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Stanley F. Mires,
Chief Counsel, Legislative.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 960805216-7098-05; I.D. 041097D]

RIN 0648-AH06

Fisheries of the Northeastern United States; Technical Amendment for the Black Sea Bass Fishery

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues this final rule to correct and clarify a section of the regulations implementing gear restrictions in the black sea bass fishery, which were implemented as a result of Amendment 9 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP).

EFFECTIVE DATE: May 7, 1997.

FOR FURTHER INFORMATION CONTACT: Dana Hartley, Fishery Management Specialist, 508-281-9226.

SUPPLEMENTARY INFORMATION: The final rule implementing Amendment 9 to the FMP was published on November 15, 1996 (61 FR 58461). Among other management measures implemented for the black sea bass fishery, the final rule implemented gear restrictions for industry members who fish with pot and trap gear. After publication of the final rule, Mid-Atlantic Fishery Management Council (Council) staff and industry members contacted NMFS to state that several provisions in the regulations implementing the pot and trap restrictions did not accurately reflect the measures specified in Amendment 9 and, as written, were unworkable.

The amendment includes a provision that pots and traps used in the black sea bass fishery must contain a minimum escape vent of one of the following dimensions: 1.125 inches (2.86 cm) by 5.75 inches (14.61 cm); or a circular vent 2 inches (5.08 cm) in diameter; or a square vent with sides of 1.5 inches

(3.81 cm), inside measure. Amendment 9 allows that pots and traps constructed of wooden laths may comply with this requirement by having one set of laths spaced at least 1.125 inches (2.86 cm) apart in the parlor portion of the trap. The regulatory language in the final rule did not stipulate that the lath spacing is an option that would satisfy the escape vent requirement in wooden traps.

Amendment 9 also contains a requirement that black sea bass pots or traps must have a rectangular opening that measures at least 3.0 inches (7.62 cm) by 6.0 inches (15.24 cm) covered by a panel affixed with degradable fasteners (a ghost panel). The regulatory text describing this requirement is confusing and has been reorganized.

These modifications will make the trap and pot gear requirements for the black sea bass fishery consistent with the Council's intent as stated in Amendment 9.

Classification

Because this rule only corrects and clarifies an existing set of regulations for which full prior notice and opportunity for comment were provided under 5 U.S.C. 553(b)(B), it is unnecessary to provide such procedures for this rule. Because this rule imposes no new requirements on anyone subject to these regulations and relieves a restriction, it is not subject to the 30-day delay in effective date provisions of 5 U.S.C. 553(d).

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 1, 1997.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.144, paragraph (b) is revised to read as follows:

§ 648.144 Gear restrictions.

* * * * *

(b) *Pot and trap gear restrictions--*(1) *Gear marking.* The owner of a vessel issued a black sea bass moratorium permit must mark all black sea bass pots or traps with the vessel's USCG

documentation number or state registration number.

(2) *Escape vents.* All black sea bass traps or pots must have an escape vent placed in a lower corner of the parlor portion of the pot or trap which complies with one of the following minimum sizes: 1.125 inches (2.86 cm) by 5.75 inches (14.61 cm); or a circular vent 2 inches (5.08 cm) in diameter; or a square vent with sides of 1.5 inches (3.81 cm), inside measure; however, black sea bass traps or pots constructed of wooden laths may instead have an escape vent constructed by leaving a space of at least 1.125 inches (2.86 cm) between one set of laths in the parlor portion of the trap. The dimensions for escape vents and lath spacing may be adjusted pursuant to the procedures in § 648.140.

(3) *Ghost panel.* Black sea bass traps or pots must contain a ghost panel affixed to the trap or pot with degradable fasteners and hinges. The opening to be covered by the ghost panel must measure at least 3.0 inches (7.62 cm) by 6.0 inches (15.24 cm). The ghost panel must be affixed to the pot or trap with hinges and fasteners made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16 inches (4.8 mm) diameter or smaller; or

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334-7025-02, I.D. 050597A]

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska

(GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the second seasonal bycatch allowance of Pacific halibut apportioned to the shallow-water species fishery in the GOA has been caught.

EFFECTIVE DATES: 1200 hrs, Alaska local time (A.l.t.), May 6, 1997, until 1200 hrs, A.l.t., July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907-486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The prohibited species bycatch mortality allowance of Pacific halibut for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established by

the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997). For the second season, the period April 1, 1997 through June 30, 1997, the bycatch mortality allowance is 100 mt.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 1997 Pacific halibut bycatch mortality allowance specified for the trawl shallow-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: Pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species".

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

This action responds to the best available information recently obtained from the fishery. It must be

implemented immediately in order to prevent overharvesting the second seasonal bycatch allowance of Pacific halibut apportioned to the shallow-water species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the second seasonal bycatch allowance of Pacific halibut. Further delay would only result in overharvest, which would disrupt the FMP's objective of apportioning Pacific halibut bycatch allowances throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: May 5, 1997.

Gary Matlock,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

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