

**DATES:** This correction is effective on September 15, 2008.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Hollingshead, NMFS, at 301-713-2289, ext 128.

**SUPPLEMENTARY INFORMATION:** The final rule that is the subject of this correction was published on Thursday, June 19, 2008 (73 FR 34875). That final rule contains an inadvertent error in the amendatory instruction concerning the removal of subpart R in 50 CFR part 216.

Subpart R governs the taking of marine mammals incidental to construction and operation of offshore oil and gas facilities in the Beaufort Sea. That rule was published in the **Federal Register** on March 7, 2006 (71 FR 11322), became effective on April 6, 2006, and remains in effect until April 6, 2011. The instruction that it should be "added and reserved" is in error because Subpart R exists, and will remain in effect until April 6, 2011. In addition, the amendatory instruction is not an allowable instruction under **Federal Register** format rules. Therefore, this rule removes this instruction as it is confusing to the public and is an action that was not intended by NMFS.

#### Classification

*E.O. 12866:* This final rule has been determined to be not significant under E.O. 12866.

*Administrative Procedure Act (APA):* The Assistant Administrator (AA) for Fisheries finds good cause under 5 U.S.C. 553 (b)(B) to waive notice and opportunity for public comments as it is contrary to the public interest. The final rule published on Thursday, June 19, 2008 (73 FR 34875) contained an inadvertent error in the amendatory instruction concerning the removal of subpart R in 50 CFR part 216. The amendatory instruction concerning the removal of subpart R in Part 216 indicated that this subpart should be "added and reserved," which was an action that was not intended by NMFS, and is not an allowable instruction under **Federal Register** format rules. As reflected in the rule that implemented the provisions of subpart R (March 7, 2006, 71 FR 11322), NMFS intended these regulations to remain in effect until April 6, 2011. In order to comply with **Federal Register** format rules and to avoid any confusion, this rule amends the June 19, 2008 final rule to delete the amendatory instruction concerning subpart R.

The AA finds good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness. As stated above, NMFS

included a confusing and unallowable **Federal Register** instruction concerning subpart R in the June 19, 2008 final rule. As stated in its March 7, 2006 rule, NMFS intended subpart R to remain in effect until April 6, 2011. In order to prevent further confusion regarding the status of subpart R, the AA makes this rule effective immediately.

#### Correction

The following is a correction to FR Doc. E8-13898, June 19, 2008:

- 1. On page 34889 in the third column, Instruction 2, reading "Subpart R is added and reserved." is hereby removed.
- 2. On page 34889 in the third column, Instruction 3 is hereby redesignated as Instruction 2.

Dated: September 8, 2008.

#### Samuel D. Rauch III,

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. E8-21479 Filed 9-12-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 071004577-8124-02]

RIN 0648-XJ76

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Inseason Action to allow use of the Ruhle Trawl in the Eastern U.S./Canada Area

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

**ACTION:** Temporary rule; gear restriction.

**SUMMARY:** NMFS announces that the Administrator, Northeast (NE) Region, NMFS (Regional Administrator) has authorized the use of an additional type of fishing gear for use by vessels fishing under a Northeast (NE) multispecies Category A Day-at-Sea (DAS) in the Eastern U.S./Canada Area. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) and is intended to prevent under-harvesting of the Total Allowable Catch (TAC) for Eastern Georges Bank (GB) haddock while ensuring that the TAC of Eastern GB cod and GB yellowtail flounder will not be exceeded during the 2008 fishing year (FY). This action

is being taken to provide additional opportunities for vessels to fully harvest the Eastern GB haddock TAC under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective September 15, 2008, through April 30, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Douglas Potts, Fishery Policy Analyst, (978) 281-9341.

**SUPPLEMENTARY INFORMATION:** On July 14, 2008, NMFS published a final rule in the **Federal Register** (73 FR 40186) approving the use of the Haddock Rope Trawl by vessels participating in either the Regular B-DAS Program or the Eastern U.S./Canada Haddock Special Access Program (SAP). A subsequent rule (73 FR 52214) renamed the Haddock Rope Trawl the "Ruhle Trawl" in honor of the late Captain Phil Ruhle, Sr., who was instrumental in its development.

Under the regulations implementing Amendment 13 to the NE Multispecies FMP, vessels fishing with trawl gear in the Eastern U.S./Canada Area must fish with either a haddock separator trawl, a flounder trawl net, or other gear approved by the Regional Administrator. The regulations at § 648.85(a)(3)(iv)(D) allow the Regional Administrator to modify these gear requirements through an in-season action in order to prevent over-harvesting or to facilitate achieving the TAC. This action approves the use of the Ruhle Trawl as a third authorized gear type for the remainder of FY 2008.

In each of the last 3 years, the Eastern U.S./Canada Area has been closed before the end of the fishing year because the TAC of either Eastern GB cod or GB yellowtail flounder had been harvested. During that period, the harvest of Eastern GB haddock has not exceeded 10 percent of the TAC. Based on current rates of harvest, a similar under-harvest of Eastern GB haddock appears likely in FY 2008. Scientific studies have demonstrated that the Ruhle Trawl is able to reduce bycatch of cod and yellowtail flounder while targeting haddock at least as effectively as the haddock separator trawl, and better than the flounder trawl net. Allowing the use of the Ruhle Trawl in the Eastern U.S./Canada Area is expected to increase landings of Eastern GB haddock, reduce discards of Eastern GB cod and GB yellowtail flounder by vessels targeting GB haddock, and result in the achievement of the Eastern GB haddock TAC during the fishing year, without exceeding it.

To encourage the use of this gear in the most selective manner, vessels

fishing with the Ruhle Trawl under a Category A DAS in the Eastern U.S./Canada Area are subject to the same gear performance incentives (i.e., bycatch possession restrictions) that currently apply to vessels fishing with the haddock separator trawl. The performance incentives limit possession of flounders (all species combined), monkfish, and skates to 500 lb (226.8 kg) (whole weight) each (i.e., no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and prohibits possession of lobsters. Possession limits for other species are the same as those for any vessel fishing under an A DAS in the Eastern U.S./Canada Area.

### Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because prior notice and comment and a delayed effectiveness would be impracticable and contrary to the public interest. This action would allow fishermen additional flexibility by authorizing an additional gear type for all NE multispecies DAS vessels using trawl gear in the Eastern U.S./Canada Area through April 30, 2009, to facilitate the harvest of the TAC for Eastern GB haddock while ensuring that the TAC will not be exceeded during FY 2008. This will likely result in increased harvest of Eastern GB haddock, decreased regulatory discards of Eastern GB cod and GB yellowtail flounder by vessels targeting Eastern GB haddock, increased revenue for the NE multispecies fishery, and an increased chance of achieving optimum yield (OY) in the groundfish fishery.

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to facilitate achieving the U.S./Canada Area TACs. It is important to take this action immediately because the current restrictive gear requirements have prevented the NE multispecies fishery from effectively harvesting the Eastern GB haddock TAC at a rate that would result in complete harvest by the end of FY 2008. Delay in the implementation of this action would likely result in underharvest of the Eastern GB haddock TAC, wasteful discards of Eastern GB cod and GB yellowtail flounder by vessels targeting Eastern GB haddock, and potentially the premature closure of the Eastern U.S./Canada Area due to the harvest of either the GB yellowtail

flounder TAC or Eastern GB cod TAC, resulting in decreased economic opportunity for vessel owners, and a decreased likelihood of achieving OY.

The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent NE multispecies DAS vessels from efficiently targeting Eastern GB haddock in the U.S./Canada Area. The Regional Administrator's authority to authorize additional gear types in the Eastern U.S./Canada Area to help ensure that the shared U.S./Canada stocks of fish are harvested, but not exceeded, was considered and open to public comment during the development of both Amendment 13 and Framework Adjustment 42. Further, the Ruhle Trawl is currently permissible gear in all other parts of the NE multispecies trawl fishery under an A DAS and was recently approved as an additional gear in the Regular B DAS Program and in the Eastern U.S./Canada Haddock Special Access Program, two programs that allow the use of Category B DAS. Its use in the Eastern U.S./Canada Area is consistent with the New England Fishery Management Council's publicly stated intention to promote the use of this gear. Therefore, any negative effect of the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: September 10, 2008.

**James P. Burgess,**

*Acting 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. 071106671-8010-02]

RIN 0648-XK53

#### Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels

using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the 2008 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 11, 2008, through 1200 hrs, A.l.t., October 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 800 metric tons as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008), for the period 1200 hrs, A.l.t., January 20, 2008, through 1200 hrs, A.l.t., October 1, 2008. The 2008 Pacific halibut bycatch allowance for the deep-water species fishery was reduced because 170 mt of this apportionment was allocated to vessels participating in the Rockfish Pilot Program, as listed at <http://www.fakr.noaa.gov/sustainablefisheries/goarat/08rppallocations.xls>.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the 2008 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery include sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder. This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained