

species permit requirements in 50 CFR part 222, apply to the application, issuance, modification, revocation, suspension, and amendment of an incidental take permit for threatened, as well as for endangered sea turtles.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This requirement has been approved previously by the Office of Management and Budget (OMB) (OMB Control Number 0648-0230). The reporting burden for this collection is estimated to average approximately 80 hours for permit applications, 0.5 hours for certificate of inclusion applications and 0.5 hours for reports. These estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service (F/PR), 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503 (Attn: PRA Project 0648-0230).

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have significant economic impact on a substantial number of small entities because the final rule establishes a discretionary permitting procedure that will, by itself, have no economic impact. As a result, a regulatory flexibility analysis was not prepared.

The AA prepared an EA for the proposed rule that concludes that the rule would have no significant impact on the human environment. A copy of the EA is available (see ADDRESSES) and comments on it are requested.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: February 10, 1995.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72, paragraph (e)(1) introductory text is revised and paragraph (e)(7) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * * (1) *General.* The prohibitions against taking in § 227.71(a) do not apply to the incidental take of any member of any species of sea turtle listed in § 227.4 (i.e., a take not directed toward such member) during fishing or scientific research activities, to the extent that those involved are in compliance with the requirements of paragraphs (e)(1), (2), (3), and (6) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (e)(7) of this section.

* * * * *

(7) *Incidental-take permits.* The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited in § 227.71(a) of this chapter in accordance with section 10(a)(1)(B) of the Act (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to, the provisions of parts 220 and 222 of this chapter. Such permits may be issued for the incidental taking of both endangered and threatened species of sea turtles. This section supersedes restrictions on the scope of parts 220 and 222, including, but not limited to, the restrictions specified in §§ 220.3, 222.1, 222.2(a) and 222.22(a).

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[FR Doc. 95-3816 Filed 2-15-95; 8:45 am]

BILLING CODE 3510-22-F

50 CFR Part 625

[Docket No. 950206038-5038-01; I.D. #103194A]

RIN 0648-XX04

Summer Flounder Fishery; Final Specifications for 1995

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

ACTION: Final specifications for the 1995 summer flounder fishery.

SUMMARY: NMFS issues the final specifications for the 1995 summer flounder fishery, which include

commercial catch quotas and mesh size requirements. The intent of this document is to comply with implementing regulations for the fishery that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of the summer flounder resource. In order to comply with an Order issued by the U.S. District Court for the Eastern District of Virginia, this document adds 3.05 million lb (1.4 million kg) to the final commercial catch quota established under the implementing regulations.

EFFECTIVE DATE: February 10, 1995.

ADDRESSES: Copies of the Environmental Assessment and supporting documents used by the Monitoring Committee are available from: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508-281-9101.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Summer Flounder Fishery (FMP) was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. Implementing regulations for the fishery are found at 50 CFR part 625.

Section 625.20 specifies the process for setting annual management measures for the summer flounder fishery. Pursuant to § 625.20, the Director, Northeast Region, NMFS, implements certain measures for the fishing year to ensure achievement of the appropriate fishing mortality rate. These measures include the following, which, with the exception of measure (1) below, are unchanged from the proposed 1995 specifications that were published in the **Federal Register** on December 2, 1994 (59 FR 61864); note that all quota figures are rounded for the convenience of the reader: (1) A coastwide commercial quota of 14.7 million lb (6.7 million kg); (2) a coastwide recreational harvest limit of 7.8 million lb (3.5 million kg); (3) no change from the present minimum commercial fish size of 13 inches (33 cm); and (4) no change in the present minimum mesh restriction of 5.5-inch (14.0 cm) diamond or 6-inch (15.2 cm) square.

Commercial Quota

The final 1995 coastwide commercial quota is changed from the amount (11.6 million lb; 5.3 million kg) contained in the proposed specifications. In order to comply with a court order issued on December 19, 1994, by the U.S. District Court for the Eastern District of Virginia, NMFS announces that an additional

3.05 million lb (1.4 million kg) are added to the commercial quota. The resulting 1995 coastwide commercial quota is 14.7 million lb (6.7 million kg).

The commercial coastwide quota is allocated among the states based on historic catch shares specified in the regulations. Table 1 presents the 1995 commercial quota (14,690,407 lb;

6,663,569 kg) apportioned among the states according to the percentage shares specified in § 625.20(d)(1). These state allocations do not reflect the adjustments required under § 625.20, if 1994 landings exceed the quota for any state. A notification of allocation adjustment will be published in the **Federal Register** if such an adjustment is necessary.

TABLE 1.—1995 STATE COMMERCIAL QUOTAS

State	Share (per- cent)	1995 quota	
		(lb)	(kg)
ME	0.04756	6,987	3,169
NH	0.00046	67	30
MA	6.82046	1,001,953	454,478
RI	15.68298	2,303,894	1,045,029
CT	2.25708	331,574	150,399
NY	7.64699	1,123,374	509,554
NJ	16.72499	2,456,969	1,114,462
DE	0.01779	2,614	1,186
MD	2.03910	299,551	135,874
VA	21.31676	3,131,519	1,420,433
NC	27.44584	4,031,905	1,828,841

Recreational catch data for 1994 are not yet available. The Council and ASMFC will consider modifications to the recreational possession limit and recreational season after a review of that information.

Comments and Responses

Twenty-nine comments were received concerning the proposed 1995 specifications from individuals, owners and employees of fishing businesses, Congressional representatives, the Council and industry organizations. One comment submitted by a fishing business was presented as a statement on behalf of 100 individuals associated with the business. The Council expressed concern that the recommended total catch may be too high. Twenty-eight of the commenters opposed the proposed commercial quota level, though their suggested alternatives varied. A few commenters suggested a less restrictive minimum-mesh requirement.

Comment: The Council notes the concern expressed by NMFS in the proposed rule that the recommended quota may not reasonably assure that the target fishing mortality rate will be achieved in 1995. The Council acknowledges that the recommended quota may be too high and states that the court order may negatively impact the likelihood of attaining the mortality target. The Council is also concerned that, if the fishery exceeds the target in 1995, it will reduce the allowable catch in 1996, when the target mortality rate

is lowered by the FMP. The Council urges NMFS to take appropriate action to ensure that the mortality target is met in 1995.

Response: NMFS acknowledges that the 1995 catch limit may not assure attainment of the target fishing mortality rate. However, under the terms of the court order, NMFS must judge the Council's recommended quota independent of the court-ordered addition. The Council's recommended quota has a 50 percent probability of achieving the target fishing mortality rate, but the FMP does not provide a basis for setting the catch limit to achieve any particular level of probability of meeting or exceeding the target fishing mortality rate. NMFS will take whatever appropriate actions remain to contain mortality in the summer flounder fishery (e.g., work closely with the states to monitor landings accurately and enforce closures after quotas are attained).

Comment: Twenty-eight of the commenters believe that the proposed commercial quota level is too low, for a variety of reasons. They propose alternate commercial quotas that range from the 1993 quota level of 12.35 million lb (5.6 million kg) to 20 million lb (9.1 million kg). Many believe that there will be harmful economic impacts if the commercial quota is reduced from the 1994 level. Several believe that summer flounder stock abundance is underestimated and that NMFS is being overly cautious at the expense of the industry. The commenters give various

examples to demonstrate that stock abundance is underestimated, including that more large fish are being landed than in the past, state quotas are filled quickly, and the most recent North Carolina trawl survey indicates a good 1994 year class.

Response: The quota has been raised for the reason noted above. NMFS strongly believes that the stock abundance estimate produced by the most recent assessment represents the best available scientific information on the stock as a whole. However, NMFS expects that the initial signs of stock rebuilding (e.g., more larger fish, increased abundance) may first be observed by harvesters. NMFS commits substantial resources toward collecting and compiling such observations from harvesters through biological sampling, interviews with captains, vessel logbooks and other methods. Once compiled throughout the range of the resource, quantifiable data on increased fish sizes and indicators of abundance are considered in the stock assessment. The observations that industry members make in 1994 will begin to be evaluated by scientists in 1995. It is important that all observations are brought together during the stock assessment process.

NMFS, the Council and the ASMFC are committed to building upon indications of positive change, such as those observed by the commenters, to the point where a healthy stock is reestablished. For example, while the results of the North Carolina trawl survey were not available in time to be

incorporated into the assessment itself, those results were factored into the quota recommendation made by the Council and ASMFC. However, despite some localized improvements, the stock as a whole continues to decline. Therefore, NMFS does not agree that the commercial quota should be increased in 1995 above the level specified herein. Furthermore, NMFS believes that continued stock decline will result in more serious and comprehensive adverse economic consequences than the reduction in the quota from 1994 levels to 1995 levels.

Comment: One industry group reminds NMFS that the recent court decision holds that the requirement to use the best scientific information available is best met by utilizing the stock projection based on the mean estimate of recruitment and the number of age-1 fish.

Response: NMFS interprets this comment to mean that the proposed quota level is appropriate because it is based on the stock projection that assumed mean recruitment and number of age-1 fish.

Comment: Several commenters express support for a change from the current minimum mesh size of 5.5-inch (14 cm) diamond, 6-inch (15.2 cm) square. They support a minimum mesh size of 5-inch (12.7 cm) diamond or 5.5-inch (14.0 cm) square mesh, because they believe that 50 percent of 13-inch (33-cm) fish escape from nets under the current requirement.

Response: NMFS data show that more than 50 percent of the 13-inch (33-cm) fish will escape. However, it is the intent of the Council that both the commercial and recreational fisheries should target fish greater than or equal to 14 inches (35.5 cm) in length. This is the required, minimum size in the recreational fishery. The Council established a minimum size of 13 inches (33 cm) in the commercial fishery to allow fish of that size to be kept in order to minimize the discard mortality in the fishery. The minimum-mesh size

selected is intended to result in a catch primarily composed of fish of 14 inches (35.5 cm) or more in size.

Classification

This action is authorized by 50 CFR part 625.

These final specifications are exempt from review under E.O. 12866.

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

Dated: February 10, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95-3815 Filed 2-10-95; 4:06 pm]

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50 CFR Part 675

[Docket No. 950206040-5040-01; I.D. 021095A]

Groundfish of the Bering Sea and Aleutian Islands Area; Atka Mackerel in the Eastern Aleutian District and Bering Sea; Prohibit Retention of Atka Mackerel

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting the retention for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of Atka mackerel in these areas be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Atka mackerel total allowable catch (TAC) in the Eastern Aleutian District and the Bering Sea subarea in the BSAI has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 10, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the TAC for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea was established by the final groundfish specifications published February 14, 1995, as 11,475 metric tons (mt).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the Atka mackerel TAC in the Eastern Aleutian District and Bering Sea subarea has been reached. Therefore, NMFS is requiring that further catches of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea be treated as prohibited species in accordance with § 675.20(c)(3), and is prohibiting their retention effective from 12 noon, A.l.t., February 10, 1995, until 12 midnight, A.l.t., December 31, 1995.

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

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

Dated: February 10, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

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