

limit, acceptable biological catch, annual catch limit (ACL), optimum yield, domestic harvest and processing, U.S. at-sea processing, border transfer, and the sub-ACL for each management area. The 2012 Domestic Annual Harvest was set as 91,200 metric tons (mt); the sub-ACL allocated to Area 3 for the 2012 fishing year (FY) was 38,146 mt, and 0 mt of the sub-ACL was set aside for research in the 2010–2012 specifications (75 FR 48874, August 12, 2010).

Section 648.201 requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor the herring fishery in each of the four management areas designated in the Fishery Management Plan for the herring fishery and, based on dealer reports, state data, and other available information, to determine when the harvest of herring is projected to reach 95 percent of the management area sub-ACL. When such a determination is made, NMFS must publish notification in the **Federal Register** and prohibit 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 landing more than once per calendar day in or from the specified management area for the remainder of the closure period. Transiting Area 3 with more than 2,000 lb (907.2 kg) of herring on board is allowed under the conditions described below.

The Regional Administrator has determined, based on dealer reports and other available information that 95 percent of the total herring sub-ACL allocated to Area 3 for 2012 is projected to be harvested on October 7, 2012. Therefore, effective 0001 hr local time, October 7, 2012, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of herring per trip (and landing herring no more than once per calendar day) in or from Area 3 through December 31, 2012. Vessels may transit through Area 3 with more than 2,000 lb (907.2 kg) of herring on board, provided such herring was not caught in Area 3 and provided all fishing gear aboard is stowed and not available for immediate use as stated in § 648.23(b). Effective 0001 hr, October 7, 2012, federally permitted dealers are also advised that they may not purchase herring from federally permitted herring vessels that harvest more than 2,000 lb (907.2 kg) of herring from Area 3 through 2400 hr local time, December 31, 2012.

### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 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 impracticable and contrary to the public interest. This action closes the herring fishery for Management Area 3 until January 1, 2013, under current regulations. The regulations at § 648.201(a) require such action to ensure that herring vessels do not exceed the 2012 sub-ACL allocated to Area 3. The herring fishery opened for the 2012 fishing year on January 1, 2012. Data indicating the herring fleet will have landed at least 95 percent of the 2012 sub-ACL allocated to Area 3 have only recently become available. If implementation of this closure is delayed to solicit prior public comment, the sub-ACL for Area 3 for this fishing year can be exceeded, thereby undermining the conservation objectives of the FMP and requiring any excess to be subtracted from the Area 3 sub-ACL for the fishing year following the total catch determination. The AA further 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: October 3, 2012.

**Lindsay Fullenkamp,**

*Acting Deputy 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. 111213751–2102–02]

RIN 0648–XC278

### Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Atka Mackerel 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 the 2012 Atka mackerel incidental catch allowance (ICA) for the Bering Sea subarea and Eastern Aleutian district (BS/EAI) of to the Amendment 80 cooperatives in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2012 total allowable catch of Atka mackerel to be fully harvested.

**DATES:** Effective October 3, 2012, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7269.

**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 2012 Atka mackerel ICA for the BS/EAI is 1,000 metric tons (mt) and 2012 Atka mackerel total allowable catch allocated to the Amendment 80 cooperative is 29,892 mt as established by the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012).

The Administrator, Alaska Region, NMFS, has determined that 570 mt of the Atka mackerel ICA for the BS/EAI will not be harvested. Therefore, in accordance with § 679.91(f), NMFS reallocates 570 mt of Atka mackerel from the BS/EAI ICA to the Amendment 80 cooperatives in the BSAI. In accordance with § 679.91(f), NMFS will reissue cooperative quota permits for the reallocated Atka mackerel following the procedures set forth in § 679.91(f)(3).

The harvest specifications for Atka mackerel included in the harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012) are revised as follows: 430 mt of Atka mackerel for the BS/EAI ICA and 30,463 mt of Atka mackerel for the Amendment 80 cooperatives in the BS/EAI. Table 4 is correctly revised and republished in its entirety as follows:

TABLE 4—FINAL 2012 AND 2013 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

| Sector <sup>1</sup>               | Season <sup>2,3,4</sup>             | 2012 allocation by area                       |   |                                | 2013 allocation by area                       |   |  |
|-----------------------------------|-------------------------------------|---|---|--------------------------------|---|---|--|
|                                   |                                     | Eastern Aleu-<br>tian District/<br>Bering Sea | Central <sup>5</sup> Aleu-<br>tian District | Western Aleu-<br>tian District | Eastern Aleu-<br>tian District/<br>Bering Sea | Central <sup>5</sup> Aleu-<br>tian District | Western <sup>5</sup><br>Aleutian Dis-<br>trict |
| TAC .....                         | n/a .....                           | 38,500  | 10,763                                      | 1,500                          | 31,700  | 8,883                                       | 1,500  |
| CDQ reserve .....                 | Total .....                         | 4,120   | 1,152                                       | 161                            | 3,392   | 950   | 161  |
|                                   | A .....                             | 2,060   | 576   | 80                             | 1,696   | 475   | 80   |
|                                   | Critical Habitat <sup>5</sup> ..... | n/a   | 58  | n/a                            | n/a   | 48  | n/a  |
|                                   | B .....                             | 2,060   | 576   | 80                             | 1,696   | 475   | 80   |
|                                   | Critical Habitat <sup>5</sup> ..... | n/a   | 58  | n/a                            | n/a   | 48  | n/a  |
| ICA .....                         | Total .....                         | 430   | 100   | 40                             | 1,000   | 100   | 40   |
| Jig <sup>6</sup> .....            | Total .....                         | 167   | 0   | 0                              | 137   | 0   | 0  |
| BSAI trawl limited<br>access.     | Total .....                         | 3,321   | 951   | 0                              | 2,717   | 783   | 0  |
|                                   | A .....                             | 1,661   | 476   | 0                              | 1,359   | 392   | 0  |
|                                   | B .....                             | 1,661   | 476   | 0                              | 1,359   | 392   | 0  |
| Amendment 80<br>sectors.          | Total .....                         | 30,463  | 8,560                                       | 1,300                          | 24,454  | 7,049                                       | 1,300  |
|                                   | A .....                             | 15,231  | 4,280                                       | 650                            | 12,227  | 3,525                                       | 650  |
|                                   | B .....                             | 15,231  | 4,280                                       | 650                            | 12,227  | 3,525                                       | 650  |
| Alaska Groundfish<br>Cooperative. | Total .....                         | 17,770  | 5,016                                       | 759                            | n/a   | n/a   | n/a  |
|                                   | A .....                             | 8,885   | 2,508                                       | 380                            | n/a   | n/a   | n/a  |
|                                   | Critical Habitat <sup>5</sup> ..... | n/a   | 251   | n/a                            | n/a   | n/a   | n/a  |
|                                   | B .....                             | 8,885   | 2,508                                       | 380                            | n/a   | n/a   | n/a  |
|                                   | Critical Habitat <sup>5</sup> ..... | n/a   | 251   | n/a                            | n/a   | n/a   | n/a  |
| Alaska Seafood<br>Cooperative.    | Total .....                         | 12,693  | 3,544                                       | 541                            | n/a   | n/a   | n/a  |
|                                   | A .....                             | 6,347   | 1,772                                       | 271                            | n/a   | n/a   | n/a  |
|                                   | Critical Habitat <sup>5</sup> ..... | n/a   | 177   | n/a                            | n/a   | n/a   | n/a  |
|                                   | B .....                             | 6,347   | 1,772                                       | 271                            | n/a   | n/a   | n/a  |
|                                   | Critical Habitat <sup>5</sup> ..... | n/a   | 177   | n/a                            | n/a   | n/a   | n/a  |

<sup>1</sup> Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

<sup>2</sup> Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

<sup>3</sup> The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

<sup>4</sup> Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to November 1.

<sup>5</sup> Section 679.20(a)(8)(ii)(C) requires the TAC in area 542 shall be no more than 47% of ABC, and Atka mackerel harvests for Amendment 80 cooperatives and CDQ groups within waters 10 nm to 20 nm of Gramp Rock and Tag Island, as described in Table 12 to part 679, in Area 542 are limited to no more than 10 percent of the Amendment 80 cooperative Atka mackerel allocation or 10 percent of the CDQ Atka mackerel allocation.

<sup>6</sup> Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

This will enhance the socioeconomic well-being of harvesters dependent upon Atka mackerel in this area. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of Atka mackerel ICA in the BS/EAI, (2) the harvest capacity and stated intent on future harvesting patterns of the Amendment 80 cooperative that participates in this BS/EAI 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 Atka mackerel from the BS/EAI ICA to the Amendment

80 cooperatives in the BSAI. 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 September 28, 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 § 679.91 and is exempt from review under Executive Order 12866.

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

Dated: October 3, 2012.

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