

will be affected by the rule are assumed to be small entities.

The number of commercial and for-hire vessels that would fish in the closed area should the area reopen is not known. During the public comment period on the proposed rule, no one expressed an intent or desire to fish in the area should it reopen. However, all entities in the area of interest have the potential to enter the area. All such entities will be covered by the final rule, and all said entities are small entities.

The final rule is not expected to alter present fishing practices. All entities can continue to fish in the location, manner and frequency that they currently operate. Therefore, the final rule should not affect the profitability of identified vessels.

Five alternatives to the final rule were considered. One alternative differs from the rule only in that it lacks a specific schedule for re-evaluation of the rule. Three alternatives also lack a re-evaluation schedule and differ from the rule in the duration of the prohibition. No impacts have been identified associated with the presence or absence of a prescribed re-evaluation schedule. These four alternatives, therefore, are expected to have the same effect on the affected entities as the final rule. None of these four alternatives would restrict current fishing practices in any way and, therefore, would not impose any new operational costs and would not adversely impact current harvests. Thus, current profits of participants in this fishery are not expected to be reduced. The only impact any of these four alternatives may induce would be the elimination of potential, but not certain, increased short-term profits that might be derived from fishing activity directed into the *Oculina* area, should sunset have been allowed to occur. The fifth alternative, the no-action alternative, would allow for sunset of the prohibition. This alternative, and the three alternatives that specify shorter prohibition duration than the final rule, would allow potential, but not certain, short-term increases in profits to occur if participants re-enter the area.

However, if snapper-grouper populations become depleted as a result of directed effort inside the area, any short-term gains would dissipate. Further, these potential short-term profits are expected to be less than the benefits that will accrue to continued protection of the resource and area. The benefits of continued protection are expected to exceed any potential short-term profits that would materialize from fishing in the *Oculina* area no matter how long the prohibition continues. However, it is the Council's intent to

achieve long term continued protection and those alternatives which limit the duration of the prohibition will not meet this intent. The final rule, therefore, is not expected to induce any significant economic impacts on small entities, best suits management needs, and meet the Council's intent.

Copies of the FRFA are available upon request (see **ADDRESSES**).

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

Dated: March 19, 2004.

**Rebecca Lent,**

*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. 031124287-4060-02; I.D. 032204H]

#### Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allocation of the 2004 total allowable catch (TAC) of Pacific cod specified for catcher vessels using trawl gear in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 23, 2004, until 1200 hrs, A.l.t., April 1, 2004.

**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 the Groundfish Fishery of the Bering Sea and Aleutian Islands 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 2004 Pacific cod TAC specified in the 2004 final harvest specification for groundfish of the BSAI (69 FR 9242, February 27, 2004) allocated 32,791 metric tons to catcher vessels using trawl gear in the BSAI for the period 1200 hrs, A.l.t., January 1, 2004, through 1200 hrs, A.l.t., April 1, 2004. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (B).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the A season allocation of the 2004 Pacific cod TAC specified for catcher vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 32,391 mt, and is setting aside the remaining 400 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

#### 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 the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure the A season allocation of Pacific cod specified for catcher vessels using trawl 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.*

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Dated: March 23, 2004.

**Alan D. Risenhoover,**

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

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