

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 040802222-4222-01; I.D. 072804A]

RIN 0648-AS52

**Atlantic Highly Migratory Species (HMS) Fisheries; Pelagic and Bottom Longline Fisheries; Correction**

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

**ACTION:** Final rule; amendment.

**SUMMARY:** This rule corrects the gear requirements for bottom longline fishermen that were inadvertently changed in a July 2004 final rule to minimize sea turtle bycatch and bycatch mortality in the pelagic longline fishery.

**DATES:** This final rule is effective August 3, 2004, except for the amendment to § 635.21(a)(3), which is effective on August 6, 2004. Section 635.21 (d)(3)(iv) is not applicable until further notification is published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz at 301-713-2347, fax: 301-713-1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic tuna and swordfish fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and Amendment 1 to the Atlantic Billfish Fishery Management Plan are implemented by regulations at 50 CFR part 635. The Atlantic pelagic and bottom longline fisheries for these HMS are also subject to the requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA).

On December 24, 2003 (68 FR 74746), NMFS published a final rule implementing the final regulations described in Amendment 1 to the HMS FMP. These regulations required bottom longline fishermen to carry and use linecutters and dipnets to release sea turtles, prohibited sharks, and smalltooth sawfish as of February 1, 2004. At the time of publication, these linecutter and dipnet requirements were the same as those required in the HMS

pelagic longline fishery to release sea turtles.

On July 6, 2004 (69 FR 35599), NMFS published a final rule to reduce sea turtle bycatch and bycatch mortality in the Atlantic pelagic longline fishery. That rulemaking was based on the results of the 3-year Northeast Distant (NED) Closed Area research experiment involving: interactions of pelagic longline (PLL) fishing gear and Atlantic sea turtles, other available studies and information on circle hook and bait treatments, and public comments. As part of that rulemaking, NMFS redefined the type of equipment and the handling guidelines that pelagic longline fishermen must carry and use to release sea turtles. These new requirements become effective on August 5, 2004.

In changing the requirements for pelagic longline fishermen, NMFS inadvertently changed the requirements for bottom longline fishermen by failing to correct a paragraph cross-reference referring to the previous linecutter and dipnet requirements. Thus, the regulatory text in the July 6, 2004 (69 FR 35599) final rule indicated that bottom longline fishermen would also need to carry the additional equipment and use the revised handling procedures established for pelagic longline fishermen. This was not the intent of that. Rather, the rule was intended to affect only Atlantic HMS fishermen using pelagic longline gear. This action corrects the change in the regulatory text by replacing the incorrect paragraph cross-reference with the linecutter and dipnet regulations from the December 24, 2003 (68 FR 74746) final rule. This action would not change the intent of either the December 24, 2003, or July 6, 2004, final rules, and would result in the existing bottom longline regulations remaining in effect. NMFS intends to update the gear requirements for the bottom longline fishery to reflect recent changes in gear requirements for the pelagic longline fishery. However, NMFS has not yet analyzed the potential impacts of such an action, or provided an opportunity for public comment on potential gear changes in the bottom longline fishery. Thus, any such change will need to be part of a future rulemaking.

**Classification**

The Assistant Administrator for Fisheries (AA), under 5 U.S.C. 553(b)(B), finds that providing prior notice and an opportunity for public comment on this final rule is unnecessary and contrary to the public interest. This rule corrects regulatory text from a July 6, 2004 (69 FR 35599)

pelagic longline rule that would inadvertently change existing bottom longline requirements. This action corrects the regulatory text to restore the linecutter and dipnet requirements for the bottom longline fishery from a December 24, 2003 (68 FR 74746) final rule, consistent with the intent of both the December 2003 final rule and the July 6, 2004, final rule. As the July 6, 2004, rule will not be effective until August 5, 2004, notice and comment are unnecessary, because this action would simply maintain regulations currently in effect and not have a substantive effect on the fishery. Further delay in taking this action is contrary to the public interest. Without expedient action, there would be adverse economic impacts on fishery participants from implementation of the July 2004 regulations and potential confusion for vessel owners and enforcement. These corrections would maintain the currently existing regulations and would not cause fishermen to purchase additional gear. For the above reasons, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness.

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

This action is not significant under the meaning of Executive Order 12866.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: August 3, 2004.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

■ 1. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. Effective August 6, 2004, in § 635.21, paragraph (a)(3) is revised to read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

(a) \* \* \*

(3) All vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna

longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must possess inside the wheelhouse the document provided by NMFS entitled, "Careful Release Protocols for Sea Turtle Release with Minimal Injury," and all vessels with pelagic or bottom longline gear on board must post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

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■ 3. Paragraph (d)(3) to § 635.21 is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

\* \* \* \* \*

(d) \* \* \*

(3) The operator of a vessel required to be permitted under this part and that has bottom longline gear on board must undertake the following bycatch mitigation measures to release sea turtles, prohibited sharks, or smalltooth sawfish, as appropriate.

(i) Possession and use of required mitigation gear. Line clippers meeting minimum design specifications as specified in paragraph (d)(3)(i)(A) of this section and dipnets meeting minimum standards prescribed in paragraph (d)(3)(i)(B) of this section must be carried on board and must be used to disengage any hooked or entangled sea turtles, prohibited sharks, or smalltooth sawfish, in accordance with the requirements specified in paragraph (d)(3)(ii) of this section.

(A) Line clippers. Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles, prohibited sharks, or smalltooth sawfish. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper is a model that meets these minimum design standards and may be fabricated from readily available and low-cost materials (65 FR 16347, March 28, 2000). The minimum design standards for line clippers are as follows:

(1) A protected cutting blade. The cutting blade must be curved, recessed, contained in a holder, or otherwise designed to minimize direct contact of the cutting surface with sea turtles, prohibited sharks, smalltooth sawfish, or users of the cutting blade.

(2) Cutting blade edge. The blade must be able to cut 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(3) An extended reach holder for the cutting blade. The line clipper must

have an extended reach handle or pole of at least 6 ft (1.82 m).

(4) Secure fastener. The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(B) Dipnets. Dipnets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that prevents injury and trauma to sea turtles. The minimum design standards for dipnets are as follows:

(1) Extended reach handle. The dipnet must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lb (34.1 kg) without breaking or significant bending or distortion.

(2) Size of dipnet. The dipnet must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may not exceed 3 inches x 3 inches (7.62 cm x 7.62 cm).

(ii) Handling requirements. (A) The dipnets required by this paragraph should be used to facilitate access and safe handling of sea turtles where feasible. The line clippers must be used to disentangle sea turtles, prohibited sharks, or smalltooth sawfish from fishing gear or to cut fishing line as close as possible to a hook that cannot be removed without causing further injury.

(B) When practicable, active and comatose sea turtles must be brought on board immediately, with a minimum of injury, and handled in accordance with the procedures specified in § 223.206(d)(1) of this title.

(C) If a sea turtle is too large or hooked in a manner that precludes safe boarding without causing further damage or injury to the turtle, line clippers described in paragraph (c)(5)(i)(A) of this section must be used to clip the line and remove as much line as possible prior to releasing the turtle.

(D) If a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and examined for research tags and the line should be cut as close to the hook as possible.

(iii) Corrodible hooks. Vessels that have bottom longline gear on board and that have been issued, or required to have, a limited access shark permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, must only have corrodible hooks on board.

(iv) Possess and use a dehooking device that meets the minimum design standards. The dehooking device must be carried on board and must be used

to remove the hook from any hooked sea turtle, prohibited shark, or other animal, as appropriate. The dehooking device should not be used to release smalltooth sawfish. NMFS will file with the Office of the Federal Register for publication the minimum design standards for approved dehooking devices. NMFS may also file with the Office of the Federal Register for publication any additions and/or amendments to the minimum design standards.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040507144–4213–02; I.D.043004A]

RIN 0648–AQ85

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery

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

ACTION: Final rule, 2004 specifications

SUMMARY: NMFS issues 2004 specifications for the Atlantic bluefish fishery, including total allowable harvest levels (TAL), state-by-state commercial quotas, and a recreational harvest limit and possession limit for Atlantic bluefish off the east coast of the United States. The intent of the specifications is to conserve and manage the bluefish resource and provide for sustainable fisheries.

DATES: Effective September 7, 2004, through December 31, 2004.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and Essential Fish Habitat Assessment (EFHA) are available from: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA/EFHA are accessible via the Internet at <http://www.nero.nmfs.gov>.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 978–281–9104, fax 978–281–9135, e-mail [myles.a.raizin@noaa.gov](mailto:myles.a.raizin@noaa.gov).

SUPPLEMENTARY INFORMATION: Regulations implementing the FMP