



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 140930815-4916-01]

RIN 0648-BE54

Highly Migratory Species; Technical Amendment to Regulations

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

ACTION: Final rule; technical amendments.

SUMMARY: NMFS is hereby making technical amendments to our regulations without altering the substance of the regulations. These changes will make our rules more internally consistent and easier to use. As a result of reorganizing 50 CFR part 622 in a previously published final rule (September 19, 2013), two cross-references in 50 CFR part 635 are no longer accurate. This final rule only corrects the outdated cross-references. The rule does not make any substantive change to the regulations governing Atlantic Highly Migratory Species (HMS) or to species managed by NMFS' Southeast Regional Office (SERO).

DATES: This final rule is effective on [insert date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of other documents relevant to this rule are available from the Highly Migratory Species Management Division website at <http://www.nmfs.noaa.gov/sfa/hms/> or upon request from the Atlantic HMS Management Division at 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Rick Pearson at 727-824-5399.

SUPPLEMENTARY INFORMATION: Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary of Commerce to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NMFS published in the Federal Register (64 FR 29090) regulations implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). On October 2, 2006, NMFS published in the Federal Register (71 FR 58058) regulations implementing the 2006 Consolidated Highly Migratory Species (HMS) FMP, which details the management measures for Atlantic HMS fisheries. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Background

These technical amendments are issued under 50 CFR part 635, entitled “Atlantic Highly Migratory Species.” Currently, the regulations at 50 CFR part 635 contain cross-references to several restricted fishing areas that are described in 50 CFR part 622, entitled “Fisheries of the Caribbean, Gulf, and South Atlantic.” The cross-references in 50 CFR part 635 ensure consistency with the regulations at 50 CFR part 622 to protect certain reef species and/or habitat managed by the Caribbean, South Atlantic, and Gulf of Mexico Fishery Management Councils. For example, some areas have been closed to bottom longline gear for reef fish permit holders through the 50 CFR part 622 regulations for the Caribbean, Gulf, and South Atlantic. NMFS through rulemaking enacted complementary regulations to prohibit bottom longline gear in these same areas by HMS permit holders to implement the closures more effectively.

On April 17, 2013, NMFS published an interim final rule (78 FR 22950) to reorganize the regulations implementing fishery management plans developed by the Caribbean, South Atlantic, and Gulf of Mexico Fishery Management Councils. The interim final rule did not create any new obligations, but reorganized the existing regulatory requirements in the Code of Federal Regulations in a more logical format; *i.e.*, by fishery, so that the public could locate regulatory requirements more easily. The final rule was published on September 19, 2013 (78 FR 57534). As a result of reorganizing 50 CFR part 622, two cross-references in 50 CFR part 635 are no longer accurate. With reorganization and changes in references to the 50 CFR part 622 regulations, parallel changes are now needed in the HMS regulations at 50 CFR part 635. This technical amendment would only correct the outdated cross-references. No other changes are being considered or implemented.

Corrections

Currently, the regulations at § 635.21(a)(4)(i) contain a cross-reference to areas designated at § 622.34(d), the Tortugas marine reserves habitat area of particular concern (HAPC). This final rule corrects the cross-reference to indicate the same areas, which are now designated at § 622.74(c), and specifies the name of the areas as the “Tortugas marine reserves HAPC.”

The regulations at § 635.21(d)(1)(ii) currently contain a cross-reference to areas designated at § 622.33(a)(1) through (3), the Mutton snapper spawning aggregation area, the Red hind spawning aggregation areas, and the Grammanik Bank closed area. This final rule corrects the cross-reference to indicate the same areas, which are now designated at § 622.435(a)(2)(i) through (iii).

Classification

The NMFS Assistant Administrator (AA) has determined that this final rule is necessary for the conservation and management of U.S. Caribbean and Gulf of Mexico fisheries and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, ATCA, and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to the public interest. This is a non-discretionary, technical amendment that must be implemented to reduce confusion by updating the regulations at 50 CFR part 635 which reference 50 CFR part 622. This final rule implements only corrective, non-substantive changes and will not result in any change in fishing activity. It is solely administrative in nature.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for this non-substantive rule. The basis for this waiver is the need to implement the action in a timely manner to correct outdated cross-references to other regulations. Any delay in implementation would result in the continuation of incorrect cross-references in the regulations at 50 CFR part 635. This would create confusion, for example, because the current regulation at § 635.21(a)(4)(i) incorrectly prohibits fishing for HMS, or anchoring a vessel, in an area that is closed seasonally to recreational fishing for shallow water grouper, rather than in the area originally identified as the Tortugas marine reserves HAPC, prior to reorganization of the regulations at 50 CFR part 622 in September 2013. Similarly, the current regulation at § 635.21(d)(1)(ii) prohibits HMS-permitted vessels with bottom longline gear on board from deploying any fishing gear year-round in areas incorrectly identified in a paragraph in 50 CFR

part 622, which does not describe any areas.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this 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.

NMFS has determined that fishing activities conducted pursuant to this rule will not affect endangered and/or threatened species or critical habitat under the Endangered Species Act, or marine mammals because the action will not result in any change or increase in fishing activity, and is solely administrative in nature.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels.

Dated: November 6, 2014

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 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. In § 635.21, revise paragraphs (a)(4)(i) and (d)(1)(ii) to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(a) * * *

(4) * * *

(i) No person may fish for, catch, possess, or retain any Atlantic highly migratory species or anchor a fishing vessel that has been issued a permit or is required to be permitted under this part, in the Tortugas marine reserves HAPC designated at §622.74(c) of this chapter.

* * * * *

(d) * * *

(1) * * *

(ii) The areas designated at §622.435(a)(2)(i) through (iii) of this chapter, year-round; and

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