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[FR Doc. 2012-7860 Filed 3-30-12; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket Nos. 100610255-0257-01 and 040205043-4043-01]

RIN 0648-XB074

**2012 Accountability Measures for Gulf of Mexico Commercial Greater Amberjack and Closure of the Commercial Sector for Greater Amberjack**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements accountability measures (AMs) for commercial greater amberjack in the Gulf of Mexico (Gulf) for the 2012 fishing year through this temporary final rule, and announces the closure of the 2012 commercial sector for greater amberjack of the Gulf reef fish fishery. This rule reduces the 2012 commercial quota for greater amberjack to 237,438 lb (107,700 kg), based on the 2011 quota overage. The commercial fishing season opened on January 1, 2012 and is closed March 1–May 31. The season is scheduled to re-open on June 1, however, NMFS has determined that the 2012 adjusted commercial quota for Gulf greater amberjack was harvested in January and February of 2012. Therefore, the commercial sector for greater amberjack will remain closed for the remainder of the 2012 fishing year. These actions are necessary to reduce overfishing of the Gulf greater amberjack resource.

**DATES:** This rule is effective April 2, 2012, through December 31, 2012.

**ADDRESSES:** Copies of the final rule for Amendment 30A, the Final Supplemental Environmental Impact Statement (FSEIS) for Amendment 30A, and other supporting documentation may be obtained from Rich Malinowski, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727-824-5305.

**FOR FURTHER INFORMATION CONTACT:** Rich Malinowski, telephone: 727-824-5305, email [Rich.Malinowski@noaa.gov](mailto:Rich.Malinowski@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the reef fish fishery of the Gulf

under the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP). The Gulf of Mexico Fishery Management Council (Council) prepared the FMP and NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

**Background**

The 2006 reauthorization of the Magnuson-Stevens Act established new requirements including annual catch limits (ACLs) and AMs to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and correct or mitigate overages of the ACL if they occur. Section 303(a)(15) of the Magnuson-Stevens Act mandates the establishment of ACLs at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

On July 3, 2008, NMFS issued a final rule (73 FR 38139) to implement Amendment 30A to the FMP. Amendment 30A established commercial and recreational quotas for Gulf greater amberjack and AMs that would go into effect if the commercial and recreational quotas for greater amberjack are exceeded. In accordance with regulations at 50 CFR 622.49(a)(1)(i), when the applicable commercial quota is reached, or projected to be reached, the Assistant Administrator for Fisheries, NOAA, (AA), will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. If despite such closure, commercial landings exceed the quota, the AA will reduce the quota the year following an overage by the amount of the overage of the prior fishing year.

**Management Measures Contained in this Temporary Rule**

Finalized 2011 commercial landings data indicated the adjusted 2011 commercial quota of 342,091 lb (155,170 kg) was exceeded by 78 percent, or 265,562 lb (120,457 kg). Therefore, the reduced 2012 commercial quota for Gulf greater amberjack is 237,438 lb (107,700 kg) (*i.e.*, 503,000-lb (228,157-kg) commercial quota minus the overage of 265,562 lb (120,457 kg)). The NMFS Southeast Fisheries Science Center estimated that the commercial sector landed 221,789 lb (100,601 kg) of greater amberjack during the months of January and February of 2012, and projects subsequent updates to the landings data will meet the adjusted 2012 commercial

sector quota for greater amberjack of 237,438 lb (107,700 kg).

Accordingly, NMFS is closing commercial sector harvest of greater amberjack in the Gulf EEZ for the remainder of the 2012 fishing year. The operator of a vessel with a valid commercial vessel permit for Gulf reef fish having greater amberjack aboard must have landed, bartered, traded, or sold such greater amberjack prior to 12:01 a.m., local time, March 1, 2012.

During the closure, all commercial harvest or possession of greater amberjack in or from the Gulf EEZ, and the sale or purchase of greater amberjack taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of greater amberjack that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, March 1, 2012, and were held in cold storage by a dealer or processor. In addition to the Gulf EEZ closure, a person on board a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with these closure provisions regardless of where the Gulf greater amberjack are harvested, *i.e.*, in State or Federal waters. This closure is intended to prevent overfishing of Gulf greater amberjack and increase the likelihood that the 2012 commercial quota will not be exceeded.

The 2013 commercial quota for greater amberjack will return to the quota of 503,000 lb (228,157 kg) specified at 50 CFR 622.42(a)(1)(v) unless AMs are implemented due to a quota overage and NMFS specifies a reduced quota through notification in the **Federal Register**, or the Council takes subsequent regulatory action to adjust the quota.

**Classification**

The Regional Administrator, Southeast Region, NMFS, (RA) has determined this temporary rule is necessary for the conservation and management of the Gulf greater amberjack component of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act, the FMP, and other applicable laws.

The temporary rule has been determined to be not significant for purposes of Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

NMFS prepared a Final Environmental Impact Statement (FEIS) for Amendment 30A. A notice of availability for the FEIS was published on April 18, 2008 (73 FR 21124). A copy

of the FEIS and the Record of Decision are available from NMFS (see ADDRESSES).

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the AMs established by Amendment 30A and located at 50 CFR 622.49(a)(1)(i) authorize the AA to file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year when the quota is reached or projected to be reached and reduce the commercial quota the following fishing year if an overage occurs. The final rule for Amendment 30A that implemented these AMs was already subject to notice and comment and all that remains is to notify the public of the 2012 commercial quota, and the closure of the commercial sector for Gulf greater amberjack.

Also, providing prior notice and opportunity for public comment on this action would be contrary to the public interest. Given the regulatory obligation for NMFS to announce the duration of the commercial season in a timely manner, it is important this announcement be made as soon as possible to allow affected participants the maximum amount of time to adjust their fishing activities to account for the closure of the commercial sector.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Dated: March 28, 2012.

**Carrie Selberg,**

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

[FR Doc. 2012-7851 Filed 3-28-12; 4:15 pm]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 111207737-2141-02]

RIN 0648-XB142

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

**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 (CVs) using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2012 Pacific cod total allowable catch apportioned to CVs using trawl gear in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), April 1, 2012, through 1200 hrs, A.l.t., September 1, 2012.

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

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2012 Pacific cod total allowable catch (TAC) apportioned to CVs using trawl gear in the Central Regulatory Area of the GOA is 8,936 metric tons (mt), as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has

determined that the A season allowance of the 2012 Pacific cod TAC apportioned to CVs using trawl gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,936 mt, and is setting aside the remaining 1,000 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 Pacific cod by CVs using trawl gear in the Central Regulatory Area of the GOA. 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 directed fishing closure of Pacific cod for CVs using trawl gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 26, 2012.

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 28, 2012.

**Carrie Selberg,**

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

[FR Doc. 2012-7841 Filed 3-28-12; 4:15 pm]

**BILLING CODE 3510-22-P**