

Dated: January 28, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, the table is amended by adding alphabetically the following polymer to read as follows:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

Polymer	CAS No.
* * * *	*
Poly(oxy-1,2-ethanediyl), $\alpha$ -hydro- $\omega$ -hydroxy-, polymer with 1, 1'-methylene-bis-[4-isocyanatocyclohexane], minimum number average molecular weight (in amu), 1800 .....	39444-87-6
* * * *	*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

RIN 0648-XT99

[Docket No. 100120036-0038-01]

**Fisheries of the Northeastern United; Black Sea Bass Fishery; 2010 Black Sea Bass Specifications; Emergency Rule**

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

**ACTION:** Temporary rule; emergency action; request for comments.

**SUMMARY:** Through this emergency rule NMFS is implementing increases to the 2010 black sea bass specifications (i.e., commercial fishing quota, recreational harvest limit (RHL), and research set-aside (RSA)). This action is necessary to mitigate potential foregone economic yield associated with the current lower specifications and to ensure the specifications are consistent with the best available scientific information. This action is also necessary to increase specifications consistent with the recently revised catch level

recommendation from the Mid-Atlantic Fishery Management Council (Council) and its scientific advisors, the Scientific and Statistical Committee (SSC).

**DATES:** Effective from February 10, 2010, through August 9, 2010. Comments must be received (see **ADDRESSES**) by 5 p.m., local time, on March 12, 2010.

**ADDRESSES:** You may submit comments, identified by 0648-XT99, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- (978) 281-9135. Send the fax to the attention of the Sustainable Fisheries Division. Include "Comments on 2010 Black Sea Bass Specification Increase" prominently on the fax.
- Mail and hand delivery: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2010 Black Sea Bass Specification Increase."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Michael Ruccio, Fishery Policy Analyst, (978) 281-9104.

**SUPPLEMENTARY INFORMATION:** A final rule to establish the 2010 black sea bass specifications was published in the **Federal Register** on December 22, 2009 (74 FR 67978), and became effective on January 1, 2010. The final rule implemented a 2.71-million-lb (1,229-mt) Total Allowable Catch (TAC) and, after deducting estimated discards, a Total Allowable Landings (TAL) of 2.3 million lb (1,043 mt). The TAC was based on the SSC(s) initial 2010 Acceptable Biological Catch (ABC) recommendation of 2.71 million lb (1,229 mt) and was the status quo catch level from 2009. The TAL was further subdivided into RSA, commercial quota, and a RHL as outlined in the Summer

Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). However, at its December 9-11, 2009, meeting in Wilmington, DE, the Council decided to convene a joint meeting of the SSC and Black Sea Bass Monitoring Committee (MC) to re-examine and reconsider the SSC(s) 2010 black sea bass ABC recommendation. The Council's SSC and MC met on January 8, 2010, and ultimately decided to revise the ABC recommendation from 2.71 million lb (1,229 mt) to 4.5 million lb (2,041 mt), consistent with catch levels established for 2008.

On January 15, 2010, the Northeast Regional Administrator, NMFS, received a letter from the Council Chairman, on behalf of the full Council, formally relaying the SSC(s) revised ABC recommendation and requesting emergency action to increase catch levels as expediently as possible. The Council outlined the following as justification for requesting the emergency modification of the 2010 black sea bass catch levels as follows:

- The Council provided the January 8, 2009, SSC meeting summary. The summary document provides information on the SSC discussion and its justification for revising the 2010 ABC recommendation.
- The revision of the ABC recommendation by the Council(s) SSC was unforeseen.
- The increased catch levels provided by the revised ABC level can be reasonably expected to alleviate significant social and economic impacts relative to the initial ABC recommendation from the SSC.

The Regional Administrator has reviewed the Council(s) request for temporary emergency rulemaking with respect to section 305(c) of the Magnuson Stevens Fishery Conservation and Management Act (MSA) and NMFS policy guidance for the use of emergency rules (August 21, 1997; 62 FR 44421) and finds the Council(s) request meets both the criteria and justifications for invoking the emergency rulemaking provisions of the MSA. Specifically, the SSC revision of its previously recommended ABC was a recent and unforeseen event. By this emergency rulemaking, NMFS is increasing the 2010 black sea bass TAC and TAL, thereby relieving restrictions imposed by the previous, lower catch levels. Doing so will assist in preventing significant direct economic loss for fishery participants and associated industries that would be subject to lower commercial and recreational harvest levels. An additional amount of black sea bass landings will be set aside for research activities, thereby

permitting additional research to be funded by black sea bass RSA in 2010.

Through this temporary emergency rule, NMFS increases the 2010 black sea bass TAC from 2.71 million lb (1,229 mt) to 4.5 million lb (2,041 mt), consistent with the revised ABC recommendation from the SSC. After

deducting discards from the TAC, the TAL is increased from 2.3 million lb (1,043 mt) to 3.7 million lb (1,678 mt). The Council expressed a desire that 3 percent of the increased TAL be set aside for research, consistent with its initial specification process that occurred in August 2009. This results in

111,000 lb (50 mt) as the revised RSA. The remaining 3,589,000 lb (1,628 mt) is divided 49 percent for the revised commercial fishery quota and 51 percent as the revised RHL. The complete change to all specifications resulting from this temporary emergency rule are outlined in Table 1.

TABLE 1. TEMPORARY EMERGENCY RULE REVISED 2010 BLACK SEA BASS SPECIFICATIONS

	Allowable Biological Catch (ABC)/ Total Allowable Catch (TAC)		Discards		Total Allowable Landings (TAL)		Research Set-Aside (RSA)		Commercial Quota		Recreational Harvest Limit (RHL)	
	lb	mt	lb	mt	lb	mt	lb	mt	lb	mt	lb	mt
Published at 74 FR 67978, December 22, 2009	2,710,000	1,229	410,000	186	2,300,000	2,252	69,000	31	1,093,190	456	1,137,810	516
Emergency Rule Revisions	4,500,000	2,041	800,000	363	3,700,000	1,678	111,000	50	1,758,610	798	1,830,390	830

### Classification

The Administrator, Northeast Region, NMFS, determined that this temporary rule is consistent with the national standards and other provisions of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. The rule may be extended for a period of not more than 186 days as described under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation Management Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest.

This emergency action is being implemented to increase the 2010 black sea bass allowable landings levels for the commercial and recreational fisheries, thereby alleviating restrictions on both. The information to support the increase through this action was not available from the Council until January 15, 2010, and occurred as the result of unforeseen circumstances. It could not be foreseen that the Council would request the SSC to revisit its 2010 ABC recommendation from the catch levels associated with the previously implemented, more restrictive measures. It was also unforeseen that the SSC would increase its previously recommended ABC level and that the Council would request implementation of the increase by emergency action.

Unnecessary economic harm and negative social impacts will occur to fishery participants and related businesses if this action to increase catch levels is not enacted as quickly as possible. Notice and comment rulemaking would significantly delay

implementation of the increased catch levels and, given the seasonal distribution of black sea bass, would likely result in differential, higher impacts to some individual states and fishery participants that operate almost exclusively in the first quarter. Such impacts would undermine the intent of this rule. These negative socio-economic impacts may be alleviated or eliminated by the more expedient implementation of increased catch limits by NMFS through this emergency rule.

Commercial fishing activities are already underway for the 2010 fishing season that opened on January 1, 2010. Individual states are currently utilizing very restrictive trip and possession limits to ensure that the NMFS-administered coastwide quota is available for the entirety of the 2010 fishing year. These possession limits cause fishery participants that encounter black sea bass above and beyond their permitted limits to discard fish at sea, often with high mortality rates among discarded animals. By promulgating this emergency rule without prior notice and the opportunity for public comment, NMFS will more quickly increase the 2010 commercial quota which will, in turn, allow for less restrictive state-administered trip and possession limits. This will allow fishery participants to convert potential at-sea discards into landings and to maximize the economic returns from their fishing operations.

Recreational fisheries have not yet begun for 2010; however, the Council is in the process of finalizing recommended 2010 management measures for submission to NMFS for review and implementation. By foregoing prior notice and the opportunity for public comment, NMFS

will ensure that the Council may make use of the less restrictive, increased RHL when crafting and analyzing potential 2010 black sea bass recreational management measures. Were normal notice-and-comment rulemaking utilized to implement the increased 2010 black sea bass catch levels, it is highly likely that additional rulemaking would be necessary to liberalize recreational management measures later in the year following the implementation of the increased RHL. Following the implementation of this emergency rule to increase the RHL, only one notice-and-comment rulemaking will be necessary to establish the 2010 recreational management measures in the spring of 2010.

The efficiencies gained by promulgating recreational management measures through one rulemaking are significant and contribute to effective joint management between state and Federal management partners and ensures the orderly prosecution of the fishery. Many of the individual states involved with management of black sea bass recreational fisheries within their state-water jurisdictions have complex rulemaking processes, often involving their respective legislatures or public hearing processes. Were black sea bass recreational management measures revised through a second rulemaking mid-year or later, comparable state management measures would lag behind measures for Federal waters. This is an undesirable situation that NMFS, the Council, and the individual states have specifically sought to avoid in recent years by jointly adopting identical management measures for state and Federal waters. In addition, many recreational party and charter vessel

operators book clients for trips well in advance. These operators will benefit by being able to better plan their operations for the entirety of the fishing year under the to-be established recreational management measures as opposed to having to develop business plans for measures under both the existing and increased catch levels that would become effective later in the fishing year were a second rulemaking necessary.

In addition, by implementing the increase in 2010 TAL quickly, NMFS will be able to increase the amount of black sea bass set aside for research from 69,000 lb (31 mt) to 111,000 lb (50 mt). This additional 42,000 lb (19 mt) will permit additional research on black sea bass to be conducted. A previously approved RSA project to conduct a pot survey of scup in hard bottom areas of southern New England has been awarded a NOAA Grant to conduct their proposed scup research using RSA; however, this project also proposed to conduct simultaneous research on black sea bass but was not awarded authorization to do so because insufficient pounds of black sea bass RSA were available at the time of the grant award. This action will make available sufficient black sea bass RSA for the black sea bass component of this project to move forward. Timely distribution of the additional RSA pounds is necessary to ensure both the research field work and RSA-compensation fishing can occur during the spring fishery. Delay of the additional black sea bass RSA award by notice-and-comment rulemaking would likely jeopardize the completion of the research. The researcher would likely miss a substantial portion of the field research, not have sufficient time to generate research funding by the sale or capture of the RSA pounds, or both.

NMFS has determined that increasing the 2010 black sea bass TAC and TAL by emergency action is consistent with section 305(c) of the MSA and NMFS guidance for application of emergency rules. The revised TAC and TAL are consistent with the best available scientific information (i.e., the revised SSC ABC recommendation), the Summer Flounder, Scup, and Black Sea Bass FMP, and present a low likelihood that the black sea bass stock will experience overfishing. Implementation via emergency rule is expected to substantially mitigate negative socio-economic impacts to fishery participants and associated businesses. Negative socio-economic impacts would continue or, in some components of the 2010 fisheries be more severe, if implementation of the increased TAL

were delayed by normal notice-and-comment rulemaking.

For the same reasons, the Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delayed effective date required by 5 U.S.C. 553(d). Members of the public, fishing and related industries, and the Council expect NMFS to utilize the most expedient rulemaking processes possible to ensure that the revised 2010 black sea bass TAL is implemented as quickly as possible to relieve fishery restrictions.

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

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 USC 553 or any other law.

Dated: February 4, 2010.

**Samuel D. Rauch III,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0810141351-9087-02]

RIN 0648-XU30

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock for American Fisheries Act Catcher Vessels in the Inshore Open Access Fishery in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock by American Fisheries Act (AFA) trawl catcher vessels participating in the inshore open access fishery in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2010 pollock total allowable catch (TAC) allocated to the inshore open access fishery in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 5, 2010, through 1200 hrs, A.l.t., June 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (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 A season allowance of the 2010 Bering Sea pollock TAC allocated to the AFA inshore open access fishery in the BSAI is 2,762 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009) and inseason adjustment (74 FR 68715, December 29, 2009). The actual 2010 Bering Sea subarea inshore cooperative allocations, including the inshore open access allocation, are posted at [http://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa\\_sf.htm](http://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa_sf.htm).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of pollock TAC allocated to the AFA inshore open access fishery, which is catching pollock for processing by the inshore component in the Bering Sea subarea, will soon be reached. Therefore, the Regional Administrator is establishing the A season allowance of pollock TAC as the directed fishing allowance. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock by AFA trawl catcher vessels participating in the inshore open access fishery in the Bering Sea subarea.

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 from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment