

[Federal Register: February 28, 1994]

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DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Administration
50 CFR Parts 672 and 675 [Docket No. 930955-4039; I.D. 092493C]
Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and
Aleutian Islands Area
AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA), Commerce.
ACTION: Final rule; technical amendment.

SUMMARY: NMFS implements a regulatory amendment that prohibits the retention of groundfish caught with unauthorized gear in the exclusive economic zone (EEZ) off Alaska. In addition, this action implements a technical amendment that organizes all fishing gear definitions as paragraphs under the single definition of ``authorized fishing gear''. This action is necessary to prevent fishing with unauthorized gear and associated preemption of fishing grounds and gear conflicts, and undermining prohibited species bycatch measures in the groundfish fishery. It is intended to support the goals and objectives contained in the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska (GOA) and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI).

EFFECTIVE DATE: March 30, 1994.

ADDRESSES: Copies of the environmental assessment/regulatory impact review (EA/RIR) prepared for this regulatory amendment may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fisheries Management Division, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the EEZ of the GOA and the BSAI is managed by the Secretary of Commerce according to the FMP for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) (Magnuson Act), and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

This regulatory action amends 50 CFR 672.7 and 675.7 to prohibit the retention of groundfish caught with other than authorized fishing gear types. Authorized fishing gear are all fishing gear types currently defined at Secs. 672.2 and 675.2.

A proposed rule was published in the Federal Register on November 12, 1993 (58 FR 59980). A complete description of, and justification for, changes to regulations that prohibit the retention of groundfish caught with other than authorized fishing gear types were discussed in the proposed rule.

Public comment on the proposed rule was invited through December 13, 1993. One letter opposing and one letter supporting the proposed action were received within the comment period and are summarized and responded to below in the ``Response to Comment'' section.

Upon reviewing the reasons for and the comments on this action, NMFS has determined that this rule is necessary for fishery conservation and management and has approved it.

Response to Comments

Comment 1: Prohibiting fishing gear types not defined in the regulations will stifle gear innovations and development by the industry.

Response: This rule will not stifle gear innovations or the development of new fishing gear by the industry. Gear innovations and development can be accomplished within existing regulations governing experimental fishing at Secs. 672.6 and 675.6.

Under an experimental fishing permit, otherwise unauthorized gear could be assessed relative to fishing efficiency, bycatch mortality rates, and the effects on the biological and physical environment. Fishing gear types assessed under this process could be subsequently authorized under future regulatory amendments.

Comment 2: Prohibiting gear types not defined in the regulations is supported because new gear types should be thoroughly tested. However, the proposed rule did not assess and does not prevent the use of imported gear, in particular the use of pair trawls, as an authorized gear type.

Response: The purpose of this action is to limit the fishing gear types employed in the groundfish fisheries off Alaska to those traditionally used, including pair trawls. Any vessels participating in a fishery with pair trawls are subject to observer requirements by Secs. 672.27 and 675.25. The use of imported gear would be inconsistent with regulations unless it conforms to the authorized fishing gear definition. NMFS will continue to obtain information from observers about performance of each authorized fishing gear type used in the groundfish fisheries.

Technical Amendment

The rule by technical amendment moves existing definitions of fishing gear types from alphabetic locations at Secs. 672.2 and 675.2 and reorganizes them under a new definition, Authorized fishing gear. Although the final rule does not change existing definitions from the proposed rule, it redesignates the fishing gear definitions by removing them from their alphabetical order and placing them as paragraphs under this new definition. Three definitions, Trawl, Non-Trawl, and Longline are modified to provide consistency in the fishing gear definitions in the GOA and BSAI regulations.

Classification

This rule is not subject to review under E.O. 12866. List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: February 22, 1994. Rolland A. Schmitten, Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672--GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

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

2. In Sec. 672.2, the definitions for Hook-and-line, Jig, Longline, Longline Pot, Nonpelagic Trawl, Pelagic Trawl, Pot-and-line, and Trawl are removed and a new definition for Authorized fishing gear is added in alphabetical order to read as follows:

Sec. 672.2 Definitions.

* * * * *

Authorized fishing gear means hook-and-line, jig, longline, longline pot, nonpelagic Trawl, non-Trawl, pelagic Trawl, pot-and-line, and Trawl gear; defined as follows:

(1) Hook-and-line means a stationary, buoyed, and anchored line with hooks attached, or the taking of fish by means of such a device;

(2) Jig means a single non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device;

(3) Longline means a stationary, buoyed, and anchored line with hooks or pots (other than king or Tanner crab pots) attached, or the taking of fish by means of such a device;

(4) Longline pot means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device;

(5) Nonpelagic Trawl means a Trawl other than a pelagic Trawl;

(6) Non-Trawl gear means hook-and-line, jig, longline, and pot-and-line gear;

(7) Pelagic Trawl means a Trawl that:

(i) Has no discs, bobbins, or rollers;

(ii) Has no chafe protection gear attached to the foot rope or fishing line;

(iii) Except for the small mesh allowed under paragraph (7)(ix) of this definition:

(A) Has no mesh tied to the fishing line, head rope, and breast lines with less than 20 inches (50.8 cm) between knots, and has no stretched mesh size of less than 60 inches (152.4 cm) aft from all points on the fishing line, head rope, and breast lines and extending past the fishing circle for a distance equal to or greater than one half the vessel's length overall; or (B) Has no parallel lines spaced closer than 64 inches (162.6 cm), from all points on the fishing line, head rope, and breast lines and extending aft to a section of mesh, with no stretched mesh size of less than 60 inches (152.4 cm), extending aft for a distance equal to or greater than one half the vessel's length overall;

(iv) Has no stretched mesh size less than 15 inches (38.1 cm) aft of the mesh described in paragraph (7)(iii) of this definition for a distance equal to or greater than one half the vessel's length overall;

(v) Contains no configuration intended to reduce the stretched mesh sizes described in paragraphs (7)(iii) and (iv) of this definition;

(vi) Has no flotation other than floats capable of providing up to 200 pounds (90.7 kg) of buoyancy to accommodate the use of a net-sounder device;

(vii) Has no more than one fishing line and one foot rope for a total of no more than two weighted lines on the bottom of the Trawl between the wing tip and the fishing circle;

(viii) Has no metallic component except for connectors (e.g., hammerlocks or swivels) or net-sounder device aft of the fishing circle and forward of any mesh greater than 5.5 inches (14.0 cm) stretched measure;

(ix) May have small mesh within 32 feet (9.8 m) of the center of the head rope as needed for attaching instrumentation (e.g., net-sounder device); and

(x) May have weights on the wing tips;

(8) Pot-and-line means a stationary, buoyed line with a single pot attached, or the taking of fish by means of such a device; and

(9) Trawl means a conical-shaped net that is towed through the water for catching fish. The net accumulates its catch in the closed, small end (usually called the cod end). This definition includes, but is not limited to, Danish and Scottish seines and otter trawls.

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3. In Sec. 672.7, paragraph (n) is added to read as follows:
Sec. 672.7 Prohibitions.

* * * * *

(n) Retain groundfish taken with other than Authorized fishing gear as defined at Sec. 672.2, except that groundfish incidentally taken by pot gear by a vessel while participating in an open crab season governed by the State of Alaska may be retained for use as unprocessed bait on board that vessel.

PART 675--GROUND FISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for 50 CFR part 675 continues to read as follows:

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

5. In Sec. 675.2, the definitions for Hook-and-line, Jig, Longline, Longline pot, Nonpelagic Trawl, Non-Trawl gear, Pelagic Trawl, and Trawl are removed, and the definition for Authorized fishing gear is added in alphabetical order to read as follows: Sec. 675.2 Definitions.

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Authorized fishing gear means fishing gear types defined as ``authorized fishing gear'' at Sec. 672.2 of this chapter.

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6. In Sec. 675.7, paragraph (o) is added to read as follows: Sec. 675.7 Prohibitions.

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(o) Retain groundfish taken with other than Authorized fishing gear defined at Sec. 675.2, except that groundfish incidentally taken by pot gear by a vessel while participating in an open crab season governed by the State of Alaska may be retained for use as unprocessed bait on board that vessel.