

In our August 2009 **Federal Register** notice, we explained that, due to a previous clerical error, the Upper Columbia River steelhead DPS had been inadvertently dropped from the enumeration of threatened species at 50 CFR 223.102(c). The August 2009 notice included a correcting amendment to reinstate the Upper Columbia River steelhead DPS to our list of threatened species at 50 CFR 223.102(c)(25). That correcting amendment, however, failed to update the cross-references at 50 CFR 223.203, which identifies the threatened anadromous fish subject to protections under ESA section 4(d). This correcting amendment remedies that oversight.

Classification

The Assistant Administrator finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment, because it is impracticable, unnecessary, and contrary to the public interest. NMFS fully intended the Upper Columbia River steelhead DPS to be subject to the ESA section 4(d) protections and expressly stated this intent in the February 2006 final rule. NMFS also previously provided public notice in the **Federal Register** and considered public comments on the 2006 final rule. However, due to a clerical error, the conforming change is not currently reflected in the regulations. In order to avoid regulatory confusion and ensure continuous protections and enforcement capability for the Upper Columbia River steelhead DPS, the Assistant Administrator waives the requirement for prior notice and opportunity for public comment.

For the same reasons above, the Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness and makes this rule effective immediately upon publication.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

It has been determined that this rule is not significant for purposes of Executive Order 12866.

References

Copies of previous **Federal Register** notices and related reference materials are available on the Internet at <http://www.nwr.noaa.gov>, or upon request (see **FOR FURTHER INFORMATION CONTACT** section above).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: March 1, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Fisheries for Regulatory Programs, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 223 is corrected by making the following correcting amendment:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

■ 2. In § 223.203, paragraphs (a) and (b) are revised to read as follows:

§ 223.203 Anadromous fish.

* * * * *

(a) *Prohibitions.* The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to fish with an intact adipose fin that are part of the threatened species of salmonids listed in § 223.102(c)(3) through (c)(25).

(b) *Limits on the prohibitions.* The limits to the prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(c)(3) through (c)(25) are described in the following paragraphs (b)(1) through (b)(13):

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA260

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 the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters)

length overall using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the A season apportionment of the 2011 total allowable catch of Pacific cod to be harvested.

DATES: Effective March 1, 2011, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2011.

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 A season apportionment of the 2011 Pacific cod total allowable catch (TAC) specified for vessels using jig gear in the Bering Sea and Aleutian Islands management area (BSAI) is 1,710 metric tons (mt) for the period 1200 hrs, A.l.t., January 1, 2011, through 1200 hrs, A.l.t., April 30, 2011, as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

The Administrator, Alaska Region, NMFS, has determined that jig vessels will not be able to harvest 1,500 mt of the A season apportionment of the 2011 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(1). Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 1,500 mt of Pacific cod from the A season jig gear apportionment to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear.

The harvest specifications for Pacific cod included in the final 2011 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011) are revised as follows: 810 mt to the A season apportionment for vessels using jig gear and 5,555 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

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 specified from jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. 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 March 1, 2011.

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: March 2, 2011.

Emily H. Menashes,

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

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