

Dated: November 26, 2004.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 031124287-4060-02; I.D. 112304C]

#### 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:** Reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels using pot gear to vessels using trawl gear and catcher processor vessels using hook-and-line gear in the BSAI. These actions are necessary to allow the 2004 total allowable catch (TAC) of Pacific cod to be harvested.

**DATES:** Effective November 26, 2004, until 2400 hours, A.L.T., December 31, 2004.

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

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish Fishery of the Bering Sea and Aleutian Islands 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 2004 final harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004), established the Pacific cod TAC as 199,338 metric tons (mt). Pursuant to § 679.20(a)(7)(i)(A), 3,987 mt was allocated to vessels using jig gear, 101,662 mt to vessels using hook-and-line or pot gear, and 93,689 mt to vessels using trawl gear. The share of the Pacific cod TAC allocated to trawl gear was further allocated 50 percent to catcher vessels and 50 percent to catcher/processor vessels (§ 679.20(a)(7)(i)(B)). The share of the Pacific cod TAC allocated to hook-and-line or pot gear was further allocated 80 percent to catcher/processor vessels using hook-and-line gear; 0.3 percent to catcher vessels using hook-and-line gear; 3.3 percent to catcher/processor vessels using pot gear; 15 percent to catcher vessels using pot gear; and 1.4 percent to catcher vessels less than 60 ft (18.3 meters) length overall that use either hook-and-line or pot gear (§ 679.20(a)(7)(i)(C)).

On October 15, 2004, 12,700 mt of Pacific cod from the trawl gear allocation and 2,000 mt from the jig gear allocation was reallocated to vessels using hook-and-line gear and vessels using pot gear (69 FR 61607, October 20, 2004).

As of November 16, 2004, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that catcher vessels using pot gear will not be able to harvest 3,960 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(C) and the subsequent reallocation on October 15, 2004 (69 FR 61607, October 20, 2004). Therefore, in accordance with § 679.20(a)(7)(ii)(C)(2), NMFS apportions 3,960 mt of Pacific cod from catcher vessels using pot gear to vessels using trawl gear and catcher/processor vessels using hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (69 FR 9242, February 27, 2004) are revised as follows: 97,795 mt to

catcher/processor vessels using hook-and-line gear, 11,735 mt to catcher vessels using pot gear, 41,431 mt to catcher/processor vessels using trawl gear, and 40,717 mt to catcher vessels using trawl 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 a 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 for catcher vessels using pot gear to vessels using trawl gear and catcher processor vessels using hook-and-line in the BSAI and therefore would cause disruption to the industry by requiring unnecessary closures, disruption within the fishing industry, and the potential for regulatory discards when the current allocations are reached. This reallocation will relieve a restriction on the industry and allow for the orderly conduct and efficient operation of this fishery.

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: November 24, 2004.

**Alan D. Risenhoover,**

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

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