

### Changes from the Proposed Rule

In response to comments received during the comment period and to clarify regulatory language, the following changes were made to the proposed rule (December 26, 2001, 66 FR 66386):

In § 635.5 (c), a lead-in paragraph was added to explain angler reporting responsibility and the wording was changed in 635.5 (c)(3) to make the intent of alternative reporting more easily understood.

In § 635.20(a), the proposed regulatory text has been amended to apply the same standard of measurement and/or size class to both recreational and commercial North Atlantic swordfish landings.

In § 635.22 (f), one North Atlantic swordfish per vessel per trip was changed to one North Atlantic swordfish per person, up to three North Atlantic swordfish per vessel, per trip.

In § 635.30(d), the proposed regulatory text has been withdrawn so that recreational vessels are not required to maintain North Atlantic swordfish with its head, fins, and bill intact through offloading.

In § 635.71, paragraph (b)(6) was revised to show that BFT reporting is now under § 635.5(c)(1) or (3) instead of § 635.5(c), paragraph (c)(6) was added to reflect changes in § 635.5 that mandated recreational self-reporting, paragraph (e)(14) was added to reflect changes in § 635.22(f) implementing a retention limit for recreationally landed North Atlantic swordfish, and paragraph (e)(15) was added to reflect changes in § 635.5(c)(2) and (3) on North Atlantic swordfish reporting. Some of these changes were necessary because the prohibitions section was omitted in the proposed rule. These changes do not alter the intent of the proposed rule.

Finally, several changes were made to conform with regulatory changes made in another final rule that published on December 18, 2002 (67 FR 77434).

### Classification

This rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act. The Assistant Administrator for Fisheries, NOAA (AA), has 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, and are consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel of Advocacy of the Small Business Administration that the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. NMFS received no comments during the comment period on the proposed rule that would change that conclusion. However, some CHB operators raised a concern during the public comment period with regard to the one swordfish per vessel retention limit. To respond to this concern and better reflect current catch patterns, NMFS modified the final rule to provide a one swordfish per person, up to three swordfish per vessel, per trip limit. This modification does not alter the agency's prior conclusion of no significant economic impact on a substantial number of small entities.

This final rule will apply to all participants in the recreational Atlantic marlin and North Atlantic swordfish fisheries, all of which are considered small entities. The Billfish Fishery Management Plan estimated that there were 7,915 U.S. tournament billfish anglers in the western Atlantic in 1989. A 1992 inventory of 359 billfish tournaments indicated an average expenditure of \$2,147 per angler per trip (including tournament fees), or \$4,242 for each fish caught, corresponding to \$32,382 for each billfish landed. Swordfish are not generally included in billfish tournament prize categories and non-tournament recreational catch data are not currently systematically collected but may be frequent.

Because of the large size of most recreationally landed swordfish, the retention limit in this final action should be sufficient for swordfish intended for personal consumption, even on vessels carrying multiple anglers. Recreationally landed swordfish cannot be sold commercially, therefore no significant economic impacts are anticipated for individual anglers. The modified retention limit should also minimize any potential impacts on CHB operators. An increase in the vessel trip limit will more accurately reflect recent catch patterns in the fishery and, since many trips are unsuccessful, on average, the three swordfish per vessel limit is not expected to be reached. The swordfish fishery is a rare event fishery characterized by clustered catch rates in which several trips may result in no swordfish catches and a few trips may

catch several swordfish. The call-in system takes less than 3 to 5 minutes for each no-cost report and an additional 3 to 5 minutes for a confirmation callback, thus no significant economic impacts are anticipated.

NMFS prepared an Environmental Assessment for this rule that describes impacts on the human environment and determined that no significant impacts would result.

This final rule is consistent with the Endangered Species Act. On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the ESA. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. NMFS issued a final rule on July 9, 2002 (67 FR 45393), to implement the reasonable and prudent alternative required by the BiOp. The fishing activities conducted pursuant to this rule will not affect listed species in any manner not already considered in the BiOp because these actions primarily address reporting requirements and are not expected to alter fishing practices or fishing effort in any way not previously considered.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648-0446. Public reporting burden for this collection of information is estimated to average 5 minutes per initial reporting call and 5 minutes per confirmation callback, and 5 minutes to fill out a catch reporting card (for those pilot programs conducted under state reporting systems). This action also repeats collection-of-information requirements that have been approved by OMB under control number 0648-0216. Public reporting burden for this collection of information is 20 minutes to prepare a billfish COE and 20 minutes for recordkeeping by subsequent purchasers of the billfish. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for the reducing the burden, to NMFS and OMB (see ADDRESSES).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be