

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

RIN 0648—XT99

[Docket No. 100120036–0038–01]

**Fisheries of the Northeastern United States; Black Sea Bass Fishery; 2010 Black Sea Bass Specifications; Emergency Rule Extension**

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

**ACTION:** Temporary rule; emergency action extension.

**SUMMARY:** NMFS is extending the emergency action to increase the 2010 black sea bass specifications (i.e., commercial fishing quota, recreational harvest limit, and research set-aside (RSA) quota) implemented on February 10, 2010, for the remainder of the 2010 fishing year, which ends on December 31, 2010. This emergency rule extension is necessary to ensure that the revised specifications remain in place for the remainder of the 2010 fishing year. Extending the increase to the 2010 black sea bass total allowable landings (TAL) will prevent disruption to the black sea bass fisheries and foregone economic opportunities that would result if the emergency action is allowed to lapse.

**DATES:** Effective August 10, 2010, through December 31, 2010.

**ADDRESSES:** Copies of the Supplemental Environmental Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. This document is also accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Sarah Heil, Fishery Management Specialist, (978) 281–9257.

**SUPPLEMENTARY INFORMATION:** A final rule to establish the 2010 black sea bass specifications was published in the **Federal Register** on December 22, 2009 (74 FR 67978), and became effective on January 1, 2010. The final rule implemented a 2.71–million-lb (1,229–mt) Total Allowable Catch (TAC) and, after deducting estimated discards, a TAL of 2.3 million lb (1,043 mt). These measures for the 2010 black sea bass fisheries were consistent with the Mid-Atlantic Fishery Management Council's (Council's) recommendations made at

its August 4–6, 2009, meeting. The Council's recommendations were based on its Scientific and Statistical Committee's (SSC's) Acceptable Biological Catch (ABC) recommendation of 2.71 million lb (1,229 mt). This was the status quo from 2009. However, citing information not previously considered, the SSC revised its ABC recommendation on January 8, 2010. The SSC recommended increasing the ABC from 2.71 million lb (1,229 mt) to 4.5 million lb (2,041 mt).

Based on the change to the ABC recommendation from the Council's SSC, NMFS published an emergency rule to increase the 2010 black sea bass specifications on February 10, 2010 (75 FR 6586). The emergency rule increased the 2010 black sea bass TAC from 2.71 million lb (1,229 mt) to 4.5 million lb (2,041 mt), consistent with the revised ABC recommendation from the SSC. After deducting discards from the TAC, the TAL increased from 2.3 million lb (1,043 mt) to 3.7 million lb (1,678 mt). Consistent with the allocation of the black sea bass TAL to the commercial and recreational sectors specified in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), the emergency rule increased the commercial quota to 1,813,000 lb (822 mt), the recreational harvest limit to 1,887,000 lb (856 mt), and the RSA quota to 111,000 lb (50 mt). The measures of this extension remain unchanged from the measures contained in the initial emergency rule and described above. This action extends the increased 2010 black sea bass TAL for the remainder of the 2010 fishing year, through December 31, 2010.

**Comments and Responses**

NMFS received two comments on the initial emergency action.

*Comment 1:* This commenter suggested that all fish quotas should be cut, and felt that commercial fisheries were causing fish species to become extinct.

*Response:* The commenter provided no scientific basis that black sea bass are at risk of extinction. The reasons presented by the Council and NMFS for increasing the 2010 black sea bass specifications are based on the best scientific information available and are discussed in the preamble of the initial emergency action and this extension. Black sea bass are not overfished or subject to overfishing, and are no longer subject to a formal Magnuson-Stevens Act rebuilding plan. Sufficient analysis and scientific justification for NMFS's action in this emergency rule extension are contained within the supporting documents.

*Comment 2:* This commenter supported the emergency action to increase the 2010 black sea bass specifications, but expressed concern for the process by which a Council's SSC makes its ABC recommendations. The commenter felt that SSCs are being pressured politically to revise their ABC recommendations and suggested that the SSCs are inequitably charged to prevent overfishing and achieve rebuilding targets, but not to achieve optimum yield (OY).

*Response:* The emergency action to increase the 2010 black sea bass TAL from 2.71 million lb (1,229 mt) to 4.5 million lb (2,041 mt) was based on the best scientific information available and was consistent with the SSC's revised ABC recommendation. The increase to the 2010 black sea bass specifications alleviated restrictions on the commercial and recreational black sea bass fisheries and prevented direct economic loss for fishery participants and associated industries that would have resulted from the previous lower catch levels.

The Magnuson-Stevens Act section 302(g)(B) requires that each SSC shall provide its Council with ongoing scientific advice, including “recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield [MSY], and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.” However, the Magnuson-Stevens Act does not require the SSCs to use a prescribed formula for developing ABC recommendations. The new mandated role of the SSCs and the process by which each SSC makes ABC recommendations is evolving. In addition, NMFS interprets the National Standard 1 requirement to achieve OY on a continuing basis to mean producing a long-term series of catches such that the average catch is equal to OY, overfishing is prevented, and long-term average biomass is near or above the biomass target ( $B_{MSY}$ ). Therefore, National Standard 1 does not contemplate that the OY will necessarily be achieved in a single year, given the natural fluctuation of fish stocks in response to environmental conditions.

**Classification**

The Administrator, Northeast Region, NMFS, determined that this temporary rule is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. In the initial emergency rule published on February 10, 2010 (75 FR 6586), NMFS requested, and subsequently received, comments on the increased black sea bass TAL. NMFS considered and responded to the comments received in the preamble to this rule; no changes to the emergency action measures as a result of the comments received. The agency has the authority to extend the emergency action for up to 186 days beyond the August 9, 2010, expiration of the initial emergency action, as authorized under section 305(c)(3)(B) of the Magnuson-Stevens Act. NMFS, through this action, extends the emergency action to the end of the 2010 fishing year, which ends on December 31, 2010.

The measures of this emergency rule extension remain unchanged from the measures contained in the initial emergency action. If the initial emergency action were allowed to lapse, the TAL would revert back to the lower TAL of 2.71 million lb (1,229 mt). Given the nature of the commercial and recreational black sea bass fisheries, a substantial reduction of the TAL mid-year would significantly complicate management of this resource and result in foregone economic opportunities for the black sea bass fisheries. Extending the provisions of the emergency rule without notice and opportunity for public comment will ensure the 2010 black sea bass fisheries continue uninterrupted and will prevent unnecessary adverse economic impacts. Therefore, for the reasons outlined above, the Assistant Administrator finds it is unnecessary and contrary to the public interest to provide any additional notice and opportunity for public comment under 5 U.S.C. 553(b)(B) prior to publishing the emergency rule extension.

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

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law.

Dated: June 29, 2010

**Samuel D. Rauch III,**

*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. 0910131362-0087-02]

RIN 0648-XX35

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch for Catcher Vessels Participating in the Rockfish Entry Level Trawl Fishery in the Central Regulatory Area of the Gulf of Alaska

**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 ocean perch by trawl catcher vessels participating in the rockfish entry level fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2010 directed fishing allowance of Pacific ocean perch for trawl catcher vessels participating in the rockfish entry level fishery in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 3, 2010, through 1200 hrs, A.l.t., September 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 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 2010 directed fishing allowance of Pacific ocean perch allocated to trawl catcher vessels participating in the entry level rockfish fishery in the Central Regulatory Area is 392 metric tons as established by the final 2010 and 2011 harvest specifications for groundfish in the GOA (75 FR 11749, March 12, 2010).

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2010 directed fishing allowance of Pacific ocean perch for trawl catcher vessels participating in the entry level rockfish fishery in the Central Regulatory Area will soon be reached. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for Pacific ocean perch by trawl catcher vessels participating in the entry level rockfish fishery in the Central Regulatory Area of the 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

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 ocean perch by trawl catcher vessels participating in the rockfish entry level fishery in the Central Regulatory Area of 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 June 30, 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: July 1, 2010.

**Carrie Selberg,**

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

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