

to Area 1B; 22,146 mt to Area 2; and 38,146 mt to Area 3.

Regulations at § 648.201(a) require NMFS to monitor catch from the herring fishery in each of the herring management areas, using dealer reports, state data, and other available information, to determine when the catch of herring is projected to reach 95 percent of the TAC allocated. When such a determination is made, NMFS is required to prohibit, through publication in the **Federal Register** herring vessel permit holders from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring, per trip or calendar day, in or from the specified management area for the remainder of the closure period, with the exception of transiting as described below.

NMFS published a temporary rule, effective November 8, 2010, in the **Federal Register** (75 FR 69104, November 10, 2010) projecting that 95 percent of the Area 1A TAC had been harvested. Based upon information indicating that 95 percent of the TAC would be reached by November 8, 2010, the temporary rule reduced the herring trip limit for all federally permitted herring vessels to 2,000 lb (907.2 kg) per trip in Area 1A; the trip limit reduction was to be effective through December 31, 2010.

The NMFS Northeast Regional Administrator subsequently determined, based upon dealer reports and other available information, that the herring fleet had not yet taken 95 percent of the TAC as of November 8, 2010, and that there was approximately 5,000 mt of Atlantic herring quota still available in Area 1A. Therefore, to ensure that the herring fleet was able to take up to 95 percent of the TAC, consistent with applicable regulations and trip limits, NMFS published a temporary rule, effective November 15 through November 17, 2010, which temporarily removed the 2,000-lb (907.2-kg) trip limit, and restored the trip limits, if any, in effect before November 8, 2010 (75 FR 69903, November 16, 2010). Effective 0001 hrs November 17, 2010, all federally permitted herring vessels were again prohibited from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring, per trip or calendar day, in or from Area 1A, through December 31, 2010.

NMFS has since determined that, as of November 18, 2010, based on the best available landings information, the herring fleet has not yet taken 95 percent of the TAC. Best available data indicates that approximately 2,400 mt of the Atlantic herring TAC in Area 1A is

still available. Therefore, to ensure that the herring fleet is able to take up to 95 percent of the TAC, consistent with applicable regulations and trip limits, this action temporarily removes the 2,000-lb (907.2-kg) trip limit implemented on November 17, 2010, and restores the trip limits, if any, in effect before November 17, 2010, from 0001 hours November 29, 2010, until 0001 hrs December 3, 2010. This means that, effective 0001 hrs, November 29, 2010, through 0001 hrs, December 3, 2010, vessels issued an All Areas Limited Access Herring Permit are authorized to fish for, possess, or land Atlantic herring with no possession restrictions; vessels issued an Areas 2 and 3 Limited Access Herring Permit are authorized to fish for, possess, or land Atlantic herring only if issued an open access herring permit or a Limited Access Incidental Catch Permit; vessels issued a Limited Access Incidental Catch Herring Permit are authorized to fish for, possess, or land up to 55,000 lb (25 mt); and vessels issued an open access herring permit may not fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring in Area 1A.

At 0001 hrs December 3, 2010, all federally permitted herring vessels will again be prohibited from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring, per trip or calendar day, in or from Area 1A, through December 31, 2010. Vessels transiting Area 1A with more than 2,000 lb (907.2 kg) of herring on board may do so, provided such herring was not caught in Area 1A and that all fishing gear is stowed and not available for immediate use, as required by § 648.23(b).

Effective 0001 hrs, November 29, 2010, federally permitted dealers are advised that they may purchase more than 2,000 lb (907.2 kg) of Atlantic herring caught in Area 1A by federally permitted vessels until 0001 hrs December 3, 2010. At 0001 hrs December 3, 2010, federally permitted dealers will again be prohibited from purchasing herring from federally permitted herring vessels that harvest more than 2,000 lb (907.2 kg) of herring from Area 1A, through 2400 hrs local time, December 31, 2010.

#### Classification

This action is taken under 50 CFR part 648 and is exempt from review under E.O. 12866. The Assistant Administrator for Fisheries, NOAA (AA), 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 action temporarily

removes the 2,000-lb (907.2-kg) herring trip limit in Area 1A from 0001 hours, November 29 until 0001 hours, December 3, 2010. As of 0001 hrs December 3, 2010, the Area 1A trip limit will again be reduced to 2,000 lb (907.2 kg) per trip or calendar day, until December 31, 2010. The Atlantic herring fishery opened for the 2010 fishing year at 0001 hrs on January 1, 2010. The Atlantic herring fleet was prohibited from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 mt) per trip or calendar day on November 8, 2010, based on projections that 95 percent of the available Area 1A herring quota had been harvested. The 2,000-lb (907.2-kg) trip limit was temporarily removed effective 0001 hrs November 15 through 0001 hours November 17, 2010, so that the herring fleet would have the opportunity to take 95 percent of the Area 1A TAC. However, catch data indicating the Atlantic herring fleet did not harvest the full amount of available quota have only very recently become available. If implementation of this temporary removal of the 2,000-lb (907.2-kg) trip limit is delayed to solicit prior public comment, the remaining quota may not be fully harvested before the end of the 2010 fishing year on December 31. The AA finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: November 22, 2010.

**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 679

[Docket No. 0910131363-0087-02]

RIN 0648-XA058

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 Feet (18.3 m) Length Overall Using Hook-and-Line or Pot Gear 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 Pacific cod by catcher vessels less than 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2010 Pacific cod total allowable catch allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), November 23, 2010, through 2400 hrs, A.l.t., December 31, 2010.

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

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI 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 2010 Pacific cod total allowable catch (TAC) allocated to catcher vessels

less than 60 feet LOA using hook-and-line or pot gear in the BSAI is 4,998 metric tons, as established by the final 2010 and 2011 harvest specification for groundfish in the BSAI (75 FR 11778, March 12, 2010) and subsequent reallocations on March 17, 2010 (75 FR 13444, March 22, 2010), April 12, 2010 (75 FR 19562, April 15, 2010), and August 23, 2010 (75 FR 52478, August 26, 2010).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2010 Pacific cod directed fishing allowance allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

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 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 the closure of Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 19, 2010.

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: November 22, 2010.

**Brian W. Parker,**

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

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