

prohibition on the possession of Gulf of Maine (GOM) cod, and continuation of the prohibition on the possession of SNE/MA winter flounder. In addition, this action continues measures to mitigate some of the negative, short-term economic impacts of the FMP by expanding the CA I Hook Gear Haddock SAP; modifying the DAS Leasing Program, the Regular B DAS Program, and the DAS Transfer Program; continuing the Eastern U.S./Canada Haddock SAP; and continuing a reduction in the haddock minimum size to 18 inches (45 cm) for both commercial and recreational vessels.

Four comments were received that were pertinent to the interim rule. Associated Fisheries of Maine supported the revised trip limits for GB winter flounder and white hake, and requested that NMFS exempt vessels fishing with haddock separator trawls or Rhule trawls from the SNE Differential DAS Area restrictions. The State of Maine supported the revised trip limits. NMFS agrees that the revised trip limits are justified. NMFS disagrees that the Rhule trawl or haddock separator trawl should be exempt from the SNE Differential DAS Area. The principal objective of the SNE Differential DAS Area is to reduce the fishing mortality on SNE winter flounder. Although the Rhule trawl significantly reduces the catch of winter flounder, it is less effective at reducing the catch of winter flounder compared to other species. Winter flounder comprised 4 percent of the experimental trawl catch in the research that was the basis of NMFS's approval of this gear for use in certain special management programs. Similarly, the haddock separator trawl research indicated significant reductions in catch of flatfish, but the percentage reduction is variable. In contrast, hook gear catches relatively little winter flounder (less than 1 percent, based on data from the Cape Cod Commercial Hook Fishermen's Association). Although it is not possible to quantitatively compare the difference in fishing mortality reduction between vessels fishing under differential (two-to-one) DAS restrictions (using regular trawl gear) and vessels fishing under one-to-one DAS restrictions (using specialized trawl gear), given the large reduction in fishing mortality necessary for SNE/MA winter flounder, exemption from the SNE Differential DAS restrictions for vessels using specialized trawl gear is not warranted.

The Atlantic States Marine Fisheries Commission (Commission) expressed support for the interim action and the extension of the action, especially those measures that provide additional

protection for winter flounder. The Commission stated that the sacrifices made by the recreational and commercial fisheries are necessary to generate the future benefits of a rebuilt winter flounder fishery. NMFS agrees that continuing measures to protect winter flounder are necessary in order to rebuild the fishery for the future, and is extending the interim management measures for the duration of the fishing year.

A member of the fishing industry from New Jersey was concerned about the economic impact of the measures on vessels fishing for winter flounder from New Jersey ports. NMFS agrees that the prohibition on the retention of SNE/MA winter flounder and the SNE Differential DAS Area will have an economic impact on vessels from New Jersey ports. The economic impacts were taken into account by NMFS in the decision to implement a differential DAS area instead of a complete closure in SNE (as described in the interim rule of April 13, 2009). Restrictive measures are necessary to rebuild the SNE/MA stock of winter flounder.

#### Classification

NMFS has determined that the interim management measures extended by this temporary rule are necessary and are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

The interim rule that this rule extends was determined to be significant for purposes of E.O. 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

The EA prepared for the initial interim rule analyzed the impacts of the interim management measures for the duration of a year (Secretarial Interim Action to Implement Measures to Reduce Overfishing in the Northeast Multispecies Fishery Complex; Environmental Assessment; April 6, 2009). Therefore, this interim action extension meets the Categorical Exclusion requirements of NOAA Administrative Order 216-6, and no additional environmental analysis was prepared pursuant to the National Environmental Policy Act.

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

Dated: October 21, 2009.

**James W. Balsiger,**

*Acting Assistant Administrator For Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0810141351-9087-02]

**RIN 0648-XS58**

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel by Vessels in the Amendment 80 Limited Access Fishery in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Atka mackerel by vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2009 Atka mackerel allocation total allowable catch (TAC) allocated to vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 22, 2009, through 2400 hrs, A.l.t., December 31, 2009.

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

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone 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 2009 Atka mackerel TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI is 9,275 metric tons (mt) as established by the final 2009 and 2010

harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2009 Atka mackerel TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 9,250 mt and is setting aside the remaining 25 mt as incidental catch to support other 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 Atka mackerel by vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI.

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 closure of Atka mackerel by vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 21, 2009.

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: October 22, 2009.

**Emily H. Menashes,**

*Acting 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. 0810141351-9087-02]

RIN 0648-XS57

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch by Vessels in the Amendment 80 Limited Access Fishery in the Central Aleutian District of the Bering Sea and Aleutian Islands Management Area**

**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 ocean perch by vessels participating in the Amendment 80 limited access fishery in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2009 Pacific ocean perch allocation specified for vessels participating in the Amendment 80 limited access fishery in the Central Aleutian District of the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 22, 2009, through 2400 hrs, A.l.t., December 31, 2009.

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

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone 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 2009 Pacific ocean perch TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Central Aleutian District of the BSAI is 1,811 metric tons (mt) as established by the final 2009 and 2010 harvest

specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2009 Pacific ocean perch TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Central Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,700 mt and is setting aside the remaining 111 mt as incidental catch to support other 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 ocean perch by vessels participating in the Amendment 80 limited access fishery in the Central Aleutian District of the BSAI.

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 closure of Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Central Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 21, 2009.

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.*