS and these callers will be referred to the non-tournament call-in system. With this action, NMFS is attempting to get a census of non-tournament billfish/swordfish landings.

*Comment 5:* Several commenters stated that the call-in system was too expensive to operate, too time consuming for NMFS to manage, has no practical utility, and is not enforceable.

*Response:* NMFS considers this the least expensive of all the measures considered. The toll-free line already exists and the estimated number of calls are expected to be within the capacity of the system. The program is patterned after the bluefin tuna call-in reporting system. The call-in will be enforced as all fisheries management rules are enforced. In lieu of the call-in system, anglers landing billfish or swordfish in states that have elected and been approved by NMFS to conduct their own alternative recreational catch reporting program, which is allowed under 50 CFR 635.5(c)(3), will follow their states procedures for reporting. North Carolina and Maryland have chosen, with NMFS approval, to modify their large pelagic/bluefin tuna catch card reporting programs to include billfish and swordfish for reporting purposes.

#### *Recreational Retention Measures of North Atlantic Swordfish*

*Comment 1:* Several commenters, which included a representative from a fishing club and two national conservation groups, supported the swordfish retention limit but expressed concern about lack of law enforcement for the sale of recreationally caught swordfish.

*Response:* NMFS implements this provision because it is easier to enforce a retention limit than a sale restriction. In addition, NMFS believes a retention limit will reduce the number of

recreationally landed swordfish that are available for sale. Through the outreach program, NMFS will remind the public that sale of recreationally landed swordfish is prohibited.

*Comment 2:* Several commenters, which included a representative for a sport fishermen association, noted that one swordfish per vessel per trip would have negative impacts on the CHB industry and suggested that the vessel limit be increased to accommodate more than one angler on a single vessel.

*Response:* NMFS has modified the final action to minimize the potential impacts on CHB operations which deal with multiple clients. The final action of one swordfish per person, up to three swordfish per vessel, per trip will accommodate multiple persons aboard a single vessel and should more closely reflect current catch patterns in this re-emerging fishery. Anecdotal information indicates that recreational catches of swordfish tend to be clustered in that several trips may not catch any swordfish while a few trips may catch several swordfish. Since not all trips are likely to be successful, NMFS expects that, on average, the three fish per vessel maximum limit will not be reached. The most recent stock assessment of North Atlantic swordfish indicates that the stock is rebuilding quickly and that current catch rates are not impeding stock recovery. As the final action should more closely reflect current catch patterns, increasing the swordfish retention limit should not impact the swordfish stock recovery. Additionally, the incidental swordfish catch quota has not been filled to date so the United States has quota available to accommodate increased landings in the recreational fishery. Therefore, NMFS has modified this portion of the rule to allow the landing of one swordfish per person, up to three swordfish per vessel, per trip.

*Comment 3:* Several commenters stated that this was an allocation matter, not a conservation measure.

*Response:* The retention limit is intended to prevent uncontrolled expansion of a re-emerging fishery and discourage the illegal sales of recreationally landed swordfish. Uncontrolled expansion of the swordfish recreational fishery could result in excess mortality, particularly on juvenile fish, that could impede stock recovery. NMFS remains concerned that the continued recovery of swordfish is sensitive to overharvests and excessive mortality of juvenile fish and the re-emerging recreational swordfish fishery off Florida occurs in a swordfish nursery area. Also see

response to comment 1 above under this section.

*Comment 4:* A mass mailing from an organized recreational anglers group objected to the retention limit, stating that the fishery was wrongly characterized as a recent fishery but indeed that it is an historic (not a recent) incidental fishery and there was no scientific basis for the one swordfish limit.

*Response:* NMFS did not intend to imply in the Environmental Assessment (EA) that the fishery was new but that catching juvenile swordfish by recreational fishermen is likely increasing. In the Purpose for Action, the EA states: "With the implementation of the ICCAT North Atlantic swordfish rebuilding program and the recent closure of nursery waters off the east coast of Florida to pelagic longline fishing activities (August 1, 2000, 65 FR 47214; February 5, 2001, 66 FR 8903), further increases in recreational landings of North Atlantic swordfish, particularly juveniles, is likely to occur along the U.S. Atlantic coast." Based on the large size of recreationally landed swordfish (50–200+ pounds), which cannot be sold commercially, NMFS considered a one fish per vessel limit to be reasonable for swordfish for personal consumption. However, based on comments that the proposed retention limit may impact CHB operations and to better reflect current catch patterns in this fishery, NMFS has modified the swordfish retention limit in the final action.

*Comment 5:* Several commenters wanted recreational vessels to have the same option as the commercial vessels to dress the swordfish at sea.

*Response:* NMFS has made the requested change to afford recreational fishermen the same latitude for at-sea processing as commercially permitted vessels. NMFS proposed to make the lower jaw fork length (LJFL) measurement the sole criterion for recreationally landed swordfish because recreational fishermen typically do not process fish at sea as well as the ability to measure the LJFL on a fish while it's still alive to determine if it meets the minimum size. However, due to public comment that recreational fishermen would like the latitude to process swordfish at sea in order to ice the carcass more thoroughly, NMFS modified the final action so that the LJFL measurement will apply when the lower jaw and tail are intact. If either the tail or lower jaw is missing, the cleithrum to keel (CK) measurement or weight standard will apply in all cases.





