



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 150727647-5877-01]**

**RIN 0648-BF30**

**Atlantic 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 the regulations for Atlantic highly migratory species —specifically, to several restricted fishing areas—without altering the substance of the regulations. Also, this action re-inserts the longstanding statutorily required limit on length of gillnets that was erroneously removed from the regulations in late 2012, and corrects the end date of the Spring Gulf of Mexico gear restricted areas from May 30 to May 31. These changes will make the cross-references in regulations accurate, the gillnet length limit consistent with statutory requirements, and the dates on restrictions consistent with the supporting analyses and management goals. The rule is administrative in nature and does not make any change with substantive effect to the regulations governing Atlantic highly migratory species (HMS) fisheries.

**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 HMS 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:** Andrew Rubin or Karyl Brewster-Geisz by phone at 301-427-8503.

**SUPPLEMENTARY INFORMATION:** Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*, (ATCA). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary of Commerce to the NOAA Assistant Administrator for Fisheries (AA). On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) regulations implementing the Fishery Management Plan (FMP) 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 HMS FMP, which details the management measures for Atlantic HMS fisheries. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

## **Background**

The regulations at 50 CFR part 635 contain cross-references to several restricted fishing areas described in 50 CFR part 622. 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 and Gulf of Mexico Fishery Management Councils. With the reorganization of the 50 CFR part 635 regulations due to the final rule for Amendment 7 to the 2006 Consolidated HMS FMP (79 FR 71509, December 2, 2014), the cross-references to the Tortugas marine

reserve habitat area of particular concern (HAPC), the Mutton snapper spawning aggregation area (SAA), the Red hind SAA, and the Grammanik Bank closed areas were mistakenly overwritten. This technical amendment corrects the cross-references in the HMS regulations.

A longstanding statutory limit on the length of gillnet gear (see 16 U.S.C. 1857(1)(M)) was erroneously removed from the regulations in 2012. This technical amendment re-inserts the language to the regulations to ensure consistency with the statutory requirements.

The regulatory end date of the Spring Gulf of Mexico gear restricted areas in § 635.21(c)(2)(vi) was mistakenly written as “May 30” when it should be on the last day of the month, “May 31.” This technical amendment changes the date to be consistent with the original analyses, outreach, and supporting documents of this regulation and to meet management goals appropriately. As the correct date was analyzed as part of the preferred alternative in the Final Environmental Impact Statement for Amendment 7 to the 2006 Consolidated HMS FMP, this modification to the regulations should not be unexpected and will not have any impacts beyond those already considered.

### **Corrections**

Currently, the regulations in § 635.21(a)(3)(i) cross-reference § 622.34(a)(3) only. This final action corrects the cross-reference by adding a cross-reference to § 622.74(c), which is missing, in order to properly include and specify the boundaries of the “Tortugas marine reserve HAPC.”

Currently, the regulatory end date of the Spring Gulf of Mexico gear restricted areas in § 635.21(c)(2)(vi) is written as “May 30.” This final rule corrects the date and changes it to “May 31.”

Currently, the regulations at § 635.21(d)(1)(ii) contain a cross-reference to areas designated at § 622.33(a)(1) through (3) to indicate the Mutton snapper spawning aggregation area (SAA), the Red hind SAA, and the Grammanik Bank closed area. This final action corrects the cross-reference in § 635.21(d)(1)(ii) by changing it from § 622.33(a)(1) through (3) to § 622.435(a)(2)(i) through (iii).

Currently, the regulations at § 635.21(g) do not contain the statutorily-required regulatory limits on the length of gillnet for persons fishing for sharks. This final rule inserts the language that was removed regarding the length restriction of gillnets into the regulations at § 635.21(g)(4) into the regulations.

### **Classification**

The AA has determined that this final rule is necessary for the conservation and management of U.S. fisheries and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, and ATCA.

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 are unnecessary and contrary to the public interest. This final rule adds only corrective, non-substantive changes to correct cross-references, re-inserts language, and corrects dates to HMS regulations and is solely administrative in nature. These changes should not be unexpected. None of these changes will have a substantive impact beyond those already considered in previous supporting documents. There is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. The basis for this waiver is that it not a substantive rule but, rather, corrects cross-references, re-inserts regulatory language, and corrects a mistaken date in HMS regulations. Furthermore,

failure to implement this rule immediately would cause continued confusion among the regulated community.

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 listed under the Endangered Species Act, or marine mammals protected by the Marine Mammal Protection Act 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, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties

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

Dated: September 30, 2015

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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)(3)(i), (c)(2)(vi), (d)(1)(ii), and add paragraph (g)(4) to read as follows:

**§ 635.21 Gear operation, restricted areas and deployment restrictions.**

(a) \* \* \*

(3) \* \* \*

(i) No person may fish for, catch, possess, or retain any Atlantic HMS or anchor a fishing vessel that has been issued a permit or is required to be permitted under this part, in the areas and seasons designated at § 622.34(a)(3) of this chapter, and in the Tortugas marine reserves HAPC designated at § 622.74(c) of this chapter.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(vi) In the Spring Gulf of Mexico gear restricted area from April 1 through May 31 each year;

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

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

and

\* \* \* \* \*

(g) \* \* \*

(4) No person may fish for sharks with a gillnet with a total length of 2.5 km or more. No vessel may have on board a gillnet with a total length of 2.5 km or more.

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