

of a trip in, the Western U.S./Canada Area south of 41° 40' N. lat. under a NE multispecies DAS, to reduce catches and discards of GB yellowtail flounder, effective November 20, 2009, through April 30, 2010, or until modified by a subsequent action. For any such vessels, other gear may be on board the vessel but must be stowed according to the regulations at § 648.23(b) for the entire trip. For any limited access NE multispecies vessel possessing, harvesting, or landing fish exclusively from the area north of 41° 40' N. lat., all trawl gear, except the haddock separator trawl or Ruhle trawl, must be stowed while transiting the Western U.S./Canada Area south of this line. If sufficient GB yellowtail flounder TAC remains available, the Regional Administrator may lift this gear restriction before the end of FY 2009 to allow additional opportunity to achieve the FY 2009 TACs for the transboundary stocks of GB yellowtail flounder, GB cod, and GB haddock.

A previous temporary rule published on September 15, 2009 (74 FR 47118), restricted the use of trawl gear in the Eastern U.S./Canada Area to either the haddock separator trawl or the Ruhle trawl. Trawl vessels may continue to fish in either the Eastern or Western U.S./Canada Areas using either a haddock separator trawl or a Ruhle trawl. This action does not affect vessels fishing in the U.S./Canada Management Area with either hook gear or gillnet gear, as these gears do not catch a significant amount of yellowtail flounder. Because observer reports indicate that catches of yellowtail flounder are lower north of 41° 40' N. lat., other trawl gear will continue to be allowed on trips fishing in the Western U.S./Canada Area exclusively north of this line in order to allow vessels to harvest other species of flatfish.

The regulations at § 648.85(a)(3)(iv)(D) specify that, if the Regional Administrator, under this authority, requires use of a particular gear type in order to reduce catches of stocks of concern, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg)(whole weight) each (i.e., no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because notice, comment, and a delayed effectiveness would be impracticable and contrary to the public interest. The regulations under § 648.85(a)(3)(iv)(D) grant the Regional Administrator the authority to modify gear requirements to prevent over-harvesting or under-harvesting the TAC allocation. Because of the time necessary to provide for prior notice and opportunity for public comment, NMFS would be prevented from taking immediate action to slow the catch rate of GB yellowtail flounder in the U.S./Canada Management Area. Such a delay would allow the high catch rate of GB yellowtail flounder to continue and would result in excessive discards of GB yellowtail flounder, the premature closure of the Eastern U.S./Canada Area for the remainder of the fishing year, and the potential under-harvest of the available TACs specified for Eastern GB cod and haddock. Excessive discards of GB yellowtail flounder caused by a delayed implementation of this action could potentially increase mortality on this overfished stock and undermine the conservation objectives of Amendment 13 to the FMP, and the Magnuson-Stevens Act. If implementation of this action is delayed, the NE multispecies fishery could be prevented from fully harvesting the TACs for Eastern GB cod and haddock during FY 2009. Under-harvesting these TACs would result in increased economic impacts to the industry, and social impacts beyond those analyzed in Amendment 13, as the full potential revenue from the available Eastern GB cod and haddock would not be realized.

The rate of harvest of the Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder TACs in the U.S./Canada Management Area are updated weekly on the internet at <http://www.nero.noaa.gov>. Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential action to provide additional opportunities to the NE multispecies industry to fully harvest the TAC for any species during FY 2009. Further, the Regional Administrator's authority to modify gear requirements in the U.S./Canada Management Area to help ensure that the shared U.S./Canada stocks of fish are harvested, but not exceeded, was considered and open to public comment during the development of Amendment 13 to the FMP and Framework Adjustment 42 to

the FMP. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: November 16, 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-XS96

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processors Using Hook-and-Line 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 processors using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2009 Pacific cod total allowable catch (TAC) allocated to catcher processors using hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 16, 2009, through 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT:

Obren Davis, 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 2009 Pacific cod TAC allocated as a directed fishing allowance to catcher processors using hook-and-line gear in the BSAI is 83,575 metric tons (mt) as

established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009) and two reallocations (74 FR 48170, September 22, 2009 and 74 FR 57262, November 5, 2009).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that the 2009 Pacific cod directed fishing allowance allocated to catcher processors using hook-and-line gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processors using hook-and-line 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 directed fishing for Pacific cod by catcher processors using hook-and-line gear in 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 November 12, 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 section 679.20 and is exempt from review under Executive Order 12866.

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

Dated: November 16, 2009.

Emily H. Menashes,

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

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