

typically generates 4,000 to 5,000 metric tons of tuna valued at between \$4 and \$5 million per year. The closure should not significantly affect their operations as they are capable of fishing in other areas that would remain open.

The 2004 IATTC Tuna Convention Resolution offers each country a choice for closing the fishery for a 6-week period beginning either August 1 or November 20, of each of the years in 2004, 2005, and 2006. NMFS considered the alternative of the 6-week closure beginning on August 1, but based on public comments on the proposed rule in 2005, NMFS chose the 6-week closures to begin on November 20, 2005 and November 20, 2006. In particular, the U.S. purse seine fleet prefers a closure later in the fishing year because the winter weather is not conducive to fishing. Also, throughout the history of this fishery shipyards are prepared to accept vessels for scheduled repairs during the winter months. The fishery closure later in the year allows the industry to plan for and mitigate economic impacts while still providing the conservation benefits to the tuna resources in the ETP. NMFS also considered the "no action" alternative of not implementing a purse seine closure, which would have imposed no economic costs on small entities. However, failure to implement measures that have been agreed on pursuant to this Convention would violate the United States' obligations under the Convention and the Tuna Conventions Act.

The U.S. longline fishery for bigeye tuna in the ETP is relatively small. Vessels in the fishery are characterized as small business entities, the majority of which are based in Hawaii. The Hawaii fleet (approximately 120 active vessels) has pursued a mix of swordfish targeting, tuna targeting, and mixed trip fishing. While the fleet usually fishes west of the ETP, there have been trips into the ETP or in which a portion of the effort was deployed in the ETP. Based on logbook data analyses, NMFS has determined that the catch of bigeye in the ETP in 2001 was 150 mt. In 2003, a total of 49 Hawaii and California based longline vessels made 92 whole or partial trips east of 150° W. long, landing 232 mts of bigeye tuna. In 2004, 52 longline vessels made 87 whole or partial trips landing 158 mts of bigeye tuna. NMFS recognizes that this closure places a hardship on this fishery. Overall, a closure should not significantly affect their operations as they are capable of fishing in other areas that would remain open, outside the boundaries of the IATTC Convention Area. NMFS recognizes that this closure

places a further hardship on the West Coast fishery because of the difficulties involved in traveling outside the boundaries of the IATTC Convention Area for bigeye tuna.

NMFS considered the "no action" alternative of not implementing the longline closure provided in the 2004 IATTC Tuna Convention Resolution. This alternative would have imposed no economic costs on small entities. However, failure to implement measures that have been agreed on pursuant to this Convention would violate the United States' obligations under the Convention, and would violate the Tuna Conventions Act. The IATTC did not provide for alternatives in setting the 150 mt bigeye quota, which was approved by the DOS. As a result, NMFS has no discretion to refrain from promulgating the quota. Further, the Tuna Conventions Act does not provide authority for the United States to take independent action to conserve and manage fisheries subject to management under the IATTC Convention.

For both the purse seine and the longline tuna fisheries, the closures will have a temporary impact as vessels can return to the fishery on January 1.

This rule does not impose any new reporting or recordkeeping requirements.

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

**Authority:** 16 U.S.C. 951–962. and 971 *et seq.*

Dated: November 15, 2005.

**James W. Balsiger,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

**[Docket No. 041126332–5039–02; I.D. 111705A]**

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processor Vessels Using Pot Gear 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; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 total allowable catch (TAC) of Pacific cod specified for catcher/processor vessels using pot gear in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), November 17, 2005, until 2400 hrs, A.l.t., December 31, 2005.

**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 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 2005 Pacific cod TAC allocated to catcher/processor vessels using pot gear in the BSAI is 3,352 metric tons as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) and the reallocation on October 5, 2005 (70 FR 58983, October 11, 2005). See § 679.20(c)(3)(iii) and (c)(5), and (a)(7)(i)(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2005 Pacific cod TAC allocated to catcher/processor vessels using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using pot gear in 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 cod by catcher/processor vessels using pot gear in the BSAI.

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 17, 2005.

**Alan D. Risenhoover,**

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

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