

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 070213032-7032-01]

RIN 0648-XC26

Fisheries of the Economic Exclusive Zone off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; inseason adjustment; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), effective 2400 hrs, Alaska local time, September 1, 2007. This adjustment is necessary to allow a 12-hour fishery for species that comprise the shallow-water species fishery without exceeding the fourth seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2007, through 2400 hrs, A.l.t., September 1, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 12, 2007.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- FAX to 907-586-7557;
- E-mail to inseason.fakr@noaa.gov and include in the subject line of the e-mail the document identifier: goaswx4s12.fo.wpd (E-mail comments, with or without attachments, are limited to 5 megabytes); or
- Webform at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the

GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 fourth seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 150 metric tons (mt) as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007), for the period 1200 hrs, A.l.t., September 1, 2007, through 1200 hrs, A.l.t., October 1, 2007.

Regulations at § 679.23(b) specify that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. Current information shows the expected trawl Pacific halibut bycatch rates observed in groundfish fisheries during the fourth season in the GOA to be 300 mt per day. The Administrator, Alaska Region, NMFS, has determined that the 2007 Pacific halibut bycatch allowance specified for the trawl fisheries could be exceeded if a 24-hour fishery were allowed to occur. NMFS intends that the halibut bycatch allowance not be exceeded and, therefore, will not allow a 24-hour directed fishery. NMFS, in accordance with § 679.25(a)(1)(i) and 679.25(a)(2)(i)(A), is adjusting the trawl shallow-water species fishery in the GOA by prohibiting the fishery at 2400 hrs, A.l.t., September 1, 2007, at which time directed fishing for shallow-water species by vessels using trawl gear in the GOA will be prohibited. This action has the effect of opening the fishery for 12 hours.

NMFS is taking this action to allow a controlled fishery to occur, thereby preventing the overharvest of the Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery designated in accordance with the 2007 and 2008 harvest specifications for groundfish in the GOA (72 FR 9676, March 5, 2007) and § 679.21(d). In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 2400 hrs, A.l.t., September 1, 2007, after a 12-hour opening is the least restrictive management adjustment to allow the fishing industry opportunity to harvest species that comprise the shallow-water species fishery without exceeding the fourth seasonal apportionment of the 2007 Pacific halibut bycatch allowance

for the shallow-water species fishery in the GOA. Pursuant to § 679.25(b)(5), NMFS has considered data regarding inseason prohibited species bycatch rates observed in groundfish fisheries in the GOA in making this adjustment.

The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and "other species." This inseason adjustment does not apply to fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This inseason adjustment does not apply to vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

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 inseason adjustment closing of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 20, 2007.

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.

Without this inseason adjustment, NMFS could not allow the fishery for the shallow-water species fishery in the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 12, 2007.

This action is required by § 679.21 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: August 22, 2007.

Emily H. Menashes,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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