

revisions (74 FR 11041, March 16, 2009).

In accordance with § 679.20(d)(1)(v)(A), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the Pacific cod sideboard limit established for Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the GOA is sufficient to support a directed fishing allowance. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance for Pacific cod as 319 mt in the Western Regulatory Area of the GOA. The remaining 5 mt in the Western Regulatory Area of the GOA will be set aside as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(v)(C), the Regional Administrator finds that this Amendment 80 sideboard directed fishing allowance will be reached by the effective date of this temporary rule. Consequently, NMFS is prohibiting directed fishing for the 2009 Pacific cod sideboard limit by Amendment 80 vessels subject to sideboard limits in the Western 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

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 directed fishing closure of Pacific cod by Amendment 80 vessels subject to sideboard limits in the Western 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 August 26, 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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 28, 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-XR36**

#### Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel 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; closures and openings.

**SUMMARY:** NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2009 total allowable catch (TAC) of Atka mackerel in these areas by vessels participating in the BSAI trawl limited access fishery. NMFS is also announcing the opening and closing dates of the first and second directed fisheries within the harvest limit area (HLA) in areas 542 and 543. These actions are necessary to conduct directed fishing for Atka mackerel in the HLA in areas 542 and 543.

**DATES:** The effective dates are provided in Table 1 under the **SUPPLEMENTARY INFORMATION** section of this temporary action.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone 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 TAC of Atka mackerel for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea was established as 952 metric tons (mt) by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.20(d)(1)(i) and (d)(1)(ii)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that 5 mt of the 2009 Atka mackerel TAC allocated to vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea will be necessary as incidental catch to support other anticipated groundfish fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 947 mt. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea by vessels participating in the BSAI trawl limited access fishery.

In accordance with § 679.20(a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543, 48 hours after prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea. The Regional Administrator has established the opening dates for the second HLA directed fisheries as immediately after the last closure of the first HLA fisheries in either area 542 or 543 for those vessels participating in the Amendment 80 cooperative. The Regional Administrator also has established the opening dates for the second HLA directed fisheries as 48 hours after the last closure of the first HLA fisheries in either area 542 or 543 for those vessels participating in the Amendment 80 limited access sector. Consequently, NMFS is opening and closing directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under Table 1 of this notice.

TABLE 1—EFFECTIVE DATES AND TIMES

Action	Area	Effective Date <sup>1</sup>	
		From	To
Prohibiting Atka mackerel by vessels participating in the BSAI trawl limited access fishery	Eastern Aleutian District and the Bering Sea subarea	1200 hrs, September 1, 2009.	1200 hrs, November 1, 2009.
Opening the first and second directed fisheries in the HLA for the Amendment 80 cooperative	542 and 543 542 and 543	1200 hrs, September 3, 2009. 1200 hrs, September 17, 2009.	1200 hrs, September 17, 2009. 1200 hrs, October 1, 2009.
Opening the first and second directed fisheries in the HLA for vessels participating in the Amendment 80 limited access sector	542 and 543 542 and 543	1200 hrs, September 3, 2009. 1200 hrs, September 14, 2009.	1200 hrs, September 12, 2009. 1200 hrs, September 23, 2009.
Opening the first directed fishery in the HLA for vessels participating in the BSAI trawl limited access sector	542	1200 hrs, September 3, 2009.	1200 hrs, September 8, 2009.

<sup>1</sup> Alaska local time

In accordance with § 679.20(a)(8)(iii)(A) and § 679.20(a)(8)(iii)(B), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel owner as to which fishery each vessel has been assigned by NMFS (74 FR 40523, August 12, 2009).

In accordance with the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009) and § 679.20(a)(8)(ii)(C)(1), the HLA limits of the B season allowance of the 2009 TACs in areas 542 and 543 are 5,039 mt and 2,783 mt, respectively, for vessels participating in the Amendment 80 limited access fishery. The HLA limits of the B season allowance of the 2009 TACs in areas 542 and 543 are 3,314 mt and 1,739 mt, respectively, for Amendment 80 cooperatives. The HLA limit of the B season allowance of the 2009 TAC in area 542 is 348 mt for the BSAI trawl limited access fishery. In accordance with § 679.20(a)(8)(iii)(E),

the Regional Administrator has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the dates and times listed in Table 1 of this notice.

After the effective dates of these closures, 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 a 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 the Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery and the opening and closing of the fisheries for the HLA limits established for area 542 and area 543 pursuant to the 2009 Atka mackerel TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 27, 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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 27, 2009.

**James P. Burgess,**

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