

**§ 622.4 Permits and fees.**

(a) \* \* \*

(2) \* \* \*

(v) *Gulf reef fish*. For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. \* \* \*

**§ 622.16 [Amended]**

3. In § 622.16, paragraph (b)(2)(iv) is removed.

■ 4. In § 622.33, paragraph (a)(2)(ii)(A) is revised to read as follows:

**§ 622.33 Caribbean EEZ seasonal and/or area closures.**

(a) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) *Bajo de Cico*.

Point A	North lat.	West long.
A	18°15.7'	67°26.4'
B	18°15.7'	67°23.2'
C	18°12.7'	67°23.4'
D	18°12.7'	67°26.4'
A	18°15.7'	67°26.4'

\* \* \* \* \*

■ 5. In § 622.38, the second sentence of paragraph (d)(1) is revised to read as follows:

**§ 622.38 Landing fish intact.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \* See § 622.31(n) regarding a prohibition on the use of Gulf reef fish as bait. \* \* \*

\* \* \* \* \*

■ 6. In § 622.41, paragraphs (g)(3)(i)(A), (B), and (E) are revised to read as follows:

**§ 622.41 Species specific limitations.**

\* \* \* \* \*

(g) \* \* \*

(3) \* \* \*

(i) \* \* \*

(A) *Fisheye*—see Appendix D to part 622 for separate specifications in the Gulf and South Atlantic EEZ.

(B) *Gulf fisheye*—South Atlantic EEZ only.

\* \* \* \* \*

(E) *Expanded mesh*—South Atlantic EEZ only.

\* \* \* \* \*

■ 7. In Appendix D to part 622, sections C and D are revised to read as follows:

**APPENDIX D TO PART 622—  
SPECIFICATIONS FOR CERTIFIED  
BRDS**

\* \* \* \* \*

**C. Fisheye.**

1. *Description*. The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel rod of at least 1/4 inch (6.35-mm) diameter, which is inserted into the cod end to form an escape opening.

2. *Minimum Construction and Installation Requirements*. The fisheye has a minimum escape opening dimension of 5 inches (12.7 cm) and a minimum total escape opening area of 36 in<sup>2</sup> (91.4 cm<sup>2</sup>). When the fisheye BRD is installed, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the cod end) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the cod end retrieval system.

(a) In the Gulf EEZ, the fisheye BRD must be installed at the top center of the cod end of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 9 ft (2.7 m) from the cod end drawstring (tie-off rings).

(b) In the South Atlantic EEZ, the fisheye BRD must be installed at the top center of the cod end of the trawl to create an escape opening in the trawl facing the direction of the mouth of the trawl no further forward than 11 ft (3.4 m) from the cod end tie-off rings.

**D. Gulf fisheye.**

1. *Description*. The Gulf fisheye is a cone-shaped rigid frame constructed from aluminum or steel rod of at least 1/4 inch (6.35-mm) diameter, which is inserted into the top center of the cod end, and is offset not more than 15 meshes perpendicular to the top center of the cod end to form an escape opening.

2. *Minimum Construction and Installation Requirements*. The Gulf fisheye has a minimum escape opening dimension of 5 inches (12.7 cm) and a minimum total escape opening area of 36 in<sup>2</sup> (91.4 cm<sup>2</sup>). To be used in the South Atlantic EEZ, the Gulf fisheye BRD must be installed in the cod end of the trawl to create an escape opening in the trawl, facing in the direction of the mouth of the trawl, no less than 8.5 ft (2.59 m) and no further forward than 12.5 ft (3.81 m) from the cod end tie-off rings, and may be offset no more than 15 meshes perpendicular to the top center of the cod end. When the Gulf fisheye BRD is installed, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or

choker straps, used to attach the lazy line to the cod end) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the cod end retrieval system.

\* \* \* \* \*

8. In addition to the amendments above, in 50 CFR part 622, remove the word “codend,” wherever it occurs, and add in its place the words “cod end”.

[FR Doc. E8–27351 Filed 11–17–08; 8:45 am]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric  
Administration****50 CFR Part 635****RIN 0648–XL77****Atlantic Highly Migratory Species;  
Inseason Action to Close the  
Commercial Porbeagle Shark Fishery**

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

**ACTION:** Fishery closures.

**SUMMARY:** NMFS is closing the commercial fishery for porbeagle sharks in the Atlantic Ocean and Gulf of Mexico. This action is necessary because the porbeagle shark quotas for the 2008 fishing season have reached or are projected to have reached at least 80 percent of the available quota.

**DATES:** The commercial porbeagle shark fishery is closed effective 11:30 p.m. local time November 18, 2008 until NMFS announces via a notice in the *Federal Register* that additional quota is available.

**FOR FURTHER INFORMATION CONTACT:**

Karyl Brewster-Geisz, 301–713–2347; fax 301–713–1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson–Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under 635.5(b)(1), shark dealers are required to report every two weeks. Dealer reports for fish received between the 1<sup>st</sup> and 15<sup>th</sup> of any month must be received by NMFS by the 25<sup>th</sup> of that month. Dealer reports for fish received between the 16<sup>th</sup> and the end of any month must be received by NMFS by the 10<sup>th</sup> of the following month. Under

50 CFR 635.28(b)(2), when NMFS projects that fishing season landings for a specific shark quota have reached or are about to reach 80 percent of the available quota, NMFS will file for publication with the Office of the **Federal Register** a notice of closure for that shark species group that will be effective no fewer than 5 days from the date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for that specific quota is closed, even across fishing years.

On June 24, 2008 (73 FR 35778; corrected July 15, 2008, 73 FR 46058), NMFS announced that the porbeagle quota for the 2008 fishing year would be 1.7 metric tons (mt) dressed weight (dw) (3,748 lbs dw). In the September 23, 2008, landings update, sharks reported as unknowns were apportioned to species or species groups using observer data by number rather than weight. This method was originally used because it follows the procedures used in the stock assessment. However, while the stock assessment is done in number of sharks, quota monitoring is done by weight. As such, for this and all future updates, sharks reported as unknowns will be apportioned to species or species groups by weight. Thus, landings for some groups may differ from previous landings updates. Additionally, NMFS worked with the State of North Carolina to try to determine the amount of double reporting between state and federal landings. While doing this, NMFS discovered that many of North Carolina's landings of spiny dogfish were incorrectly reported as unknown or sandbar sharks. The latest update corrects this reporting error. Dealer reports through the October 15, 2008, reporting period indicated that 2.0 mt dw or 116.0 percent of the available quota for porbeagle sharks has been taken. Accordingly, NMFS is closing the commercial porbeagle shark fishery as of 11:30 p.m. local time November 18, 2008.

During the closure, retention of porbeagle sharks is prohibited for persons fishing aboard vessels issued a commercial shark limited access permit under 50 CFR 635.4, unless the vessel is permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and no sale provisions may apply (50 CFR 635.22(a) and (c)). The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of porbeagle sharks harvested by a person aboard a vessel

that has been issued a commercial shark limited access permit under 50 CFR 635.4, is prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure, and were held in storage by a dealer or processor.

#### Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest because the fishery is currently underway, and any delay in this action would cause further overharvest of the quota and be inconsistent with management requirements and objectives. Similarly, affording prior notice and opportunity for public comment on this action is contrary to the public interest because if the quota is exceeded, the affected public is likely to experience reductions in the available quota and a lack of fishing opportunities in future seasons. Thus, for these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553 (d)(3). This action is required under 50 CFR 635.28(b)(2) and is exempt from review under Executive Order 12866.

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

Dated: November 12, 2008.

**Emily H. Menashes,**

*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 660

[Docket No. 0808051050-81421-02]

RIN 0648-XJ42

#### Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the annual harvest guideline (HG) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2008, through June 30, 2009.

This HG has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific mackerel off the Pacific coast. The HG for the 2008–2009 fishing season is 40,000 metric tons (mt). If this total is reached, Pacific mackerel fishing will be closed to directed harvest and only incidental harvest will be allowed at a 45 percent by weight incidental catch rate when landed with other CPS, except that up to one mt of Pacific mackerel can be landed without landing any other CPS.

**DATES:** Effective December 18, 2008 through June 30, 2009.

**ADDRESSES:** Copies of the report *Pacific Mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2008–2009 Fishing Year* may be obtained from the Southwest Regional Office by contacting Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

#### FOR FURTHER INFORMATION CONTACT:

Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

**SUPPLEMENTARY INFORMATION:** The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

During public meetings each year, the biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team), the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel) and the CPS Subcommittee of the Scientific and Statistical Committee (SSC). At that time, the biomass, the acceptable biological catch (ABC) and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with HG recommendations and comments from the Team and Subpanel. Following review by the Council and after hearing public comments, the Council makes its HG recommendation to NMFS.

For the 2008–2009 Pacific mackerel management season an updated assessment for Pacific mackerel was