

category following the transfer of quota to Japan in 2002, as described in 67 FR 70023, November 20, 2002, to implement the quota transfer to Canada.

South Atlantic Swordfish Quota

The SCRS conducted a stock assessment of South Atlantic swordfish in 2002. Due to discrepancies between several of the datasets, reliable stock assessment results could not be produced. However, the SCRS noted that the total reported catches have decreased since 1995. ICCAT set a South Atlantic swordfish TAC of 15,631 mt ww in 2003, 15,776 mt ww in 2004, 15,956 mt ww in 2005, and 16,055 mt ww in 2006. Of these amounts, the United States is allocated 100 mt ww (75.2 mt dw) in 2003, 2004, and 2005 and 120 mt ww (90.2 mt dw) in 2006. The ICCAT recommendation allows for the U.S. underharvest from the South Atlantic quota in 2000 to be carried over to 2003 in addition to the 100-mt ww (75.2 mt dw) quota. This proposed rule would adjust the United States annual quota level for South Atlantic swordfish.

Request for Comments

In addition to comments on the provisions of the proposed rule, NMFS is requesting comments (see **ADDRESSES**) on the swordfish quota allocation methodology and the incidental catch limits. Specifically, NMFS would like to receive comments regarding the need for a recreational swordfish category to reflect the increase in effort in the recreational swordfish fishery. Currently, the swordfish fishery is managed via directed, incidental, and reserve categories. Also, NMFS is soliciting comments concerning how the North Atlantic swordfish quota could be allocated among the user groups, how the reserve quota category could be utilized, and if and how the trip limits for incidental permit holders should be modified. These measures are not being proposed at this time. Based on comments received, NMFS will take further action as warranted.

Public Hearings and Special Accommodations

NMFS will hold public hearings to receive comments from fishery participants and other members of the public regarding these proposed amendments. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tyson Kade at (301) 713-2347 at least 5 days prior to the hearing date. For individuals unable to attend a hearing, NMFS also solicits

written comments on the proposed rule (see **DATES** and **ADDRESSES**).

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA, has preliminarily determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A Biological Opinion (BiOp) for HMS fisheries, including pelagic longline, bottom longline, and drift gillnet, was issued on June 14, 2001, which found that the continued operation of the HMS pelagic longline fishery jeopardizes the continued existence of loggerhead and leatherback sea turtles, but provided a reasonable and prudent alternative under which fishing activity could continue. On July 9, 2002, NMFS promulgated a final rule (67 FR 45393) that implemented the measures required by the BiOp for the pelagic and bottom longline and shark gillnet fisheries. The measures in the July 2002 final rule were necessary to alleviate the jeopardy situation for HMS fisheries. In examining the potential impact of the proposed regulations, NMFS feels that the only measure that could adversely affect stocks of protected species is the increase in the North Atlantic swordfish quota from 2,951 mt ww to 3,877 mt ww and then to 3,907 mt ww in the upcoming fishing years. The increase in available quota could trigger an increase in fishing effort which could then increase the incidental catch of protected species. Currently, NMFS believes that the likelihood of an increase in the incidental take of protected species by the pelagic longline fleet due to an increase in effort is unlikely. For the past several years, the level of effort in the pelagic longline fishery has been steadily declining and a number of restrictions such as limited access and time and area closures have been placed on the pelagic longline fleet. This declining effort has led to underharvests of the 2,951 mt ww swordfish quota (1,025.4 mt ww in the 2001 fishing year). Because the proposed rule does not relieve any of these restrictions, NMFS believes that the level of effort in the fleet is unlikely to increase despite the change in quota

level. Thus, NMFS feels that the current level of incidental takes of protected species will remain at current levels or decrease.

NMFS has determined preliminarily that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have approved coastal zone management programs. Letters have been sent to the relevant states asking for their concurrence.

NMFS has prepared a regulatory impact review and an initial regulatory flexibility analysis that examine the impacts of the selected alternatives discussed previously in this rulemaking. The purpose of this action is to implement the 2002 ICCAT recommendations regarding North and South Atlantic swordfish consistent with the HMS FMP, the Magnuson-Stevens Act, and other domestic regulations. The commercial swordfish fishery is composed of fishermen who hold a swordfish directed, incidental, or handgear permit and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities. In October 2002, there were approximately 205 fishermen with a directed swordfish limited access permit, 110 fishermen with an incidental swordfish limited access permit, and 94 fishermen with a handgear limited access permit for swordfish. In recent years, the number of active permit holders who have caught swordfish has decreased from over 200 to approximately 180 and the number of hooks has decreased from over 10 million to under 8 million.

For each of the 2002 ICCAT recommendations, two alternatives were considered: a preferred alternative to implement the ICCAT recommendation and a no action alternative that would not implement the recommendation. Under ATCA, the United States is obligated to implement ICCAT-approved recommendations. The preferred alternative to increase the quota for the North Atlantic swordfish fishery is unlikely to have any impact on the amount of fish that can be harvested by U.S. swordfish fishermen. In recent years, the quota has not been fully harvested. In the 2001 fishing year, there was a 1,025.4-mt ww (771 mt dw) underharvest. If the increase in quota was fully harvested, it would have a value of a little over \$5.7 million. However, based on the declining level of effort both in number of vessels and number of hooks fished in the fishery, and based on the fact that U.S.