

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: September 9, 2010.

**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. 0910131363-0087-02]

RIN 0648-XZ01

#### 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:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating projected unused amounts of Pacific cod from catcher vessels using trawl gear to American Fisheries Act catcher/processors and the Amendment 80 cooperative in the Bering Sea and Aleutian Islands management area. These actions are necessary to allow the 2010 total allowable catch of Pacific cod established for trawl catcher vessels to be harvested.

**DATES:** Effective September 9, 2010, until 2400 hours, A.l.t., December 31, 2010.

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

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (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 2010 Pacific cod total allowable catch (TAC) in the BSAI is 168,780 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010). Pursuant to ' 679.20(a)(7)(ii), the allocations of the Pacific cod TAC are 3,467 mt to American Fisheries Act (AFA) trawl catcher/processors and 16,878 mt to the Amendment 80 cooperative. The allocation to catcher vessels using trawl gear is 32,809 mt after one reallocation (75 FR 52478, August 26, 2010).

As of September 8, 2010 the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that catcher vessels using trawl gear will not be able to harvest 4,000 mt of Pacific cod allocated to those vessels under ' 679.20(a)(7)(ii). The Regional Administrator has determined that the projected unharvested amount is unlikely to be harvested by any of the other catcher vessel sectors described in § 679.20(a)(7)(iii)(A). Therefore, in accordance with § 679.20(a)(7)(iii)(B), NMFS apportions 600 mt of Pacific cod from catcher vessels using trawl gear to AFA trawl/catcher processors and 3,400 mt of Pacific cod from catcher vessels using trawl gear to the Amendment 80 cooperative.

The allocations for Pacific cod specified in the final 2010 and 2011 final harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) and one reallocation (75 FR 52478, August 26, 2010) are revised as follows: 4,067 mt to AFA catcher/processors using trawl gear, 20,278 mt to the Amendment 80 cooperative, and 28,809 mt to catcher vessels using trawl gear.

This will enhance the socioeconomic well-being of harvesters dependent upon Pacific cod in this area. The Regional Administrator considered the

following factors in reaching this decision: (1) the current catch of Pacific cod by the applicable BSAI sectors and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in the sectors participating in this 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 Pacific cod. 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 8, 2010.

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: September 9, 2010.

**Emily H. Menashes,**

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

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