

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 0910131363-0087-02]

RIN 0648-XZ61

**Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod 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; reallocation.

**SUMMARY:** NMFS is reallocating projected unused amounts of Pacific cod among multiple sectors in the Bering Sea and Aleutian Islands management area. These actions are necessary to allow the 2010 total allowable catch of Pacific cod to be harvested.

**DATES:** Effective December 28, 2010, until 2400 hours, A.l.t., December 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (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 parts 600 and 679.

The 2010 Pacific cod total allowable catch (TAC) in the BSAI is 168,780 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010). Pursuant to § 679.20(a)(7)(ii)(A), the allocations of the Pacific cod TAC are 73,000 mt to hook-and-line catcher/processors, 2,248 mt to pot catcher/processors, 300 mt to catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line gear, 12,591 mt to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear, and 3,319 mt to the Amendment 80 limited access sector. The allocation to American Fisheries Act (AFA) trawl catcher/processors is 4,067 mt after one

reallocation on September 9, 2010 (75 FR 55690, September 14, 2010). The allocation to catcher vessels using trawl gear is 28,809 mt after two reallocations on August 27, 2010 (75 FR 52478, August 26, 2010) and September 9, 2010 (75 FR 55690, September 14, 2010). The allocation to jig gear is 510 mt after two reallocations on March 17, 2010 (75 FR 13444, March 22, 2010) and April 12, 2010 (75 FR 19562, April 15, 2010). The allocation to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear is 5,098 after three reallocations on March 17, 2010 (75 FR 13444, March 22, 2010), April 12, 2010 (75 FR 19562, April 15, 2010), and August 27, 2010 (75 FR 52478, August 26, 2010).

First, as of December 23, 2010, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that vessels using jig gear will not be able to harvest 160 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(ii) and subsequent reallocations. Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 160 mt of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Second, as of December 23, 2010, the Regional Administrator has determined that catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear will not be able to harvest 299 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(ii)(A). Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 251 mt of Pacific cod from catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear and 48 mt of Pacific cod from catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear.

Third, as of December 23, 2010, the Regional Administrator has determined that AFA trawl catcher/processors will not be able to harvest 26 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(ii)(A) and subsequent reallocations. Therefore, in accordance with § 679.20(a)(7)(iii)(B), NMFS apportions 26 mt of Pacific cod from AFA trawl catcher/processors to the Amendment 80 limited access sector.

Fourth, as of December 23, 2010, the Regional Administrator has determined that trawl catcher vessels will not be able to harvest 634 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(ii)(A) and subsequent reallocations. The Regional

Administrator has also determined that the projected unharvested amount is unlikely to be harvested by any of the other catcher vessel sectors described in § 679.20(a)(7)(iii)(A). Therefore, in accordance with § 679.20(a)(7)(iii)(B), NMFS apportions 405 mt of Pacific cod from trawl catcher vessels to the Amendment 80 limited access sector, 190 mt of Pacific cod from trawl catcher vessels to hook-and-line catcher/processors, 33 mt to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear, and 6 mt to pot catcher/processors.

Finally, as of December 23, 2010, the Regional Administrator has determined that catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear will not be able to harvest 1,096 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(ii)(A) and subsequent reallocations. Therefore, in accordance with § 679.20(a)(7)(iii)(C), NMFS apportions 1,096 mt of Pacific cod from catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear to pot catcher/processors.

The allocations for Pacific cod specified in the final 2010 and 2011 final harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) and reallocations on March 17, 2010 (75 FR 13444, March 22, 2010), April 12, 2010 (75 FR 19562, April 15, 2010), August 27, 2010 (75 FR 52478, August 26, 2010), and September 9, 2010 (75 FR 55690, September 14, 2010) are revised as follows: 4,041 mt to AFA catcher/processors using trawl gear, 3,750 mt to the Amendment 80 limited access sector, 28,175 mt to catcher vessels using trawl gear, 1 mt to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook-and-line gear, 11,576 mt to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear, 5,509 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear, 350 mt to vessels using jig gear, 3,350 mt to pot catcher/processors, and 73,190 mt to hook-and-line catcher/processors.

This will enhance the socioeconomic well-being of harvesters dependent upon Pacific cod in this area. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of Pacific cod by the applicable BSAI sectors and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in the sectors participating in this fishery.

**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 reallocation of Pacific cod. Since the fishery is currently open, it is important to immediately inform the

industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 23, 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: December 28, 2010.

**Emily H. Menashes,**

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

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