

Dated: February 10, 2006.

**James H. Lecky,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 060201022-6022-01; I.D. 012606A]

RIN 0648-AU16

#### Fisheries of the Exclusive Economic Zone Off Alaska; Control Date for Bering Sea and Aleutian Islands Pacific Cod Fishery

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

**ACTION:** Advance notice of proposed rulemaking; consideration of control date.

**SUMMARY:** This document announces that anyone entering the Bering Sea and Aleutian Islands (BSAI) Pacific cod fishery after December 11, 2005 (control date), will not be assured of future access to the Pacific cod resource if a management regime is developed and implemented that limits the number of participants, licenses or vessels in the fishery. This announcement is necessary for public awareness of a potential eligibility criterion for access with commercial fishing gear to the BSAI Pacific cod resource. This announcement does not prevent any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed and implemented. The intended effect of this announcement is to discourage new entry into the fishery based on speculation while discussions continue on whether and how access to the Pacific cod resource should be limited.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hartman, 907-586-7442, or [jeff.hartman@noaa.gov](mailto:jeff.hartman@noaa.gov).

**SUPPLEMENTARY INFORMATION:** On December 11, 2005 the North Pacific Fishery Management Council (Council) recommended that NMFS provide a notice to the public that a control date of December 11, 2005, for participation in the BSAI Pacific cod fishery be set. The purpose of this notice is to inform the public that participation in the BSAI Pacific cod commercial fishery after this date may not count for consideration of an allocation or eligibility to fish for Pacific cod.

The BSAI Pacific cod fishery is managed pursuant to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The total allowable catch (TAC) for BSAI Pacific cod currently is allocated among trawl, fixed, and jig gear sectors at 50 CFR 679.20(a)(7). The Council is developing a proposed amendment to the FMP (Amendment 85) that would further divide and refine these allocations. During the development of this amendment, the Council became aware that new entrants into some sectors of the Pacific cod fishery would exacerbate competition for increasingly smaller sector allocations under Amendment 85.

In October 2005, the Council developed a problem statement for Amendment 85 identifying that:

Participants in the BSAI Pacific cod fishery who have made significant investments and have a long-term dependence on the resource need stability in the allocations to the trawl, jig, fixed gear, and CDQ [Community Development Quota] sectors. To reduce uncertainty and provide stability for these participants, allocations should be adjusted to better reflect historic use by sector. The basis for determining sector allocations will be catch history as well as consideration of socio-economic and community factors. As other fisheries in the BSAI and GOA [Gulf of Alaska] are incrementally rationalized, historical participants in the BSAI Pacific cod fishery may be put at a disadvantage. Each sector in the BSAI Pacific cod fishery currently has different degrees of license requirements and levels of participation. Allocations to the sector level are a necessary step on the path towards comprehensive rationalization. Prompt action is needed to maintain stability in the BSAI Pacific cod fisheries.

In October 2005, the public testified to the Council that new entry into the Pacific cod fishery likely would erode

the Pacific cod allocations and associated prohibited species catch amounts available to long-term participants, especially under proposed Amendment 85. On December 11, 2005, the Council recommended that NMFS provide a notice to the public that a control date of December 11, 2005, be set for participation in the BSAI Pacific cod fishery. This notice informs the public that participation in the BSAI Pacific cod commercial fishery after this date may not be considered by the Council for purposes of any future limited entry program developed for this fishery.

NMFS and the Council intend, in making this announcement, to discourage speculative entry into the Pacific cod fishery while potential entry or access control management regimes are considered by the Council. If the Council decides to develop an access or entry control regime, some fishermen who do not currently fish for Pacific cod in the BSAI and never have done so may decide to enter the fishery for the sole purpose of establishing a record of making commercial landings of this species.

A record of making commercial landings generally is considered indicative of economic dependence on a fishery. On this basis, a new entrant may successfully claim access to a fishery that otherwise is limited to traditional participants. New entrants may have to buy the fishing history or a permit from an earlier participant. Hence, initial access to the fishery at little or no entry cost may result in a transfer of wealth to entities with little investment in a fishery and away from those that have substantial investment in the fishery as indicated by their fishing history. Any anticipated increase in the security of an allocation also may encourage speculative entry, which is associated with a rapid and wasteful increase in fishing effort in fisheries already fully or over-exploited. Specification of a control date may communicate helpful investment and operational information to businesses considering entry to a fishery, or those currently operating in a fishery.

This action does not commit the Council or Secretary to a particular management regime or criterion for entry to the Pacific cod fishery. Fishermen are not guaranteed future participation in the fishery before or after the control date. The Council may choose a different control date, or it may

choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. The Council may choose also to take no further action to control entry or access to the fishery.

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

Dated: February 13, 2006.

**John Oliver,**

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

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