

Arrangements, FCC 97-51, adopted February 18, 1997, and released February 19, 1997. The Commission concurrently released a First Report and Order in the same docket. The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., N.W., Suite 140, Washington, D.C. 20037, phone (202) 857-3800.

Analysis of Proceeding

The *FNPRM* asks for comment on the technical feasibility of implementing 711 for TRS access. The *FNPRM* also ask parties: (1) if it would be possible to develop within a reasonable time an N11 "gateway" offering access to multiple TRS providers; (2) whether, with such gateway access, TRS calls would still be answered within our mandatory minimum standards for TRS answer times; (3) whether such a gateway would be consistent with Section 255 of the Act; and (4) whether any other important disability services could be accessed through the same gateway. Regarding TRS, the *FNPRM* also requests comment from interested parties, particularly TRS providers, about the possibility of providing both voice and text TRS services through the same abbreviated N11 code. The *FNPRM* also asks for comment on the technical feasibility and time needed to make network changes to ensure that all telecommunications carriers have the same access that LECs have to certain N11 codes. Finally, the *FNPRM* asks for comment on the proprietary nature of N11 codes and on our proposal to transfer the administration of N11 codes at the local level from the incumbent LECs to the NANP administrator.

Ordering Clauses

It is further ordered, pursuant to Sections 1, 4(i) and (j), 201-205, 218 and 251(e)(1) of the Communications Act as amended, 47 U.S.C. Sections 151, 154(i), 151(j), 201-205, 218 and 251(e)(1), that the Further Notice of Proposed Rulemaking is hereby ADOPTED.

List of Subjects

47 CFR Part 52

Local exchange carrier, Numbering, Telecommunications.

47 CFR Part 64

Communications common carriers, Individuals with disabilities, Telecommunications relay services, and

related customer premises equipment for persons with disabilities, Telephone.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97-4786 Filed 2-25-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 010897A]

RIN 0648-AE09

Atlantic Swordfish Fisheries; Notice of Availability of Amendment 1

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Highly Migratory Species Division has submitted Amendment 1 to the Fishery Management Plan for Atlantic Swordfish (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public. Amendment 1 would implement limited access measures for the Atlantic swordfish fisheries.

DATES: Written comments must be received on or before April 28, 1997.

ADDRESSES: Send comments to William Hogarth, Acting Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Requests for copies of Amendment 1, which includes an environmental assessment and a regulatory impact review, should be sent to James Chambers, Fishery Management Specialist, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: James Chambers or John Kelly, 301-713-2347; fax: 301-713-1917.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the FMP and its implementing regulations found at 50 CFR part 630 and 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.). Regulations issued under the authority of ATCA carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The FMP was implemented on September 18, 1985.

If approved, Amendment 1 would redefine permits as directed or incidental, develop eligibility criteria for these permits based on historical participation, and specify rules for transferability of permits. NMFS has determined that the Atlantic swordfish fishery is overfished and overcapitalized, with an excessive number of permitted vessels relative to the harvest level prescribed by ICCAT. The objective of this Amendment is to take a first and significant step towards reducing fleet capacity to levels more closely aligned with resource production by implementing limited access, substantially reducing latent harvesting capacity, and implementing measures to prevent further overcapitalization while allowing traditional hand-gear fishers to participate fully as the stock recovers.

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

Dated: February 19, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97-4657 Filed 2-20-97; 2:46 pm]

BILLING CODE 3510-22-F

50 CFR Part 630

[Docket No. 970206023-7023-01; I.D. 010897A]

RIN 0648-AE09

Atlantic Swordfish Fisheries; Limited Access Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement the limited access system contained in Amendment 1 to the Fishery Management Plan for Atlantic Swordfish (FMP). If approved, Amendment 1 would establish a two-tiered permit system for the Atlantic swordfish commercial fishery, set forth eligibility criteria for these permits based on historical participation, and limit the transferability of these permits. NMFS has determined that the Atlantic swordfish fishery is overfished and overcapitalized, with an excessive number of permitted vessels relative to

the total allowable catch (TAC) recommended for each member state by the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS is holding public hearings and requesting written comments from the public on this proposed rule. The objective of this amendment is to take a first and significant step to prevent further overcapitalization.

DATES: Written comments on this proposed rule must be received on or before April 28, 1997.

ADDRESSES: Comments on this proposed rule should be sent to William Hogarth, Acting Chief, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Copies of Amendment 1, which includes an Environmental Assessment (EA) and Regulatory Impact Review (RIR), are available from James Chambers, Fishery Management Specialist, at the same address. The locations and dates of public hearings on the proposed rule have been published in the Federal Register (62 FR 1705). Additional public hearings may be held if needed. Comments regarding the collection-of-information requirement contained in this rule should be sent to William Hogarth at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: James Chambers or John Kelly, 301-713-2347; fax: 301-713-1917.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic swordfish fishery is managed under the FMP for Atlantic Swordfish, developed by the South Atlantic Fishery Management Council, and its implementing regulations published September 18, 1985, and found at 50 CFR part 630 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.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

The FMP included a requirement for vessel permits beginning January 1, 1986. However, to date, there have been no eligibility requirements for obtaining a swordfish permit. Accordingly, the Atlantic swordfish fishery has operated under open access.

The north Atlantic swordfish stock is depleted due to overfishing. According

to the latest ICCAT stock assessment, the fishable biomass (total weight) of north Atlantic swordfish is estimated to have declined 68 percent between 1960 and 1996, and by the beginning of 1996, was estimated to be at 58 percent of that needed to produce the maximum sustainable yield (MSY). The average size of north Atlantic swordfish has declined from over 266 lb (121 kg) live weight in 1963 to 90 lb (41 kg) in 1995. According to ICCAT's data, 88 percent of the swordfish caught in 1995 by the domestic industry, and 86 percent of those landed by the international fleets, were immature. Populations of swordfish along the U.S. coast of the Atlantic Ocean and Gulf of Mexico have declined such that a historical recreational fishery and commercial harpoon fishery (dating from the 19th century) have been virtually eliminated because the large swordfish, which these handgear fisheries targeted, are now scarce.

Due to the overfished status of the north Atlantic swordfish stock, current harvest levels (estimated to be about 17,000 MT per year) are scheduled for immediate reductions. At its November 1996 meeting, ICCAT adopted reductions in the TAC for north Atlantic swordfish to 11,300 MT for 1997, 11,000 MT for 1998, and 10,700 MT for 1999. In 1997, the U.S. allocation will be 29 percent of the TAC. To comply with ICCAT's recommendations for north Atlantic swordfish, NMFS has implemented several management measures including, on June 12, 1991 (56 FR 26934), quotas and a minimum size limit and, on August 30, 1991 (56 FR 42982), a notice of control date for entry into the fishery. The August 30, 1991 control date notice announced that anyone entering the fishery after that date (the "control date") may not be assured of future access to the fishery if some form of limited access were implemented later.

Need for Limited Access

The Atlantic swordfish fishery is overcapitalized in that there are more vessels permitted in the fishery than are necessary or desirable to harvest the total allowable catch (TAC). At least 1,531 vessel owners are "current permit holders," but only about 300 regularly land swordfish. The inactive, permitted vessels (about 1,200) represent a potential for increased overcapitalization, shortened fishing seasons, and significant economic impact if many enter the fishery.

The creation of a limited access system would be an initial step toward achieving a more reasonable balance between the harvesting capacity of the

permitted fleet and the TAC. At a minimum, it would prevent further increases in the number of permits in the fisheries that target swordfish and would dramatically reduce the number of speculative permit holders (those without significant documented landings of Atlantic swordfish).

The objectives of this proposed rule are to (a) reduce the amount of latent effort in the U.S. Atlantic swordfish fishery without significantly affecting the livelihoods of those who have are substantially dependent on swordfish fisheries, (b) reduce the size of the incidental fishery over time, and (c) allow traditional handgear fishers (whose permits have lapsed due to the scarcity of large fish, which they target) to participate fully as the stock recovers. The long-term objective of the limited access program currently under development for the Atlantic swordfish fishery is to create a management system to make fleet capacity commensurate with resource productivity so as to achieve the dual goals of economic efficiency and biological conservation. The agency's long-term objective is to rebuild the stock to the level at which the maximum sustained yield will be produced at a minimum, and ultimately, to the level at which the maximum economic yield will be produced.

While limited access alone will not resolve all of the problems associated with open access fisheries (derby fishing conditions, "the race for fish," market gluts), it would help prevent them from becoming more severe. A limited access system would stabilize fleet size and provide an opportunity for NMFS to collect data, conduct studies, and work cooperatively with fishery participants and other constituents to develop a more flexible, permanent effort control program in the future.

Permit Categories

NMFS proposes to implement a two-tiered commercial fishing permit system in which permits would be classified as "directed" or "incidental." The reason for issuing two broad categories of permits is to define and regulate the directed swordfish fishery separately from commercial fisheries that target other species but take swordfish as bycatch. Only persons holding a directed fishery permit would be eligible to participate in the directed fisheries under the management measures already established, while those holding an incidental permit would be restricted to the bycatch fishery with more restrictive management measures. NMFS proposes to restrict access to both the directed

and incidental swordfish fisheries. Two types of directed permits would be issued: Longline and drift gillnet permits, and handgear (harpoon, rod and reel, and handline) permits. Only one permit would be issued to a vessel, i.e., a vessel would be issued a directed longline/drift gillnet, directed handgear, or incidental permit. No combination of permits would be issued.

Eligibility Criteria

Only persons or entities that held a swordfish permit at any time from July 1, 1994, through December 31, 1995, who have documented landings that meet at least the directed or incidental threshold levels of historical participation in the swordfish fishery, and who own a swordfish-permitted vessel at the time of publication of the final rule would receive a directed longline/drift gillnet commercial permit or an incidental commercial permit. Separate criteria would be established for former harpooners to be issued a directed handgear commercial permit for use only with handgear.

Specific eligibility criteria are proposed because the majority of existing swordfish permit holders have not participated in the fishery (have not had significant reported landings of swordfish). If all current swordfish permit holders were to be allowed future participation in the commercial swordfish fishery, there would be a potential to reach or even to exceed greatly the TAC in a short time.

For the directed longline and drift gillnet fisheries, NMFS proposes a minimum requirement of having landed at least 18 swordfish per year for any 2 years between January 1, 1987, and June 30, 1995 (which is equivalent to having landed sufficient swordfish each year on average to earn \$5,000 per year in gross revenue). NMFS estimates that 231 vessels would be eligible for these directed swordfish permits.

NMFS proposes to issue directed fishery handgear permits only to those who (1) have previously been issued swordfish permits for use primarily with harpoon gear or (2) have documented landings of swordfish with handgear as evidenced by logbook records; official, verifiable sales slips or receipts from registered dealers; or state landings records. The number of vessel owners that would be eligible is estimated to be about 40.

Under the eligibility criteria proposed for longline and drift gillnet gear types, few (if any) former harpooners could qualify because their landings were made before 1987 when mandatory reporting began and because most have let their permits lapse because of the

reduced abundance of large swordfish, which they target.

For the incidental fishery, NMFS proposes a minimum landings threshold of nine swordfish between January 1, 1987, and June 30, 1995, and an earned income requirement of \$20,000 or more than half of one's earned income from commercial fishing or charter or headboat operations during 1 of the last 3 years. The earned income requirement is intended to limit the incidental fishery to bona fide commercial fishers who target other species but catch swordfish as bycatch. NMFS estimates that 134 vessels would be eligible for incidental swordfish permits under the preferred alternative.

It is considered that catch histories belong to the current permit holders rather than to vessels (i.e., if a swordfish permit holder sells one vessel and buys another, he or she retains the history of the vessel sold and does not acquire the history of the vessel purchased). Thus, it is considered that persons or entities purchasing existing swordfish vessels have not also purchased that vessel's catch history (since the fishery is currently open access, it would be imprudent for someone to pay money for a catch history from which he or she may never benefit). However, several vessels were purchased after the control date (August 30, 1991) with stipulations that the catch history of the purchased vessel was purchased as well.

Accordingly, NMFS has decided to accept legal documentation of transfers of catch histories in the determination of eligibility. If a vessel was sold after the control date and its landings history was included specifically in the written sales agreement, such landings would accrue to the purchaser (and no longer to the seller) for purposes of qualifying for a directed or incidental permit under the proposed limited access system.

Permit Process

NMFS would identify and notify all current permit holders of their eligibility status for the directed or incidental swordfish fishery after analysis based on the established eligibility criteria.

Upon receipt of this initial notification, eligible permit holders may submit an application for a directed or incidental fishery permit. If a permit holder is informed that he or she does not qualify for a permit, but he or she believes that there is credible evidence to the contrary, the permit holder may apply for a permit and provide the appropriate documentation. NMFS would then evaluate all applications, and any accompanying documentation, and notify the applicant of its decision

either to accept or deny the permit application.

If the permit application is denied, the applicant may appeal within 90 days of receipt of the notice of denial. Provisional directed or incidental fishery permits, as appropriate, would be issued, pending the outcome of an appeal, until the final decision has been rendered. All appeal decision letters would be mailed via certified mail. If the appeal is denied, provisional permits would become invalid 5 days after the receipt of the notice of denial. If the appeal is approved, provisional permits would become invalid upon receipt of the appropriate permit.

Only owners of permitted vessels that were permitted at any time from July 1, 1994, through December 31, 1995, would be considered for appeal. All appeals would need to be made in writing. To appeal, the applicant would complete an appeal cover sheet with the name, affiliation (if any), address, and telephone number of the applicant. Additional pages and documentation could be attached, as necessary.

The sole ground for appeal would be that NMFS used incorrect or incomplete landings data in the eligibility analysis. No other ground would be considered. Valid documentation of landings covering the eligibility period would be required for consideration of an appeal. Documentation that would be considered in support of an appeal from fishers who believe they qualify for a directed or incidental fishery permit would be restricted to official NMFS logbook records that have been submitted to NMFS prior to August 30, 1995 (60 days after the cutoff date for eligible landings); official, verifiable sales slips or receipts from registered dealers; and state landings records. Dealer sales slips or receipts would have to show definitively the species and the vessel's name or other traceable indication of the harvesting vessel. Dealer records would have to include a sworn affidavit by the dealer confirming the accuracy and authenticity of the records.

While photocopies would be acceptable for initial submission, NMFS might request originals at a later date, which would be returned to the applicant via certified mail. Any submitted materials of questionable authenticity would be referred for investigation to NMFS' Office of Enforcement.

NMFS would designate appeals officers who would be NOAA employees. The appeals officers would individually review cases but would confer regularly to ensure consistency.

The appeals officers would review appeals for no more than 30 days before making a recommendation to the Director of the Office of Sustainable Fisheries (Director). The Director would render the final decision for the Department of Commerce. All denial letters would be sent by certified mail with return receipt so that NMFS would know when letters were received by permit holders.

Restrictions on Transfer of Permits

NMFS recognizes that vessels may sink or deteriorate beyond repair, and vessel owners may have valid reasons for wishing to exit the fishery. NMFS proposes to create a system in which directed commercial permits would be transferable with the sale of the permitted vessel, or to a vessel of similar harvesting capacity, or to a replacement vessel owned or purchased by the original permittee, but not under any other circumstances. Such transfers would be subject to upgrading restrictions (defined in the next section). Incidental permits would not be transferable. Directed handgear permits would be transferable, but for use with only handgear. NMFS recognizes that the same factors present in the directed fishery (vessel sinking or deterioration, disability, retirement) would also be present in the incidental fishery and that non-transferability of incidental permits would eventually result in the elimination of the incidental fishery through attrition. Prohibiting transferability of incidental permits would slow the growth of fishing effort in the limited access fishery.

In years after 1997, the eligibility criteria to which initial limited access permit holders are subject would not apply. In other words, transferees/buyers and holders of limited access vessel permits would not be required to meet the initial limited access eligibility criteria (i.e., having held a swordfish permit at any time from July 1, 1994, through December 31, 1995; having met the landings thresholds; and owning a vessel at the time of publication of the final rule).

Restrictions on Vessel Upgrading

NMFS proposes to require that any vessel to which a permit is transferred would be defined as the "new" vessel and be required to have the same or less gross registered tonnage and registered length as the originally permitted vessel. This restriction would apply to "replacement vessels," or those vessels acquired by the original permittee to replace originally permitted vessels, and to "new vessels," or those vessels not originally permitted but to which a

permit has been transferred after the original permittee has sold the permit. This restriction would also apply to the refurbishment of existing permitted vessels.

Ownership Limits

No one person or entity may own or control more than 5 percent of the permitted vessels in the directed fishery. This would prevent significant consolidation and maintain the historically predominant individual owner/operator character of the swordfish fishery.

Incidental Harvest Limits

Without limits on the harvest of bycatch, the potential would exist for the incidental fishery to target and harvest significant numbers of swordfish. This would defeat the purpose of the two-tiered commercial permit system. For these reasons, NMFS proposes to retain the existing harvest limit for the incidental fishery at a maximum of five swordfish per trip for squid/mackerel/butterfish otter trawl vessels and two per trip for all other gear types. Fishers with directed longline or drift gillnet permits would be limited to five swordfish per trip during a closure of the directed fishery. The current limit is 15 swordfish per trip, which is considered excessive in view of the depleted status of the resource. A lower bycatch limit would provide an incentive to avoid swordfish.

Handgear Set-aside

A quota equivalent to 2 percent of the directed fishery quota would be set-aside for holders of the directed handgear permit during each semiannual period. This percentage would be increased by subsequent regulation as the north Atlantic swordfish stock recovers.

Fees

The Regional Administrator may charge a fee to recover the administrative expenses of permit issuance and appeals. The amount of the fee would be determined, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. The fee would not exceed such costs and would be specified with each application form. The appropriate fee would be required to accompany each application. Failure to pay the fee would preclude issuance of the permit. Payment by a commercial instrument later determined to be

insufficiently funded would invalidate any permit.

Classification

This proposed rule is published under authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.* The Assistant Administrator has preliminarily determined that the regulations contained in this proposed rule are necessary for management of the Atlantic swordfish fishery. NMFS prepared a draft EA for this proposed rule with a preliminary finding of no significant impact on the human environment. The biological opinion issued on September 1, 1995, indicated that the level of impact from the longline and drift gillnet fisheries for Atlantic swordfish was not likely to jeopardize the continued existence of any threatened or endangered species or marine mammal populations. This action to limit access is under review to determine if any environmental impacts would alter that opinion.

NMFS reinitiated formal consultation for all highly migratory species commercial fisheries on September 25, 1996, under section 7 of the Endangered Species Act. This consultation will consider new information concerning the status of the northern right whale. NMFS has determined that proceeding with this rule, pending completion of that consultation, will not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. This rule would reduce the number of permits in the Atlantic swordfish commercial fishery and freeze the harvesting capacity of the fleet at current levels, thereby preventing further overcapitalization and derby fishing conditions and would likely reduce interaction rates with such protected species.

A draft RIR was prepared with a preliminary finding of no significant economic impact. The RIR provides further discussion of the economic effects of the proposed rule.

The Assistant General Counsel for Legislation and Regulations of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The purpose of this proposed rule is to rationalize current harvesting capacity with total allowable catch and substantially reduce latent effort without significantly

altering the status quo in the Atlantic swordfish fishery. Practically all current participants of the swordfish fishery readily fall within the definition of a small business. The proposed rule will affect all current permit holders (1,531) in the Atlantic swordfish fishery. However, it will not have a "significant economic effect" or adversely affect a "substantial number" of those engaged in the fishery. In general, a substantial number of small entities is defined by the Department of Commerce as more than 20 percent of those engaged in the fishery.

Only about 300 permitted vessels catch at least one swordfish each year and together they constitute the Atlantic swordfish fishery. Few, if any, fishers who are considered to be substantially dependent on the fishery would be excluded under the proposed limited access regulation. All longline and drift gillnet vessel owners who can demonstrate a history of landings at a minimum threshold of 18 swordfish per year during the 2-year qualifying period would be eligible for a directed permit (about 231). Only the most recent entrants to the fishery and those without at least a minimal record of landings over two years would be excluded. Historical participants, particularly about 40 New England-based harpooners who have let their permits lapse and would otherwise be excluded from the directed fishery, could be issued a directed handgear permit allowing them to participate in any potential recovery of the stock.

Speculative permit holders (numbering 1,231), by definition, have not participated in the commercial swordfish fishery at all or have not been substantially dependent on the fishery for a period of years. The incidental bycatch limits continue to provide for speculative commercial fishers to land some swordfish; accordingly, their annual gross revenues should not decrease substantially. Incidental permits are also available to those who have participated in the fishery over a period of years but whose landings were at such low levels that they could not qualify for a directed fishery permit. Incidental landing limits (two swordfish per trip) should be comparable to their previous catch rates, thus their annual gross revenue should also not be affected.

Therefore, redefining commercial swordfish permits as directed and incidental as proposed will not have a significant economic impact on a majority of those engaged in the Atlantic swordfish fishery in terms of fishers' annual gross revenues. The substantive changes proposed primarily affect the applicability of permitting requirements. The need for these changes is explained in the preamble to the proposed rule.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with the collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This proposed rule contains collections of information subject to the PRA. Revisions are proposed to the vessel permitting process, but these are minor and not expected to alter the estimated response time of 20 minutes. Permit requirements have been approved by OMB under Control Number 0648-0205. Reporting requirements remain unchanged from those approved by OMB under Control Number 0648-0016, with an estimated response time of 15 minutes per logbook report. The appeals procedure constitutes a new collection-of-information requirement and it has been submitted to OMB for approval. An appeal of a permit denial is estimated to take 1.5 hours, including the time to gather records, make copies, and mail documents to NMFS. Comments regarding: (1) The accuracy of this burden estimate (including hours and cost); (2) whether the proposed collection of information is necessary for the proper performance of NMFS' functions, including whether the sought information has practical utility; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information; and (5) any other aspects of information collection should be sent to OMB and NMFS (see **ADDRESSES**).

This action has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: February 19, 1997.

Rolland Schmittin,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 630 is proposed to be amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

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

2. In § 630.2, the definitions for "Director" and "Handgear" are added, in alphabetical order, and the definition of "Recreational fishery" is revised to read as follows:

§ 630.2 Definitions.

* * * * *

Director means the Director, Office of Sustainable Fisheries F/SF, NMFS, or a designee.

* * * * *

Handgear means harpoon, rod and reel, and handline fishing gear.

* * * * *

Recreational fishery means all activities involved in the catching of swordfish from a vessel, having only rod and reel or handline gear on board, intended solely for sport or pleasure with no subsequent sale or commercial barter of any of the catch.

* * * * *

3. In § 630.4, paragraphs (a), (b), the first sentence of (d), and (e) through (g) are revised and paragraph (c)(1) is amended by adding a new first sentence to read as follows:

§ 630.4 Permits and fees.

(a) *Vessel permits*—(1) *General.* (i) Except as provided by paragraph (a)(1)(ii) of this section, a valid Federal permit issued under this paragraph must be obtained and carried on board at all times by the owner of the United States that fishes for, possesses, or lands Atlantic swordfish from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude, the management unit; or that takes such swordfish as bycatch, whether or not retained.

(ii) The owner of a vessel that fishes for or possesses swordfish in or from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N latitude in the recreational fishery is exempt from the requirement to have a permit.

(2) *Limited access eligibility in 1997.* NMFS will issue three types of limited access permits for Atlantic swordfish vessels: Directed longline and drift gillnet permits, directed handgear permits, and incidental permits. To be eligible to obtain a vessel permit in 1997—

(i) For use with longline or drift gillnet gear in the directed swordfish fishery, a vessel owner must have held a valid Federal commercial swordfish permit at any time during the period July 1, 1994, through December 31, 1995; met the landings criteria specified in paragraph (a)(3)(i) of this section; and own a vessel with a valid swordfish permit on February 26, 1997.

(ii) For use with handgear (harpoon, rod and reel, or handline) but having no longline or drift gillnet gear on board, a vessel owner must have previously been issued a swordfish permit for use primarily with harpoon gear or have documented landings of swordfish with handgear as evidenced by official NMFS

logbook records; official, verifiable sales slips or receipts from registered dealers; and state landings records.

(iii) For use by vessels targeting species other than swordfish, but catching limited numbers of swordfish incidentally, a vessel owner must have earned at least \$20,000 or more than half of his or her earned income from commercial fishing or from charter or headboat operations during 1 of the last 3 years; held a valid Federal commercial swordfish permit during the period July 1, 1994, through December 31, 1995; met the landings criteria specified in paragraph (a)(3)(ii) of this section; and own a vessel with a valid swordfish permit on February 26, 1997. A statement attesting to having met the earned income requirement must be furnished with an application for an incidental swordfish permit.

(3) *Landings Criteria.* (i) Directed permits for use with longline or drift gillnet gear will be issued only to eligible permit holders who have documented landings of at least 18 swordfish per year for any 2 years between January 1, 1987, and June 30, 1995.

(ii) Incidental permits will be issued only to eligible permit holders who have documented landings of nine swordfish during the period January 1, 1987, to June 30, 1995.

(4) *Eligibility in 1998 and thereafter.* To be eligible for a swordfish permit for use with longline or drift gillnet gear in years after 1997, a vessel owner must have been issued a permit for the directed longline or drift gillnet fishery for the preceding year, or the vessel must be replacing a vessel that has been retired from the directed longline or drift gillnet fishery and had been issued a permit for the preceding year, and the vessel and owner must meet the criteria set forth in paragraphs (b)(5) and (g). A vessel owner desiring to apply for a directed handgear permit must meet the eligibility criteria specified at paragraph (a)(2)(ii) of this section; handgear permits are renewable annually. If more than one vessel owner claims eligibility to apply for a limited access Atlantic swordfish vessel permit based on one vessel's fishing and permit history after 1997, NMFS shall determine who is entitled to qualify for the limited access Atlantic swordfish vessel permit according to paragraph (g)(3) of this section.

(5) *Notification of eligibility for 1997.*

(i) NMFS will attempt to notify all commercial swordfish permit holders (and former permit holders that used harpoon gear) of their eligibility for a directed or incidental limited access Atlantic swordfish vessel permit, based

on the requirements contained in paragraph (a)(2) of this section. Upon receipt of this initial notification, eligible permit holders may submit an application for the appropriate permit following procedures described in paragraph (b) of this section.

(ii) If an owner has been notified that the vessel is not eligible for a limited access Atlantic swordfish vessel permit, and the vessel owner can provide credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for the appropriate permit by submitting the documentation required under paragraph (a)(8) of this section.

(6) If, based on the documentation supplied with the application, NMFS determines that the vessel meets the eligibility criteria, the appropriate limited access permit will be issued.

(7) *Application denial.* If, based on the documentation supplied with the application, NMFS determines that the vessel does not meet the eligibility criteria specified in paragraphs (a)(2) and (a)(3) of this section or the conditions specified in paragraphs (a)(5) and (e) of this section, the limited access permit application will be denied. Letters of denial will be sent via certified mail.

(8) *Appeals.* (i) Any applicant denied a limited access permit for Atlantic swordfish vessels may appeal the denial to NMFS within 90 days of the notice of denial. The sole ground for appeal is that NMFS erred in its determination of eligibility on the basis of incorrect or incomplete data. No other grounds will be considered. Valid documentation of landings specified in paragraph (a)(3) of this section covering the eligibility period must be provided by the applicant for NMFS to consider an appeal. Photocopies will be acceptable for initial submission. NMFS may request originals at a later date, which would be returned to the applicant via certified mail. Any such appeal must be in writing. Documentation that is of questionable authenticity will be referred for investigation to NMFS' Office of Enforcement.

(ii) The only landings documentation that will be considered in support of an application or appeal are official NMFS logbook records that were submitted to NMFS prior to August 30, 1995; state landings records; and official, verifiable sales slips or receipts from registered dealers. Dealer sales slips and receipts must definitively show the species landed and vessel's name or other traceable information for the harvesting vessel and must include a sworn affidavit by the dealer confirming the

accuracy and authenticity of the records.

(iii) The Director shall issue a provisional permit, which shall be valid for the pendency of the appeal, to a vessel and owner for which an appeal has been initiated. The provisional permit shall be valid only for use with the gear appropriate to the category of permit the appellant is seeking. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity pending a final decision on the appeal. The provisional permit must be carried on board the vessel while participating in the Atlantic swordfish fishery and is not transferable.

(iv) NMFS will appoint appeals officers who will review the written materials for no more than 30 days before making a recommendation to the Director.

(v) Upon receiving the findings and a recommendation, the Director will issue a final decision on the appeal. The Director's decision is the final administrative action of the Department of Commerce.

(vi) The Director shall send letters of approval or denial of appeals to the vessel owners. All appeal decision letters will be mailed via certified mail. If the appeal is denied, provisional permits will become invalid 5 days after receipt of the notice of denial. If the appeal is approved, provisional permits will become invalid upon receipt of the appropriate permit.

(b) *Application for a limited access vessel permit.* (1) In the year 1997, an initial application for a limited access vessel permit must be submitted and signed by the owner (in the case of a corporation, the qualifying officer or shareholder; in the case of a partnership, the qualifying general partner) of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. Permit application forms are available from the Regional Director. An applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name, official number, registered gross tonnage, and registered length.

(iii) Name, mailing address including ZIP code, telephone number, and social security number, and date of birth of the owner (if the owner is a corporation/partnership, in lieu of the social security number, provide the employer identification number, if one has been

assigned by the Internal Revenue Service (IRS), and, in lieu of the date of birth, provide the date the corporation/partnership was formed).

(iv) Information concerning vessel, gear used, fishing areas, and fisheries vessel is used in, as requested by the Regional Director and included on the application form.

(v) If a directed handgear permit is being sought, indication of the year a permit was issued for use primarily with harpoon gear, or if issued prior to 1984, a copy of the permit issued, or valid documentation of landings of swordfish with handgear. Valid documentation that will be considered in support of an application for a directed handgear permit are official NMFS logbook records; official, verifiable sales slips or receipts from registered dealers; or state landings records.

(vi) If an incidental swordfish permit is being sought, a sworn statement by the applicant certifying that, during 1 of the 3 calendar years preceding the application:

(A) More than 50 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, or from charter or headboat operations; or

(B) His or her gross sales of fish were more than \$20,000; or

(C) For a vessel owned by a corporation or partnership, the gross sales of fish of the corporation or partnership were more than \$20,000.

(vii) A sworn statement that the applicant agrees to the conditions specified in paragraph (a)(5) of this section.

(viii) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Administrator and included on the application form.

(ix) The Regional Administrator may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(1)(vi) of this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (i) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules will be treated as confidential.

(2) In years after 1997, a limited access permit holder may apply for a limited access permit renewal, provided that the initial information under which the permit holder qualified for a limited access permit has not changed. Limited access vessel permits must be renewed

annually and renewal applications must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. Only holders of valid limited access permits in the preceding year are eligible for a renewal of their limited access permits.

(3) In years after 1997, an application for permit transfer of a directed limited access vessel permit to a new vessel and/or owner will be authorized, subject to transfer and upgrading restrictions specified in § 630.4 (g)(1) through (g)(3) and ownership limits set forth in § 630.4 (b)(5). Incidental limited access permits are not transferable or assignable. All other requirements and restrictions specified in this part apply to transferred limited access permits and permit holders.

(4) A limited access vessel permit for 1997 will not be issued unless an application for such permit is received by NMFS on or before November 30, 1997.

(5) No person or entity may own or control more than 5 percent of the vessels in the limited access Atlantic swordfish directed fishery.

(c) *Application for an annual dealer permit.* (1) A dealer who receives swordfish harvested or possessed by a vessel of the United States must have an valid annual dealer permit issued under this part. * * *

* * * * *

(d) *Fees.* A fee is charged for each limited access vessel permit issued under paragraph (a) of this section, for each appeal under paragraph (b) of this section, and for each annual dealer permit issued under paragraph (c) of this section.

(e) *Issuance—(1) Limited access vessel permits.* Except as provided in subpart D of 15 CFR part 904 and under paragraphs (a)(7) and (a)(8) of this section, the Regional Administrator shall issue a Federal limited access Atlantic swordfish vessel permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a complete application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified at § 630.5;

(ii) The application was not received by NMFS by the deadlines set forth in paragraph (b)(4) of this section;

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraph (a)(2) of this section; or

(iv) The applicant has failed to meet any other application requirements stated in this part.

(2) *Dealer permits.* The Regional Administrator will issue a dealer permit at any time to an applicant if the application is complete. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 630.5(a) or § 630.5(b).

(3) *Incomplete applications.* Upon receipt of an incomplete application, the Regional Administrator will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 90 days of the date of the Regional Administrator's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it, and the conditions accepted upon its issuance remain in effect for that period, unless the vessel is retired from the swordfish fishery or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* (1) Directed limited access permits are transferable to a new vessel and/or owner or to a replacement vessel owned or purchased by the original permittee but not under any other circumstances. Such transfers are subject to requirements specified in paragraph (g)(2) of this section.

Incidental permits are not transferable or assignable; incidental permits are valid only for the vessel and owner of original issuance. A person purchasing a permitted vessel who desires to conduct activities for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of the bill of sale.

(2) Transfer of directed limited access permits is authorized only for new or replacement vessels not exceeding the gross registered tonnage and registered length as the originally permitted vessel.

(3) The fishing and permit history of a vessel is presumed to be retained by the original permit holder whenever the vessel is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is transferring/selling the vessel's fishing and permit history.

* * * * *

4. In § 630.7, paragraph (bb) is added to read as follows:

§ 630.7 Prohibitions.

* * * *

(bb) Aboard a vessel for which a directed swordfish handgear permit has been issued under § 630.4, retain or possess swordfish taken with gear other than harpoon, rod and reel, or handline and or to have longline or drift gillnet gear on board. 5. Section 630.22 is revised to read as follows:

§ 630.22 Gear Restrictions.

(a) *Drift gillnet*. A drift gillnet with a total length of 2.5 km or more may not be used to fish for swordfish. A vessel using or having aboard a drift gillnet with a total length of 2.5 km or more may not possess a swordfish.

(b) *Handgear*. A vessel for which a directed swordfish handgear permit has been issued under § 630.4 may retain or possess swordfish taken only with harpoon, rod and reel, or handline and must not have longline or drift gillnet gear on board.

6. In § 630.24, paragraph (a) is revised and paragraph (b)(1)(iii) is added to read as follows:

§ 630.24 Quotas.

(a) *Applicability*. A swordfish harvested from the North Atlantic swordfish stock by a vessel of the United States in other than the recreational fishery is counted against the directed fishery gear quota or the bycatch quota. A swordfish harvested commercially by longline, drift gillnet, harpoon, rod and reel or handline and landed before the effective date of a closure for that gear, done pursuant to § 630.25(a)(1), is counted against the applicable directed fishery gear quota. After a gear closure, a swordfish landed by a vessel using or possessing gear for which bycatch is allowed under § 630.25(c) is counted against the bycatch allocation specified in paragraph (c) of this section. Notwithstanding the above, a swordfish harvested by a vessel using or possessing gear other than longline, drift gillnet, harpoon, rod and reel or handline is counted against the bycatch quota specified in paragraph (c) of this section at all times.

(b) * * *

(1) * * *

(iii) A quota equivalent to 2 percent of the directed fishery quota will be set-aside for holders of the directed handgear permit during each semiannual period. Any unused portion of the set-aside quota will be returned to the directed fishery allocation by the end of September (the end of the handgear season) of each year.

* * * *

7. In § 630.25, the first sentence in paragraph (c)(2)(ii) is amended by removing the numeral "15" and by adding the numeral "5" in its place, and paragraph (d) introductory text is revised to read as follows:

§ 630.25 Closures and bycatch limits.

* * * *

(d) *Bycatch limits in the non-directed fishery*. Aboard a vessel using or having aboard gear other than longline, drift gillnet, harpoon, rod and reel or handline, other than in the recreational fishery—

* * * *

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50 CFR Part 678

[I.D. 121196A]

Atlantic Shark Fisheries; Limited Access Program; Extension of Comment Period

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

ACTION: Extension of comment period.

SUMMARY: NMFS extends the comment period for a proposed rule and Amendment 1 to the Fishery Management Plan for Atlantic Sharks (FMP) to implement the limited access system. The proposed rule was published in the Federal Register on December 27, 1996. The proposed rule would establish a two-tiered permit system for the Atlantic shark commercial fishery, set forth eligibility criteria for these permits based on

historical participation, and limit the transferability of such permits.

DATES: Written comments on the proposed rule must be received on or before April 28, 1997.

ADDRESSES: Written comments should be sent to William T. Hogarth, Chief, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Room 14853, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: John Kelly or Margo Schulze at 301-713-2347; fax 301-713-1917.

SUPPLEMENTARY INFORMATION: NMFS has received requests from the affected public that more time is necessary to submit their comments on the Atlantic shark fishery proposed rule and FMP amendment to implement limited access (61 FR 68202, December 27, 1996). The extension in comment period will ensure that this proposed rule can be examined in conjunction with the proposed rule for limited access in the swordfish fishery, which is being published on the same date as this notice. The public has informed NMFS that it is essential to examine both proposals simultaneously in order to determine the net effect of the two proposed limited access systems.

The proposed rule, as published, would establish a two-tiered permit system for the Atlantic shark commercial fishery, set forth eligibility criteria for these permits based on historical participation, and limit the transferability of such permits. NMFS has determined that the Atlantic shark fishery is overfished and overcapitalized, with an excessive number of permitted vessels relative to the harvest level prescribed by the recovery plan.

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

Dated: February 19, 1997.

Gary Matlock,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

[FR Doc. 97-4656 Filed 2-20-97; 5:05 pm]

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