

Dated: October 1, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR Part 665 is amended as follows:

## **PART 665—FISHERIES IN THE WESTERN PACIFIC**

■ 1. The authority citation for 50 CFR Part 665 continues to read as follows:

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

■ 2. In § 665.802, revise paragraphs (ss) and (tt) to read as follows:

### **§ 665.802 Prohibitions.**

(ss) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set longline fishery has been closed pursuant to § 665.813(b), in violation of § 665.813(i).

(tt) Fail to immediately retrieve longline fishing gear upon receipt of actual notice that the shallow-set longline fishery has been closed pursuant to § 665.813(b), in violation of § 665.813(i).

■ 3. In § 665.813, revise paragraphs (b)(1) and (b)(2), and paragraph (i) to read as follows:

### **§ 665.813 Western Pacific longline fishing restrictions.**

(b) \* \* \*

(1) Maximum annual limits are established on the number of physical interactions that occur each calendar year between leatherback and North Pacific loggerhead sea turtles and vessels registered for use under Hawaii longline limited access permits while shallow-set fishing. The annual limit for leatherback sea turtles (*Dermochelys coriacea*) is 26, and the annual limit for North Pacific loggerhead sea turtles (*Caretta caretta*) is 34.

(2) Upon determination by the Regional Administrator that, based on data from NMFS observers, the fishery has reached either of the two sea turtle interaction limits during a given calendar year:

(i) As soon as practicable, the Regional Administrator will file for publication at the Office of the Federal Register a notification that the fishery reached a sea turtle interaction limit. The notification will include an advisement that the shallow-set longline

fishery shall be closed, and that shallow-set longline fishing north of the Equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date until the end of the calendar year in which the sea turtle interaction limit was reached.

Coincidental with the filing of the notification, the Regional Administrator will also provide actual notice that the shallow-set longline fishery shall be closed, and that shallow-set longline fishing north of the Equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date, to all holders of Hawaii longline limited access permits via telephone, satellite telephone, radio, electronic mail, facsimile transmission, or post.

(ii) Beginning on the fishery closure date indicated by the Regional Administrator in the notification provided to vessel operators and permit holders and published in the **Federal Register** under paragraph (b)(2)(i) of this section, until the end of the calendar year in which the sea turtle interaction limit was reached, the Hawaii-based shallow-set longline fishery shall be closed.

(i) Vessels registered for use under Hawaii longline limited access permits may not be used to engage in shallow-setting north of the Equator (0° lat.) any time during which the shallow-set longline fishery is closed pursuant to paragraph (b)(2)(ii) of this section.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

[Docket No. 111207737-2141-02]

**RIN 0648-XC277**

### **Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the Herring Savings Areas of 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 pollock by vessels using trawl gear in the Winter Herring Savings

Area of the Bering Sea and Aleutian Islands (BSAI). This action is necessary to prevent exceeding the 2012 herring bycatch allowance specified for the midwater trawl pollock fishery in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 1, 2012, through 1200 hrs, A.l.t., March 1, 2013.

**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 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 2012 herring bycatch allowance specified for the midwater trawl pollock fishery in the BSAI is 1,600 metric tons as established by the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012).

The Administrator, Alaska Region, NMFS, has determined that the 2012 herring bycatch allowance specified for the midwater trawl pollock fishery in the BSAI has been caught. Consequently, in accordance with § 679.21(e)(7)(vi), NMFS is closing directed fishing for pollock by vessels using trawl gear in the Winter Herring Savings Areas of the BSAI. The Winter Herring Savings Area of the BSAI is that part of the Bering Sea subarea that is between 58° N latitude and 60° N latitude and between 172° W longitude and 175° W longitude.

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 for pollock by vessels using trawl gear in the Winter Herring Savings Areas of 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 September 28, 2012.

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 § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: October 1, 2012.

**Lindsay Fullenkamp,**

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

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