

**Classification**

*National Environmental Policy Act*

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA; See NOAA Administrative Order 216 6.)

*Executive Order 12866, Regulatory Flexibility Act and Paperwork Reduction Act*

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information

requirement for the purposes of the Paperwork Reduction Act.

*Federalism*

NMFS has conferred with the State of California in the course of assessing the status of black abalone through quarterly coordination meetings between the CDFG and NMFS and CDFG technical peer review of the black abalone draft status review report. The coordination meetings contributed to our consideration of Federal, state and local conservation measures. The CDFG technical peer review comments were considered and comments and information were incorporated into the final version of the status review report. As subsequent issues with ESA compliance and rulemaking arise (e.g., issuance of permits, critical habitat designation, recovery planning), we will continue to communicate with the States, and other affected local or regional entities, giving careful consideration to all concerns and comments received.

**List of Subjects in 50 CFR Part 224**

Endangered and threatened species, Exports, Imports, Transportation.

Dated: January 9, 2009.

**James W. Balsiger,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 224 is amended as follows:

**PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES**

■ 1. The authority citation of part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531 1543 and 16 U.S.C. 1361 *et seq.*

■ 2. In § 224.101, paragraph (d) is revised to read as follows:

**§ 224.101 Enumeration of endangered marine and anadromous species.**

\* \* \* \* \*

(d) *Marine invertebrates.* The following table lists the common and scientific names of endangered species, the locations where they are listed, and the citations for the listings and critical habitat designations.

Species		Where Listed	Citation (s) for Listing Determinations	Citations (s) for Critical Habitat Designations
Common name	Scientific name			
Black abalone	<i>Haliotis cracherodii</i>	USA, CA. From Crescent City, California, USA to Cape San Lucas, Baja California, Mexico, including all offshore islands.	[insert Federal Register volume and page number where document begins; January 14, 2009]	N/A
White abalone	<i>Haliotis sorenseni</i>	USA, CA. From Point Conception, California to Punta Abreojos, Baja California, Mexico including all offshore islands and banks.	NOAA 2001; 66 FR 29054, May, 29, 2001.	Deemed not prudent NOAA 2001; 66 FR 29054, May, 29, 2001.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 071106673-8011-02]

RIN 0648-XM68

**Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Lottery in Areas 542 and 543**

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

**ACTION:** Notification of fishery assignments.

**SUMMARY:** NMFS is notifying the owners and operators of registered vessels of their assignments for the 2009 A season Atka mackerel fishery in harvest limit area (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the 2009 A season HLA limits established for area 542 and area 543 pursuant to the 2008 and 2009 harvest specifications for groundfish in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), January 9, 2009, until 1200 hrs, A.l.t., April 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 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.

In accordance with § 679.20(a)(8)(iii)(A), owners and operators of vessels using trawl gear for directed fishing for Atka mackerel in the HLA are required to register with NMFS. Fourteen vessels have registered with NMFS to fish in the A season HLA fisheries in areas 542 and/or 543. In

accordance with § 679.20(a)(8)(iii)(B), the Administrator, Alaska Region, NMFS, has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which they have registered and is now notifying each vessel of its assignment in accordance with § 679.20(a)(8)(iii).

For the Amendment 80 cooperative, the vessels authorized to participate in the first HLA directed fishery in area 542 and the second HLA directed fishery in area 543 are as follows: Federal Fishery Permit number (FFP) 2134 Ocean Peace, FFP 2733 Seafreeze Alaska, FFP 3694 Arica, and FFP 3835 Seafisher.

For the Amendment 80 cooperative, the vessels authorized to participate in the first HLA directed fishery in area 543 and the second HLA directed fishery in area 542 are as follows: FFP 1610 Rebecca Irene, FFP 2110 Cape Horn, and FFP 3369 Unimak.

For the Amendment 80 limited access sector, vessels authorized to participate in the first HLA directed fishery in area 542 and in the second HLA directed

fishery in area 543 are as follows: FFP 2443 Alaska Juris and FFP 3819 Alaska Spirit.

For the Amendment 80 limited access sector, the vessels authorized to participate in the first HLA directed fishery in area 543 and the second HLA directed fishery in area 542 are as follows: FFP 3423 Alaska Warrior and FFP 4093 Alaska Victory.

For the BSAI trawl limited access sector, the vessels authorized to participate in the first HLA directed fishery in area 542 are as follows: FFP 480 Muir Milach and FFP 11770 Alaska Knight.

For the BSAI trawl limited access sector, the vessel authorized to participate in the second HLA directed fishery in area 542 is as follows: FFP 6202 Epic Explorer.

#### **Classification**

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 unnecessary. This notice merely advises the owners of these vessels of the results of a random assignment required by regulation. The notice needs to occur immediately to notify the owner of each vessel of its assignment to allow these vessel owners to plan for participation in the A season HLA fisheries in area 542 and area 543.

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: January 9, 2009.

**Emily H. Menashes,**

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

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