

18-24 inches of exposed rope between the poles to be used as a working surface to capture and secure the flipper. Knot the line at the ends of both poles to prevent line slippage if they are not otherwise secured. The remaining line is used to tether the apparatus to the boat unless an additional tag line is used. Two lengths of sunlight resistant 3/4-inch schedule 40 PVC electrical conduit, fiberglass, aluminum, or similar material should be used to construct the apparatus with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 feet (1.83 m), whichever is greater.

(ii) * * *

(A) Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(A) through (D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought onboard. Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(E) through (M) of this section, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought onboard, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraph (a)(3) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1) of this title.

* * * * *

(C) * * *

(1) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured with an approved turtle control device from the list specified in paragraph (c)(2)(v)(D) of this section. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using a line cutter as required by paragraph (c)(5)(i) of this section. If the hook can be removed, it must be removed using a long-handled dehooker as required by paragraph (c)(5)(i) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its

release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title for additional information.

* * * * *

(iii) * * *

(C) * * *

(3) If green-stick gear, as defined at § 635.2, is onboard, a vessel may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. J-hooks used with green-stick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook. If green-stick gear is onboard, artificial bait may be possessed, but used only with green-stick gear.

* * * * *

(e) * * *

(1) * * *

(ii) *Charter/Headboat*. Rod and reel (including downriggers), bandit gear, handline, and green-stick gear are authorized for all recreational and commercial Atlantic tuna fisheries. Speargun is authorized for recreational Atlantic BAYS tuna fisheries only.

(iii) *General*. Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick.

* * * * *

(v) *Longline*. Longline and green-stick.

* * * * *

(g) *Green-stick gear*. Green-stick gear may only be utilized when fishing from vessels issued a valid Atlantic Tunas General, HMS Charter/Headboat, or Atlantic Tunas Longline category permit. The gear must be attached to the vessel, actively trolled with the mainline at or above the water's surface, and may not be deployed with more than 10 hooks or gangions attached.

- 6. In § 635.71:
- a. Paragraph (a)(23) is revised.
- b. Paragraphs (b)(36) through (40) are added.

The revision and additions read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(23) Fail to comply with the restrictions on use of pelagic longline, bottom longline, gillnet, buoy gear, speargun gear, or green-stick gear as specified in § 635.21(c), (d), (e)(1), (e)(3), (e)(4), (f), or (g).

* * * * *

(b) * * *

(36) Possess J-hooks onboard a vessel that has pelagic longline gear onboard, and that has been issued, or is 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, except when green-stick gear is onboard, as specified at § 635.21(c)(2)(v)(A) and (c)(5)(iii)(C)(3).

(37) Use or deploy J-hooks with pelagic longline gear from a vessel that has been issued, or is 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.

(38) Possess more than 20 J-hooks onboard a vessel that has been issued, or is 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, when possessing onboard both pelagic longline gear, as described at § 635.21(c), and green-stick gear as defined at § 635.2.

(39) Use or deploy more than 10 hooks at one time on any individual green-stick gear.

(40) Possess, use, or deploy J-hooks smaller than 1.5 inch (38.1 mm), when measured in a straight line over the longest distance from the eye to any other part of the hook, when fishing with or possessing green-stick gear onboard a vessel that has been issued, or is 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.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070817467-81179-04]

RIN 0648-AV90

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 19; Correcting Amendment

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

ACTION: Final rule.

SUMMARY: NMFS is correcting regulatory text implementing measures that were

approved as part of Framework Adjustment 19 (Framework 19) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed by the New England Fishery Management Council (Council). This correction specifies the September 1 through October 1 Elephant Trunk Sea Scallop Access Area (ETAA) seasonal closure, which was inadvertently removed from the regulations in the final rule for Framework 19. This rule also corrects an incorrect reference to the Nantucket Lightship Access Area included in the regulations for the ETAA, and includes the total allowable catch (TAC) values.

DATES: Effective September 23, 2008.

ADDRESSES: An environmental assessment (EA) was prepared for Framework 19 that describes the action and other alternatives considered, and provides a thorough analysis of the impacts of the measures and alternatives. Copies of Framework 19, the EA, and Initial Regulatory Flexibility Analysis are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The final rule for Framework 19 includes the Final Regulatory Flexibility Analysis.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, 978-281-9288; fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

The final rule for Framework 19 to the FMP was published on May 29, 2008, (73 FR 30790). The preamble text explained that NMFS was maintaining the September 1 through October 31 ETAA seasonal closure to provide protection for sea turtles during that period in the ETAA. However, in the instructions for amending § 648.59, which included the seasonal closure, the Framework 19 final rule stated that the paragraph that implemented the closure (§ 648.59(e)(3)) was to be "removed and reserved." This instruction was inadvertent and, as a result, the regulations effective July 1, 2008, did not include the seasonal closure.

This final rule also corrects a mistaken reference to the Nantucket Lightship Access Area that was included in the ETAA regulations and provides the TAC specifications for limited access general category vessels fishing in the ETAA. The regulations in § 648.59(e)(4)(ii), that became effective on June 1 in the Framework 19 final rule, included the TACs for general

category vessels fishing in the ETAA prior to the effective date of the LAGC permit requirements on July 1, 2008, but omitted the TAC values for LAGC scallop vessels.

In Framework 19, the Council recommended elimination of the ETAA seasonal closure. The proposed rule for Framework 19 described NMFS's disapproval of the elimination of the ETAA seasonal closure and maintained the seasonal closure in the proposed regulations for public comment. The disapproval of the Council's recommendation to eliminate the ETAA seasonal closure was the subject of public comments on the Framework 19 proposed rule. NMFS has already responded to comments in the Framework 19 final rule. The seasonal closure has been in effect since the ETAA opened in 2007. The change of the reference in § 648.59(e)(4)(ii)(A) from the Nantucket Lightship Access Area to the ETAA and the inclusion of the TAC in that paragraph do not change the measures included in the Framework 19 final rule and are for clarification only. Therefore, the correction does not change the operating practices of the fishery.

Classification

NMFS has determined that this correcting amendment is necessary for the conservation and management of the Atlantic sea scallop fishery and is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule corrects regulations implemented as part of Framework 19, which was determined to be not significant for purposes of Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause Pursuant to 5 U.S.C.553(b)(B) to waive prior notice and an opportunity for public comment on this action, as notice and comment would be contrary to the public interest. The opportunity for public comment on the ETAA seasonal closure was provided through the proposed rule for Framework 19. Allowing for public comment would give the impression that the ETAA seasonal closure is subject to review and approval by NMFS, despite NMFS having already decided to disapprove the Council's recommendation to remove the seasonal closure and leave the ETAA seasonal closure in place. This would be contrary to public interest as it would generate confusion with respect to the rulemaking process for Framework 19. The AA further finds pursuant to 5 U.S.C. 553(d)(3) good cause to waive the thirty-day delayed effectiveness period. NMFS was only

recently made aware of the inconsistency between the Framework 19 preamble and the regulations that became effective on July 1, 2008, and the closure under this correction began on September 1, 2008. This closure is important for the protection of sea turtles listed under the Endangered Species Act. Sea turtles are present in the Mid-Atlantic region, including the ETAA, from May through November. The ETAA seasonal closure reduces the potential for interactions between the scallop fishery and turtles from interactions with fishing gear by prohibiting scallop fishing in the area during September and October, when takes have been observed. A delay in the effectiveness of this reinstatement of the closure provision will increase the likelihood of injurious interactions between turtles and scallop fishing gear.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: September 17, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, 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 § 648.59, paragraph (e)(3) is added and paragraph (e)(4)(ii)(A) is revised to read as follows:

§ 648.59 Sea Scallop Access Areas.

* * * * *

(e) * * *

(3) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Elephant Trunk Sea Scallop Access Area, described in paragraph (e)(2) of this section, from September 1 through October 31 of each year the Elephant Trunk Access Area is open to scallop fishing as a Sea Scallop Access Area, unless transiting pursuant to paragraph (f) of this section.

(4) * * *

(ii) *LAGC scallop vessels.* (A) The percentage of the Elephant Trunk Access Area TAC to be allocated to

LAGC scallop vessels shall be specified in this paragraph (e)(4)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (e)(4)(ii)(B) of this section. LAGC vessels shall be allocated 1,067,000 lb (484 mt) in fishing year 2008, which is 5 percent of the 2008 Elephant Trunk Access Area TAC. LAGC vessels shall be allocated 785,700 lb (356 mt) in fishing year 2009, which is 5 percent of the 2009 Elephant Trunk Access Area TAC. The 2009 general category TAC may be reduced per § 648.60(a)(3)(i)(E)(2).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 080326475-8686-02]

RIN 0648-XK61

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific sardine. This action is necessary because the directed harvest allocation total for the third allocation period (September 15 - December 31) is projected to be reached. From the date of closure until the new fishing season begins on January 1, 2009, Pacific sardine may only be harvested incidental to other fisheries, with incidental harvest constrained by a 20-percent by weight incidental catch rate. Fishing vessels must be in the process of offloading at the time of closure.

DATES: Effective 12:01 am Pacific Standard Time September 23, 2008, through January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). Annual specifications published in the Federal

Register establish the total harvest guideline (HG) and allowable harvest levels for each Pacific sardine fishing season (January 1 - December 31). The total HG for the 2008 Pacific sardine fishing season (January 1, 2008 - December 31, 2008) is 89,093 mt and is divided into a directed harvest fishery of 80,184 mt and an incidental fishery of 8,909 mt. These directed and incidental harvest amounts are subdivided throughout the year in the following way: January 1-June 30, 26,550 mt is allocated for directed harvest with an incidental set-aside of 4,633 mt; July 1-September 14, 34,568 mt plus any portion not harvested from the initial allocation is allocated for directed harvest with an incidental set-aside of 1,069 mt; September 15-December 31, 19,066 mt plus any portion not harvested from earlier allocations is allocated for directed harvest with an incidental set-aside of 3,207 mt (73 FR 30811, May 29, 2008).

If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, only incidental harvest is allowed and, for the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. The incidental fishery will also be constrained to a 20-percent by weight incidental catch rate when Pacific sardine are landed with other CPS to minimize targeting of Pacific sardine and to maximize landings of harvestable stocks. In the event that an incidental set-aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period via appropriate rulemaking. If the set-aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period will be automatically adjusted to account for the discrepancy.

Under 50 CFR 660.509 if the total HG or these apportionment levels for Pacific sardine are reached at any time, NMFS is required to close the Pacific sardine fishery via appropriate rulemaking and it is to remain closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. In accordance with § 660.509 the Regional Administrator shall publish a notice in the Federal Register the date of the closure of the directed fishery for Pacific sardine.

The above in-season harvest restrictions are not intended to affect the prosecution the live bait portion of the Pacific sardine fishery.

Classification

This action is required by 50 CFR 660.509 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the closure of the September 15 - December 31 directed harvest of Pacific sardine. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. This measure responds to the best available information and is necessary for the conservation and management of the Pacific sardine resource. A delay in effectiveness would cause the fishery to exceed the in-season harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel.

Many of the same fishermen who harvest Pacific sardine rely on these other fisheries for a significant portion of their income.

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

Dated: September 18, 2008.

Alan D. Risenhoover,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673-8011-02]

RIN 0648-XK62

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Pot Catcher Processors in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.