

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

[Docket No. 980305056-8245-02; I.D. 020398B]

RIN 0648-AK88

Atlantic Billfishes; Atlantic Blue Marlin and Atlantic White Marlin Minimum Size; Billfish Tournament Notification Requirements; Atlantic Marlin Bag Limit

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

ACTION: Interim rule; amendment; extension of expiration date; response to comments; request for comments.

SUMMARY: By interim rule, published in the **Federal Register** on March 24, 1998, NMFS increased the minimum size limits for Atlantic blue marlin (BUM) and Atlantic white marlin (WHM) respectively, and required operators of tournaments involving any Atlantic billfish to notify NMFS at least 4 weeks prior to commencement. NMFS extends this interim rule for an additional 180 days, and amends it to increase the minimum size limit for Atlantic BUM to 99 inches LJFL (251 cm); establish a recreational bag limit of one Atlantic BUM or WHM per vessel per trip; and grant the Assistant Administrator for Fisheries, NOAA (AA) authority to adjust the bag limit. The intent of this amendment and extension is to continue to reduce overfishing of Atlantic BUM and WHM, and implement the recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required under the Atlantic Tunas Convention Act (ATCA). These actions are necessary until an amendment to the Atlantic Billfish Fishery Management Plan is proposed and approved, and other more comprehensive measures as established by that amendment, are implemented by final rule.

DATES: Effective September 23, 1998, the regulations published on March 24, 1998 at 63 FR 14030 are extended through March 19, 1999. The amendments in this rule are effective September 24, 1998 through March 19, 1999. Comments on the increase in minimum size limit for Atlantic BUM to 99 inches LJFL and the establishment of an Atlantic marlin bag limit must be received no later than November 23, 1998.

ADDRESSES: Comments should be mailed to Dr. Rebecca Lent, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Copies of this document and documents supporting this action are available from Buck Sutter, Highly Migratory Species Management Division, NMFS, Southeast Regional Office, 9721 Executive Center Drive N, St. Petersburg, FL 33702. Comments regarding the collection-of-information requirement contained in this extended interim rule, as amended, should be sent both to one of the previous addresses and to the Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Buck Sutter, 813-570-5447; fax: 813-570-5364.

SUPPLEMENTARY INFORMATION: Under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS promulgated an interim rule (63 FR 14030, March 24, 1998) that increased the minimum size limits for Atlantic BUM and WHM to 96 inches (244 cm) lower jaw-fork length (LJFL) and 66 inches (168 cm) LJFL, respectively, and required operators of tournaments involving any Atlantic billfish to notify NMFS at least 4 weeks prior to commencement. The interim rule was intended to reduce overfishing of Atlantic BUM and WHM and to implement a recommendation of ICCAT to reduce Atlantic BUM and WHM landings by 25 percent for each of these species from 1996 levels and to improve current monitoring, data collection, and reporting requirements. The interim rule also directly responded to a petition for rulemaking from the National Fisheries Institute (NFI), received on July 28, 1997, which recommended mandatory registration and reporting requirements for all billfish tournaments. NMFS announced receipt of the petition in a **Federal Register** notice on August 28, 1997 (62 FR 45614), and made copies available to interested parties, including members of the Billfish Advisory Panel (AP). A discussion of the management and stock status of Atlantic BUM and WHM, ICCAT's recommendation relating to Atlantic billfish, and the need for interim action is found in the preamble to the interim rule.

The increased minimum sizes for Atlantic BUM and WHM, established in the original interim rule, were selected based on the 1994 to 1996 size distribution of recorded landings for those species and were calculated to reduce Atlantic BUM and WHM

landings by number and weight during 1998 to provide an adequate timeframe to determine whether these size measures were an effective means to meet U.S. billfish landing caps by the end of 1999. The ICCAT recommendation restricts U.S. landings to 26.2 mt whole weight (ww) of BUM and 2.48 mt ww of WHM. The increased minimum sizes were expected to reduce the number and weight of landings of Atlantic BUM by 46 percent and 39 percent, respectively, and of Atlantic WHM by both number and weight by 53 percent from 1996 levels.

The size limits established in the interim final rule were based on the best available information at the time. However, an analysis of a more extensive database that includes 1997 landings has since been completed. This information indicates that the minimum size of 96 inches (244 cm) LJFL for Atlantic BUM may not be adequate to achieve the required 25 percent reduction in landings. Application of a 96-inch (244 cm) LJFL limit on the size frequency of Atlantic BUM landed during 1995 to 1997 results in a reduction in landings of only 21 percent by weight and 32 percent by number. Therefore, the minimum size for Atlantic BUM must be increased to 99 inches (251 cm) LJFL to help ensure full compliance with the 1997 ICCAT recommendation, with a projected reduction in landings of 32.44 percent by weight and 44.33 percent by number. Application of a 66-inch (168 cm) LJFL limit on the size frequency of WHM landed during 1995 to 1997 results in a projected reduction in landings of 42 percent by weight and 47 percent by number. While this reduction in WHM landings is less than the interim rule estimate of 53 percent by weight and by number, it is still sufficient for compliance with the 1997 ICCAT recommendation. Therefore, this extended interim rule, as amended, maintains the 66-inch (168 cm) LJFL minimum size for Atlantic WHM.

A complicating factor in evaluating minimum size for the recreational billfish fishery is the source of data used to evaluate management alternatives. Actual landings (weight, number, and size distributions) by U.S. recreational anglers are unknown; minimum landing estimates are calculated from billfish tournaments and from the Large Pelagic Survey (LPS). The only available size distribution data are collected from the Recreational Billfish Survey of tournaments, and it is unknown whether this information accurately reflects the true distribution of recreational landings. Although the use of increased minimum sizes will reduce

the number of fish that are landed and provide immediate reductions in current fishing mortality levels, the exact impact on the total mortality is unknown, since size limits and resulting landing reduction estimates were based on fish taken only during fishing tournaments.

The impact of handling or release mortality must also be considered in evaluating the effectiveness of any management measure requiring the release of live fish (e.g., fish less than the minimum size). Accurate measures of release mortality are complicated by a variety of factors, including fishing techniques (e.g., type of tackle and bait, length of fight), location on fish of hooking, water temperature, handling time, size of the fish, and many other parameters.

Considering the limits the above factors place on using minimum sizes as the only measure for complying with the ICCAT recommendation, NMFS also amends the interim rule to establish a recreational bag limit of one Atlantic marlin (either BUM or WHM) per vessel per trip. NMFS also amends the interim rule to grant the AA the authority to adjust the bag limit, with 3-days notice, including an adjustment to a zero bag limit. This will allow the bag limit to be reduced to zero when the recommended ICCAT landing cap of 26.2 mt ww Atlantic BUM and 2.48 mt ww WHM (25 percent reduction from 1996 Atlantic BUM and WHM landings) is reached.

Retention of more than one billfish (of any species) during a recreational trip is relatively rare. It has been estimated that over 70 percent of recreational trips do not result in a landed billfish (Fisher and Ditton, 1992). There are occasional trips, however, where more billfish are encountered, and limiting landings to one fish per vessel could significantly reduce fishing mortality. One concern associated with bag limits is that "culling" of fish could occur, that is the retention of several fish until fishing is completed, then the retention of the bag limit. However, given the conservation ethics of most billfish anglers, culling is not anticipated to be a problem. Therefore, the extended interim rule, as amended, would establish a one marlin (either BUM or WHM) per vessel, per trip bag limit. The AA would have the authority, under this alternative, to adjust the bag limit with a 3-day notice, including a zero bag limit.

In a survey of recreational billfish anglers who participate in billfish tournaments, Fisher and Ditton (1992) found that 50.1 percent of the sample population either was neutral or agreed with a one billfish per vessel, per day

bag limit. Interestingly, results of the mail survey by Fisher and Ditton indicated that more anglers supported a zero bag limit (74.2 percent were either neutral or in agreement with this action). At their September 1998 meeting, Billfish AP members supported a one billfish per vessel, per trip bag limit, but were opposed to granting the AA authority to reduce the bag limit to zero.

Shortly, NMFS will propose an amendment to the Atlantic Billfish FMP, that includes a comprehensive set of management measures addressing overfishing and long-term rebuilding of overfished Atlantic billfish, including BUM and WHM, and will propose regulations implementing these measures. To allow time for the FMP Amendment and rulemaking processes to be completed, the interim rule needs to be extended to ensure that 1999 BUM and WHM landings are at least 25 percent below 1996 levels as required by the ICCAT. Therefore, in addition to the amendments discussed above, the interim rule, which would otherwise expire on September 23, 1998, is extended through March 19, 1998.

Comments Received to Date

A 4-week notification requirement for tournaments involving Atlantic billfish was originally included in a proposed rule to consolidate regulations for Atlantic Migratory Species Fisheries (61 FR 57361, November 6, 1996). Five public hearings were held to receive comments on the proposed consolidated rule. Comments addressing billfish tournament requirements were also received by mail and fax and were summarized in the interim rule, along with responses to these comments.

Subsequent to the publication of the interim rule, seven public hearings, announced in the **Federal Register** on April 9, 1998, were held to receive comments. NMFS found no opposition to the interim rule regulations at these hearings. There were 13 letters received during the comment period; 5 of these did not address the interim rule. Comments pertaining to Atlantic billfish management issues beyond the scope of the interim rule will not be addressed here. There was general support for the interim management measures; responses to additional comments on the interim rule are provided.

Responses to Comments

Comment 1: One commenter stated concern that the tournament reporting requirements should help to monitor billfish mortality but doubted if the universe of tournaments is known or even closely estimated.

Response 1: NMFS agrees that the universe of tournaments is not known, and plans to use the tournament registration requirement to better estimate the total number of tournaments. Additional measures to monitor Atlantic billfish landings are being considered in the development of the Atlantic Billfish FMP amendment.

Comment 2: The NFI found it difficult to verify the statement that landings will be reduced by 46 percent by number and 39 percent by weight for Atlantic BUM and by 53 percent by both number and weight of Atlantic WHM and that these figures should be based on cumulative frequency distribution plots or suitable tables listing the numbers of Atlantic BUM and WHM sampled by LJFL. This commenter also felt that the rule should explicitly state the assumptions underlying conclusions about the effect that larger minimum sizes will have on total recreational billfish landings based on the existing sample size frequency.

Response 2: NMFS agrees. The Atlantic BUM and WHM minimum sizes and associated reductions in landings established in the existing interim final rule were based on the best available information at the time. However, further analysis using subsequent information, which includes 1997 Atlantic BUM and WHM landings, indicates that the resultant reductions in landings from the increased minimum size were overestimated. A discussion of the new analysis and its results is mentioned in the section of supplementary information. Further detail, as requested by NFI, is contained in the EA/RIR document supporting this action.

Comment 3: The Blue Water Fishermen's Association (BWFA) supported the interim measures but stated that these measures alone are not sufficiently strict to ensure that the United States meets ICCAT Atlantic BUM and WHM landing caps and recommendations. BWFA wants the interim rule to be implemented in concert with strict quota monitoring to ensure that ICCAT caps are not exceeded. There were three other written comments expressing similar concern.

Response 3: NMFS also agrees that the increases in minimum sizes of Atlantic marlin may not be adequate to achieve the required 25-percent reduction in Atlantic BUM and WHM landings. Further the interim rule is being amended to ensure that the ICCAT recommendation is met. The minimum size for BUM has been increased to 99 inches LJFL. In addition, NMFS is establishing a one Atlantic marlin per

vessel, per trip bag limit and is granting the AA the authority to adjust the bag limit with a 3-day notice, including adjusting to a zero bag limit. Additional conservation measures to ensure that the United States meets ICCAT landing caps and recommendations are being developed as part of the Atlantic Billfish FMP amendment.

Comment 4: BWFA commented that NMFS should also implement a strict "landing tag" program immediately to ensure that the quota is not exceeded. Similarly, NFI recommended that NMFS require all tournaments to obtain a permit to land and/or target, in the case of catch and release tournaments, Atlantic marlin.

Response 4: NMFS is considering requiring a landing tag to be affixed to all recreationally landed Atlantic billfish as part of the Atlantic Billfish FMP amendment. However, the success of such a tagging program is dependent on self-reporting, and even then, it would not ensure that the ICCAT recommended landing cap is not exceeded. More comprehensive management measures are being developed as part of the Atlantic Billfish FMP amendment.

Comment 5: NFI is disappointed with the reporting requirements of the interim rule and concerned that NMFS¹ failure to implement anything more than a negligible improvement in billfish monitoring will jeopardize compliance with the ICCAT recommendation and undermine the credibility of the United States in the ICCAT forum. BWFA also comments that the United States has failed to monitor the recreational sector after years of advocating strict commercial measures and that the disparity in treatment undermines our credibility at ICCAT. Both NFI and BWFA commented on how much of the effort by U.S. recreational fishermen goes entirely unregulated, undetected, and undocumented. NFI specifically commented that NMFS ignored billfish landings from private and charter fishing activities not associated with tournaments and ignores comments that NFI and other organizations have submitted over several years on the need to improve monitoring of recreational fisheries for Atlantic marlin and sailfish, especially for charter and tournament businesses. Nine additional commenters expressed concern about discriminatory regulations, and they want NMFS to hold the sportfishing sector accountable for its associated fish mortalities.

Response 5: NMFS agrees that all sectors of the billfish fishery must be held accountable for their associated

billfish mortality. These interim management measures are intended only as initial actions until a more comprehensive set of management measures can be implemented. Actions to improve monitoring, including private and charter/party vessels, are being developed for both the proposed Billfish Amendment and the proposed HMS FMP. Alternatives include requiring (1) permits and logbook reporting for charter/headboat operations targeting Atlantic highly migratory species; (2) observer coverage onboard charter/headboats targeting highly migratory species; (3) a landing tag to be affixed to all recreationally landed Atlantic Billfish; and (4) vessel permits for all U.S. registered vessels fishing recreationally for Atlantic highly migratory species.

Comment 6: BWFA requested that NMFS require every tournament to submit data on catches and effort, not just selected tournaments. NFI requested that there be 100 percent tournament reporting selection until a statistically based sampling program is implemented.

Response 6: The total number of tournaments held is unknown. Since implementation of the tournament registration requirement, 114 tournaments have registered. NMFS anticipates the number of tournaments registered will increase as public outreach expands. A statistically based sample of tournaments will be selected for reporting in order to reduce the potential burden on NMFS and on tournament directors. Currently, all registered tournaments that land billfish must submit tournament reports. Until a statistically based sampling program is implemented, all tournaments be 100 percent tournaments will be required to report.

Classification

NMFS extends the interim rule published on March 24, 1998, at 63 FR 14030, as amended, for 180 days. As authorized by section 305(c)(3)(B) of the Magnuson-Stevens Act, an interim rule may be extended for an additional 180 days provided the public has had an opportunity to comment on the interim rule and, at the time of this extension, a proposed plan amendment to address the overfishing on a permanent basis is being actively pursued. The public has had opportunity to comment on the interim rule as noted in the supplementary information section. These comments were considered in determining the amendment and extension of this interim rule, and responses to comments have been provided. The Billfish AP commented

on various aspects of this extended rule, as amended, at their September 1998 meeting. NMFS is preparing an amendment to the Atlantic Billfish FMP outlining a rebuilding plan and concomitant management strategies to reduce bycatch and bycatch mortality. The amendment is being developed using the best possible science and input from the Billfish AP, and various outreach forums will ensure public input into this process.

The AA has determined that this extension of the interim rule is necessary to continue to reduce overfishing of BUM and WHM and to meet U.S. obligations under ICCAT. The extension of the interim rule is consistent with the Magnuson-Stevens Act and other applicable laws.

The actions set forth in the extended interim rule respond to the over-exploitation of these resources in the Atlantic Ocean and to the need to improve current monitoring, data collection, and reporting procedures, as well as to promote the release of live billfish. The United States is also obligated, under ATCA, to implement ICCAT recommendations. Failure to implement these actions in a timely manner may result in failure to meet ICCAT obligations and increase the need for more severe restrictions in the future.

The AA has determined that, under 5 U.S.C. 553(b)(B), there is good cause to waive the requirement for prior notice and an opportunity for public comment as such procedures would be contrary to the public interest. The modifications in this rule are necessary to ensure compliance with international legal obligations. Additionally, these modifications were discussed in a public AP meeting. To ensure wide circulation of the extended interim measures, as amended, NMFS will work with the Billfish AP, recreational fishing organizations, sportfishing media, and fishing tournaments known to involve billfish, to notify affected entities. In addition, notice will be provided through the HMS FAX network and NOAA weather radio.

Further, under 5 U.S.C. 553(d)(3), the AA has determined that there is good cause, as explained above, to waive the 30-day delay in effective date. NMFS will rapidly communicate the new regulations to fishery participants through its FAX network, HMS Information Line, billfish brochure, and NOAA weather radio.

The extension of this interim rule has been determined to be not significant for purposes of E.O. 12866.

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 a 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 control number. This extended interim rule contains the same collection-of-information requirement subject to the PRA. Fishing tournament registration and selective reporting in § 644.10 have already been approved by OMB under control number 0648-0323 and estimated at 10 minutes per report. Send comments regarding this burden estimate or any other aspect of this collection-of-information requirement including suggestions on how to reduce or eliminate this burden to NMFS and OMB (see **ADDRESSES**).

Because prior notice and an opportunity for public comment are not required to be provided for the extension of this interim rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 644

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 23, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 644 is amended as follows:

50 CFR CHAPTER VI

PART 644—ATLANTIC BILLFISHES

1. The authority citation for part 644 continues to read as follows:

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

2. Section 644.21 is amended by suspending paragraph (e) and adding paragraph (f), effective from September 24, 1998, through March 19, 1999, to read as follows:

§ 644.21 Size limits.

* * * * *

(f) The following minimum size limits, expressed in terms of lower jaw-fork length (LJFL), apply for the possession of billfish shoreward of the outer boundary of the EEZ, regardless of where caught:

- (1) Blue marlin-99 inches (251 cm)
- (2) White marlin-66 inches (168 cm)
- (3) Sailfish-57 inches (145 cm)

3. Section 644.26 is added, effective from September 24, 1998, through March 19, 1999, to read as follows:

§ 644.26 Catch Limits.

(a) Only one Atlantic marlin (either a blue marlin or a white marlin) may be possessed or landed per vessel per trip.

(b) If he determines after considering the most recent tournament and other landings data that such action is necessary to comply international obligations, the Assistant Administrator may increase or reduce the catch limit, including reduction to zero Atlantic marlin per vessel per trip. The Assistant Administrator will publish a notice in the **Federal Register** of any adjustment in the allowable catch limit per trip under this paragraph.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980318065-8241-02; I.D. 030698B]

RIN 0648-AK68

Atlantic Sea Scallop Fishery; Extension of Interim Final Rule Implementing Area Closures

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

ACTION: Interim final rule; extension of expiration date.

SUMMARY: NMFS extends the existing closures to scallop fishing of two Mid-Atlantic areas for an additional 180 days. These closures would have expired on September 28, 1998. The extensions are necessary to continue protection of high concentrations of juvenile scallops while permanent measures are being developed by the New England Fishery Management Council (Council).

DATES: Effective September 28, 1998, the interim final rule published March 31, 1998, beginning at 63 FR 15324 is extended through March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978-281-9273.

SUPPLEMENTARY INFORMATION:

Background

In December 1997, the New England and Mid-Atlantic Fishery Management Councils (Councils) initially requested interim action to implement management measures for the scallop fishery, which close an area south of

Hudson Canyon and a specific area off Virginia Beach to scallop fishing. An interim rule to immediately implement these measures was published on March 31, 1998 (63 FR 15324), with effective dates of April 3, 1998, through September 27, 1998. A full discussion of the status of the scallop stock and the need for interim action is found in the preamble to the interim rule and is not repeated here. No comments were received during the comment period.

In August 1998, the Council adopted these same measures as part of proposed Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan (FMP). The Council also voted to adjust the days-at-sea reduction schedule and to implement a 10-year stock rebuilding program beginning in the 1999 fishing year to eliminate overfishing and comply with the requirements of the Sustainable Fisheries Act. The Council plans to submit Amendment 7 to the FMP in October 1998. However, if Amendment 7 is approved, the final rule to implement it will not be published before the end of the effective period of the interim rule, thus allowing a lapse between the end date of the interim rule and the final rule implementing Amendment 7. This could leave the already overfished scallop stock unprotected from increased exploitation. Both Councils expressed support for the extension of the interim action at their August 1998 meetings. Extending an interim action for up to an additional 180 days is authorized under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by publication in the **Federal Register**, provided the public has had an opportunity to comment on the interim measure, and, in the case of a Council recommendation for interim measures, the Council is actively preparing an FMP, plan amendment, or proposed regulations to address the overfishing on a permanent basis. This action meets both requirements. The Council will soon submit Amendment 7, which will address overfishing on a permanent basis, and the interim final rule that implemented these closures requested public comment on the measures (no comments were received during the comment period). The extension would be in effect from September 28, 1998, through March 26, 1999, or until regulations implementing Amendment 7 become effective.

Classification

NMFS has determined that this rule is necessary to reduce overfishing of sea scallops and is consistent with the