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List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 227A at Malvern, and adding Bryant, Channel 227A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99-6320 Filed 3-15-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-186; RM-9318]

Radio Broadcasting Services; Rio Grande City, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 236A to Rio Grande City, Texas, in response to a petition filed by Arturo Lopez and Eleazar Trevino. See 63 FR 55831, October 19, 1998. The coordinates for Channel 236A at Rio Grande City are 26-25-47 and 98-49-25. There is a site restriction 5.79 kilometers (3.6 miles) north of the community. Mexican concurrence has been obtained for this allotment. With this action, this proceeding is terminated. A filing window for Channel 236A at Rio Grande will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: April 19, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98-186, adopted February 24, 1999, and released March 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 236A at Rio Grande City.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99-6318 Filed 3-15-99; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 970829218-9064-03; I.D. 080597E]

RIN 0648-AK39

Atlantic Swordfish Fishery; Dealer Permitting and Import Documentation Requirements

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to prohibit the import into the United

States of Atlantic swordfish or Atlantic swordfish pieces, weighing less than 33 lb (15 kg) dressed weight (dw) unless documented as coming from an Atlantic swordfish weighing 33 lb (15 kg) dw or more; to require dealer permitting and reporting for importation of swordfish from any source; and to implement a Certificate of Eligibility (COE) program for all swordfish imports.

These measures are necessary to implement a 1995 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) with respect to controlling the harvest of undersized Atlantic swordfish and to facilitating the collection of information relating to the trade in Atlantic swordfish which may hinder conservation efforts by the United States and ICCAT.

DATES: This final rule is effective June 14, 1999 with the exception of § 630.5(b)(1)(ii) which will be made effective when approval of the information collection requirement contained therein is obtained from the Office of Management and Budget. When approved, NMFS will publish a separate document in the **Federal Register** giving notice of the effective date for that section.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) supporting this action may be obtained from Rebecca Lent, Chief, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the collection-of-information requirement contained in this extended interim rule, as amended, should be sent to the previous address and to the Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Jill Stevenson or Steve Meyers, 301-713-2347 or FAX 301-713-1917.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA).

Introduction

You may obtain background information about the need for revisions to Atlantic swordfish fishery regulations from the preamble to the proposed rule (63 FR 54661, October 13, 1998). That information is not repeated here.

NMFS has been concerned that sales of swordfish less than 33 lb (15 kg) dw in the United States diminish the

effectiveness of domestic conservation efforts due to the inability to differentiate in the marketplace between imported swordfish weighing less than 33 lb (15 kg) dw (legal prior to June 14, 1999 and domestic Atlantic swordfish weighing less than 33 lb dw (illegal). Therefore, as required by an ICCAT recommendation, NMFS has concluded it is necessary to prevent the sale in the United States of Atlantic swordfish weighing less than 33 lb (15 kg) dw harvested either by non-U.S. vessels or by fishermen from other countries and imported to the United States. Import restrictions, coupled with reporting requirements for swordfish importers, will facilitate enforcement of the domestic minimum size for Atlantic swordfish and provide NMFS with additional information on swordfish harvests from all ocean areas. Such information will contribute to stock assessments and estimates of fishing mortality.

ICCAT has requested that all countries that import frozen swordfish collect and examine as much import or landing data and associated information as possible and report that information to ICCAT.

Under the authority of ATCA (971 d (c)(3)), the United States may impose requirements or other measures necessary to implement ICCAT recommendations or to obtain scientific data necessary to accomplish the purpose of the Convention.

This final rule (1) prohibits any Atlantic swordfish weighing less than 33 lbs (15 kg) dw from entering the United States, (2) prohibits any shipment of swordfish from entering the United States unless accompanied by a Certificate of Eligibility, and (3) establishes permitting and reporting requirements for swordfish importers to facilitate tracking of swordfish imports.

You may not import swordfish unless you possess a valid swordfish dealer permit and submit bi-weekly reports on a NMFS-dealer report form and relevant COEs to NMFS. You may obtain a permit application from the NMFS Southeast Permit Office, St. Petersburg, FL by calling (727) 570-5326. Once your permit is issued, you will receive, under separate cover, bi-weekly dealer report forms (including import report forms).

Electronic Access

You may obtain a blank example of a COE from the NMFS Highly Migratory Species Management Division by mail (see ADDRESSES) or the Internet (www.usatuna.com).

If you export swordfish to the United States, you may use an existing form to serve the purpose of the COE or you

may obtain a copy of a COE from NMFS. The COE accompanying the swordfish shipment does not need to be on an official form but must contain, in English, at least the following: (1) flag of harvesting vessel, (2) ocean of origin, (3) weight of the shipment, (4) date, name, signature, title, authorizing government agency, and address of validating official or authorized agent and government seal, (5) certification that the shipment does not contain swordfish weighing less than 33 lb (15 kg) dw or, if it does, that it is not Atlantic swordfish, or, if it is Atlantic swordfish, that it was taken from a fish weighing greater than 33 lb (15 kg) dw, and (6) Customs Form 7501 entry number (to be completed by importer before submission to NMFS).

Comments and Responses

NMFS received written comments and held five public hearings during the 45-day comment period on the proposed rule. When drafting the final EA/RIR and the final regulations, NMFS considered all comments received.

Comment 1: All but two commenters supported the proposed measures. One dissenting commenter felt that these measures would do little to aid the recovery of the swordfish stock, considering swordfish are not mature when they reach the U.S. minimum size. Another commenter, representing the Federal fisheries agency in Canada, opposed the COE requirement for Canadian exports given that Canada has also adopted the 33-lb (15 kg) dw minimum size for Atlantic swordfish and has documentation and enforcement restrictions in place to implement that minimum size.

Response: NMFS agrees that the minimum size "allows" fishermen to harvest immature swordfish. However, the Standing Committee for Research and Statistics of ICCAT has determined that swordfish yields may increase substantially with the current minimum size if fishing mortality on undersized swordfish can be further reduced. NMFS believes these final actions will facilitate enforcement of the U.S. minimum size (recommended by ICCAT) and may encourage other countries to target swordfish larger than 33 lb (15 kg) dw in order to sell to the U.S. market. Because Canada has not implemented the ban on sale of undersized swordfish, NMFS cannot make an exemption for Canada regarding the documentation requirements, or all countries that adopt the 33-lb (15 kg) dw minimum size would also have to be exempted. This would create an enforcement loophole which might allow transshipments of

undersized swordfish through exempted countries and into the United States without a COE.

Comment 2: One commenter expressed support for including very specific information on the COE, including the name of the harvesting vessel. The commenter felt that this information is collected by other ICCAT countries and would help in enforcing ICCAT conservation and management measures.

Response: NMFS believes this information is useful; however, it would increase the burden on exporting firms. At this time, NMFS does not consider that further information is necessary to implement the ICCAT minimum size recommendation. If an ICCAT recommendation adopts a multi-lateral information collection, NMFS would implement the ICCAT recommendation.

Comment 3: Several commenters, including importers and wholesalers, did not think the dealer reporting and COE paperwork burden would be onerous.

Response: NMFS agrees. Although this final rule requires new and revised paperwork collections, exporters and importers have the information readily available and are likely to transcribe this information from an existing invoice (with the exception of the flag of the harvesting vessel).

Comment 4: Two commenters stressed the need for a governmental official to validate the COE form certifying that the data are accurate. They believe it will increase the accountability for disregarding ICCAT recommendations.

Response: NMFS agrees that governmental oversight might increase the accountability for an exporting firm's activities. However, allowing an authorized agent to validate the shipment minimizes the burden on governmental officials and decreases interference with trade in fresh swordfish (possible delay over a weekend, for example). NMFS, therefore, will allow the exporting nation's governmental official to authorize another person or entity to validate COEs.

Comment 5: Two commenters believe NMFS should monitor the trade of all ICCAT species with a COE.

Response: NMFS acknowledges the benefits of monitoring trade in highly migratory species, especially with regard to monitoring compliance with ICCAT measures. However, a certification program may be costly to implement and there are no current ICCAT recommendations which would justify the increased reporting burden on exporting countries.

Comment 6: One commenter indicated the need to monitor total species imports by country to ensure compliance with ICCAT's established quotas.

Response: NMFS currently monitors total species imports by exporting country. These data are available to the public on the NMFS statistics website <http://www.st.nmfs.gov/st1/trade/index.html>). Because U.S. Customs does not require information about flag of harvesting vessel, these data cannot infer the total harvest by country but can illustrate a broad picture of HMS trade activities. Data contained on the COEs, the bi-weekly dealer reports, and bluefin tuna statistical documents allow NMFS to monitor bluefin tuna and swordfish imports by harvesting nation.

Comment 7: Commenters were concerned about the enforcement of these regulations if the importer of record is a foreign firm.

Response: Under U.S. Customs regulations, an importer of record must have a registered agent in the United States. NMFS can then serve the charging documents to the registered agent of the corporation.

Comment 8: General comments were received on the formatting of the COE and the dealer report form.

Response: NMFS has altered those forms to reflect the submitted comments. Specifically, the entry number from the Customs Form 7501 will be required on the COE and the dealer report form so that NMFS can cross-check the entry form, dealer report, and COE for accuracy. In addition, individual weights of headed and gutted swordfish will be required on the dealer report form. However, NMFS is not requiring a specific form, but rather any form that contains the required information may be used as a COE.

Comment 9: A request for extension of the comment period was submitted. The commenter indicated the usefulness of allowing exporting firms to review these measures at the International Boston Seafood Show in March 1999.

Response: NMFS believes that a 60-day comment period and five public hearings were sufficient to notify the public about these measures. Further, NMFS agrees with the idea of disseminating information at the International Boston Seafood Show and has reserved exhibit space. NMFS has also planned a special seminar to explain the final COE requirements to swordfish importers and exporters.

Comment 10: Enforcement concerns were raised relative to unlawful entry of swordfish by non-resident corporations.

Response: To facilitate enforcement, NMFS has referenced pertinent U.S. Customs regulations pertaining to entry of merchandise by non-resident corporations. The resident agent for a foreign corporation which serves as a swordfish importer in the United States would receive any notice regarding the violation for the corporation. NMFS could then prosecute the case against the foreign corporation.

Changes From the Proposed Rule

NMFS has changed the proposed dealer reporting requirement to include the individual weights of headed and gutted swordfish and to require the Customs Form 7501 entry number of each swordfish shipment on the COE and dealer report form. NMFS has also included a clause stating that the COE and dealer report form must be submitted in English. NMFS has also allowed a foreign government to authorize a person or entity to sign and seal the COE form that will accompany a shipment of swordfish to the United States. NMFS cross-referenced existing U.S. Customs regulations applying to entry of a shipment into the United States by a non-resident corporation. NMFS has also clarified requirements for non-resident importers. Finally, editorial changes have been made in this final rule.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.*

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification, and the initial certification remains valid. As a result, a Regulatory Flexibility Analysis was not prepared.

This 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 any 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 OMB control number.

This rule contains three collection-of-information requirements subject to the PRA. Two of these collections have been approved by the Office of Management

and Budget under OMB control numbers 0648-0013 and 0648-0363 for dealer permits and the COE, respectively. The estimated burden for dealer permitting is a 200 response increase at 5 minutes per response. The estimated burden for the Certificate of Eligibility is 6500 hours or 1 hour for each response.

The third collection, dealer reporting, has been submitted to OMB for approval. The public reporting burden for this collection of information is estimated to average 1440 additional hours or a 16-minute response each for 5400 responses, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this dealer reporting collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: March 10, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is 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, definitions for "First transaction in the United States" and "Import" are added in alphabetical order and the definition of "Swordfish" is revised to read as follows:

§ 630.2 Definitions.

* * * * *

First transaction in the United States means the time and place at which the swordfish is filleted, cut into steaks, or

processed in any way that physically alters it after being landed in or imported into the United States.

* * * * *

Import, for the purpose of these regulations, means the release of swordfish from a nation's Customs' custody and entry into the territory of that nation. Swordfish are imported into the United States upon release from U.S. Customs' custody pursuant to filing an entry summary document (Customs Form 7501) or to any authorized electronic medium. Swordfish destined from one foreign country to another, which transits the United States and for which an entry summary is not required to be filed, are not considered an import under this definition, so long as they remain in customs bond.

* * * * *

Swordfish means a fish of the species *Xiphias gladius*, occurring in, or harvested from, any ocean area, or any part or product thereof.

* * * * *

3. In § 630.4, paragraph (a)(2) is revised to read as follows:

§ 630.4 Permits and fees.

(a) * * *

(2) *Annual dealer permit*. A dealer in the United States who first receives swordfish harvested from the north or south Atlantic swordfish stocks, or who imports swordfish harvested from any ocean area, must have been issued a valid dealer permit under paragraph (e) of this section. Importation of swordfish by nonresident corporations is restricted to those entities authorized under 19 CFR 141.18.

* * * * *

4. In § 630.5, paragraphs (b)(1)(ii) and (b)(1)(iii) are revised to read as follows:

§ 630.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(1) * * *

(ii) For imported swordfish, the dates of import, total weight of the shipments, individual weights of headed and gutted swordfish, Customs Form 7501 entry numbers, weight and price per pound or kilogram by product form (round, dressed, steaks, fillets or loins), condition (fresh or frozen), as specified at § 630.42; this information must be submitted in English and a copy of each certificate of eligibility must be attached;

(iii) For swordfish landed by vessels of the United States, the dates of receipt and the names and official numbers of fishing vessels from which swordfish were received; and

* * * * *

5. In § 630.7, paragraphs (d) and (g) are revised to read as follows:

§ 630.7 Prohibitions.

* * * * *

(d) As a dealer, purchase, barter, or trade or attempt to purchase, barter, or trade a swordfish from the north or south Atlantic stock, or to import or attempt to import swordfish harvested from any ocean area into the United States without a valid dealer permit, as specified in §§ 630.4(a)(2) and 630.21(c).

* * * * *

(g) Falsify or fail to maintain or submit information required to be maintained or submitted, as specified in § 630.5 (a), (b), and (c).

* * * * *

6. Section 630.26 is redesignated as § 630.27, and a new § 630.26 is added to read as follows:

§ 630.26 Compliance monitoring.

Compliance with the minimum size requirements specified at §§ 630.23(a) and 630.41 will be determined from the point at which the swordfish is either landed in, or imported into, the United States up to, and including, the point of first transaction in the United States as follows:

(a) Except for a swordfish landed in a Pacific state and remaining in the state of landing, a swordfish, or part thereof, weighing less than 33 lb (15 kg) dressed weight will be deemed to be harvested by a vessel of the United States and to be in violation of the minimum size requirement specified at § 630.23(a) unless such swordfish, or part thereof, is accompanied by a certificate of eligibility attesting that the swordfish was imported.

(b) An imported swordfish, or part thereof, weighing less than 33 lb (15 kg) dressed weight that is imported into the United States will be deemed in violation of the minimum size requirement specified at § 630.41 unless it is accompanied by a certificate of eligibility attesting either that the swordfish was harvested from an ocean area other than the Atlantic or that the fish part was derived from a swordfish harvested from the Atlantic that weighed at least 33 lb (15 kg) dressed weight at harvest.

7. Section 630.40 is revised to read as follows:

§ 630.40 Applicability.

The policies and procedures contained in §§ 285.80 through 285.86 of this title, which implement the provisions of section (6)(c) of the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*, with respect to import controls, and which specify

procedures for the establishment of restrictions on imports of tuna, apply to swordfish taken from the north and south Atlantic stocks.

8. Sections 630.41 and 630.42 are added to read as follows:

§ 630.41 Minimum size requirement.

To facilitate enforcement of domestic regulations, a swordfish, or part thereof, less than the minimum size specified at § 630.23(a) may not be imported, or attempted to be imported into the United States, unless it is accompanied by the certificate of eligibility specified at § 630.42 attesting either that the swordfish was harvested from an ocean area other than the Atlantic Ocean or that the fish part was derived from a swordfish harvested from the Atlantic that weighed at least 33 lb (15 kg) dressed weight at harvest.

§ 630.42 Certificate of eligibility.

(a) A shipment of swordfish in any form offered for import into the United States, directly or indirectly, from any country is admissible only if accompanied by a certificate of eligibility. Such a certificate is required for swordfish identified by any item number from the Harmonized Tariff Schedule including, but not limited to, the following:

(1) Fresh or chilled swordfish, steaks, No. 0302.69.20.41.

(2) Fresh or chilled swordfish, excluding fillets, steaks and other fish meat, No. 0302.69.20.49.

(3) Frozen swordfish, steaks, No. 0302.79.20.41.

(4) Frozen swordfish, excluding fillets, steaks and other fish meat, No. 0302.79.20.49.

(5) Frozen swordfish, fillets, No. 0304.20.60.92.

(b) The certificate of eligibility required under this section must indicate, in English, the flag state of the harvesting vessel, the ocean area of harvest and, if the shipment contains swordfish, or parts thereof, less than the minimum size specified at § 630.23(a), the reason such swordfish is eligible for entry as specified in § 630.41. The certificate shall be attached to the invoice accompanying the swordfish shipment from the point of original export up to and including the point of first transaction in the United States.

(c) The certificate of eligibility required under this section must include, in English, the date, the name, the title of the governmental official or other authorized person, and the name of the authorizing government agency of the country exporting the swordfish to the United States. The certificate of eligibility must be signed and dated by

that governmental official or authorized person with an official government seal affixed, thus validating the information on the certificate of eligibility.

(d) A certificate of eligibility may refer to swordfish taken from only one ocean area of harvest (Atlantic, Pacific, Indian) and by vessels under the jurisdiction of only one nation. If a shipment contains swordfish taken from more than one ocean area, or swordfish harvested by

several vessels from different flag states, a separate certificate must accompany the shipment for each ocean area of harvest and for each flag nation of the harvesting vessels.

(e) A model certificate of eligibility can be obtained by contacting NMFS at 1315 East-West Highway, F/SF1, Silver Spring, MD 20910. An equivalent form may be used provided it contains all the information required under this section.

(f) The importer must write the Customs Form 7501 entry number on each COE and attach to the dealer report form all COEs from shipments that are recorded on the bi-weekly dealer report form. The Customs Form 7501 can be obtained by contacting U.S. Customs at <http://www.customs.treas.gov/order.htm>.

[FR Doc. 99-6376 Filed 3-15-99; 8:45 am]

BILLING CODE 3510-22-F