

Comprehensive ACL Amendment on January 18, 2012. The final rule to implement the Comprehensive ACL Amendment was published on March 16, 2012 (77 FR 15916).

On April 20, 2012, NMFS published a supplemental proposed rule to the Comprehensive ACL Amendment to revise the commercial quota (commercial ACL) for greater amberjack and requested public comment (77 FR 23652). A summary of the action implemented by this supplemental final rule is provided below.

The final rule to implement the Comprehensive ACL Amendment (77 FR 15916, March 16, 2012) implemented AMs and a recreational ACL for greater amberjack. However, as part of the rulemaking for the Comprehensive ACL Amendment, NMFS inadvertently failed to revise the commercial quota for greater amberjack. This supplemental final rule revises the greater amberjack commercial quota to accurately reflect the actions in the Comprehensive ACL Amendment and the Council's intent. This rule reduces the current commercial sector quota of 1,169,931 lb (530,672 kg), gutted weight, to 769,388 lb (348,989 kg), gutted weight.

#### Comments and Responses

A total of four comments letters were received on the supplemental proposed rule. Relevant comments were similar in content and are addressed in a single comment and response as follows.

*Comment 1:* The greater amberjack commercial quota should not be reduced to 769,388 lb (348,989 kg), gutted weight. The recent stock assessment indicated that greater amberjack is not undergoing overfishing and is not overfished. The lower quota will lead to greater economic hardships if greater amberjack is closed earlier each year.

*Response:* Although greater amberjack is not undergoing overfishing and is not overfished, the Magnuson-Stevens Act requires that a fishery management council specify ACLs for species in its FMPs at a level that may not exceed the fishing level recommendation of its scientific and statistical committee (SSC), and that ACLs prevent overfishing. The SSC recommendation that is the most relevant to ACLs is the acceptable biological catch (ABC). Based on the most recent stock assessment completed in 2008, the SSC recommended a greater amberjack stock ABC of 1,968,000 lb (892,670 kg), round weight. Therefore, the Council specified a stock ACL for greater amberjack of 1,968,000 lb (892,670 kg). As described in the Comprehensive ACL

Amendment, the commercial sector allocation equates to a commercial ACL of 800,163 lb (362,948 kg), round weight, or 769,388 lb (348,989 kg), gutted weight.

NMFS agrees that if the new commercial quota is met in-season, negative economic effects could be experienced by commercial fishermen who target greater amberjack, because the current Federal regulations require that if commercial landings reach, or are projected to reach the commercial quota (ACL), then the commercial sector will close for the remainder of the fishing year. The fishing year for greater amberjack begins on May 1 and ends on April 30. For the period of 2005–2009, commercial greater amberjack landings did not exceed the commercial quota (ACL) being implemented through this rule. However, NMFS notes that preliminary greater amberjack commercial landings data for the 2011–2012 fishing year indicate that commercial landings may have exceeded the revised commercial quota being implemented through this rule, and might have triggered a closure had this rule been in place for the 2011–2012 fishing year. However, as noted above, the Council cannot set the ACL at a level that exceeds the ABC. NMFS will monitor commercial landings for the 2012–2013 fishing year, and subsequent years, to determine if the AM will be triggered and the commercial sector should be closed in-season.

#### Classification

The Regional Administrator, Southeast Region, NMFS has determined that this supplemental final rule is necessary for the conservation and management of the species within the Comprehensive ACL Amendment and is consistent with the Magnuson-Stevens Act, and other applicable law.

This supplemental final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the final rule to implement the Comprehensive ACL Amendment would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and the supplemental proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was proposed.

#### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 12, 2012.

**Alan D. Risenhoover,**  
*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

#### PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.42, paragraph (e)(3) is revised to read as follows:

##### § 622.42 Quotas.

\* \* \* \* \*

(e) \* \* \*

(3) Greater amberjack—769,388 lb (348,989 kg).

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#### DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

#### 50 CFR Part 679

[Docket No. 111207737-2141-02]

RIN 0648-0648-XC112

#### Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in 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 species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 14, 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.

The third seasonal apportionment of the Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 200 metric tons as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012), for the period 1200 hrs, A.l.t., July 1, 2012, through 1200 hrs, A.l.t., September 1, 2012.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached.

Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, squids, sharks, octopuses, and sculpins. This prohibition does not apply to fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock and vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Program for the Central 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 Acting 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 the shallow-water species fishery by vessels using trawl gear in 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 July 12, 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 § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: July 13, 2012.

**Emily H. Menashes,**

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

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