

Decided: August 18, 2004.

By the Board, Vernon A. Williams,  
Secretary.

**Vernon A. Williams,**

Secretary.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 031124287-4060-02; I.D. 081804A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands

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

**ACTION:** Closures and openings.

**SUMMARY:** NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig gear (other gears) in the Eastern Aleutian District (Statistical Area 541) and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Atka mackerel in these areas. NMFS is also announcing the opening and closure dates of the first and second directed fisheries within the harvest limit area (HLA) in Statistical Areas 542 and 543. These actions are necessary to prevent exceeding the HLA limits established for the Central (statistical area 542) and Western (statistical area 543) Aleutian Districts pursuant to the 2004 Atka mackerel TAC.

**DATES:** Prohibition of directed fishing for Atka mackerel with other gears in the Eastern Aleutian District and the Bering Sea subarea: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2004, until 2400 hrs, December 31, 2004. The first directed fisheries in the HLA in area 542 and area 543 are open from 1200 hrs, A.l.t., September 3, 2004, until 1200 hrs, A.l.t., September 11, 2004. The second directed fisheries in the HLA in area 542 and area 543 open from 1200 hrs, A.l.t., September 13, 2004, until 1200 hrs, A.l.t., September 21, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone

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-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 portion of the Atka mackerel TAC allocated to other gears in the Eastern Aleutian District and the Bering Sea subarea is 10,293 metric tons (mt) as established by the 2004 Harvest Specifications for Groundfish (69 FR 9242, February 27, 2004). See § 679.20(c)(3)(iii) and 679.20(a)(8)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC for Atka mackerel allocated to other gears in the Eastern Aleutian District and the Bering Sea subarea will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,293 mt, and is setting aside the remaining 7,000 mt as bycatch to support other anticipated groundfish fisheries. 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 Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI by vessels using other gears.

In accordance with § 679.20(a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543, 48 hours after the closure of the area 541 Atka mackerel directed fishery. The Regional Administrator has also established the opening date for the second HLA directed fisheries as 48 hours after the last closure of the first HLA fisheries in either 542 or 543. Consequently, NMFS is opening and closing directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the **DATES** section of this notice.

In accordance with § 679.20(a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 or 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel owner as to which fishery each vessel has been

assigned by NMFS (69 FR 51014, August 17, 2004).

In accordance with § 679.20(a)(8)(ii)(C)(1), the HLA limit of the TAC in areas 542 and 543 are 5,733 mt and 8,630 mt, respectively. Based on those limits and the proportion of the number of vessels in each fishery compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543, the harvest limits for the HLA directed fishery in areas 542 and 543 are as follows: 3,185 mt for the first directed fishery in area 542, 4,315 mt for the first directed fishery in area 543, 2,548 mt for the second directed fishery in area 542, and 4,315 mt for the second directed fishery in area 543. In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 on the dates and times listed under the **DATES** section of this notice.

#### 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 pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay both the closure of the Atka mackerel fishery by other gears in the Eastern Aleutian District and the Bering Sea subarea and the opening and closures of the fisheries for the HLA limits established for the Central (area 542) and Western (area 543) Aleutian Districts pursuant to the 2004 Atka mackerel TAC.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 19, 2004,

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable  
Fisheries, National Marine Fisheries Service.*

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