

Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California.

Regulations at 50 CFR 660.323(a)(2) divide the commercial Pacific whiting OY into separate allocations for the catcher/processor, mothership, and shore-based sectors. Each commercial sector receives a portion of the commercial OY. Regulations at 50 CFR 660.323 (c) provide for the reapportionment of Pacific whiting that the Regional Administrator determines will not be used during the year.

The shore-based sector was closed on July 7, 2009 (July 28, 2008; 74 FR 37176). The best available information on July 6, 2009 indicated that the 42,063 mt allocation for the shore-based sector would be reached by 10:00 a.m. on July 7, 2009. Data received after the closure indicated that the fishing rates slowed considerably in the last few days of the fishery, resulting in 1,382 mt of unharvested shore-based allocation.

This document announces the reapportionment of 1,325 mt of shore-based allocation to the catcher/processor sector resulting in the following commercial allocations for 2009: catcher/processor 35,376 mt, mothership 24,034 mt, and shore-based 40,738 mt. Facsimiles directly to fishing businesses and postings on the Northwest Regions internet site were used to provide actual notice to the affected fishers.

#### Classifications

The determinations to take these actions were based on the most recent data available. The aggregate data upon which the determinations were based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours.

This action is authorized by the regulations implementing the FMP. The Assistant Administrator for Fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for comment on these actions pursuant to 5 U.S.C. 553 (3)(b)(B), because providing prior notice and opportunity would be impracticable. It would be impracticable because of the need for immediate action. NMFS has determined that providing an opportunity for prior notice and comment would be impractical and contrary to public interest. Delay of this action would leave Pacific whiting unharvested. In addition, the catcher/processors needed an immediate reallocation if they were to keep their workers employed. For these same reasons the agency finds good cause to waive the 30-day delay in effectiveness. These actions are taken

under the authority of 50 CFR 660.323(c), and are exempt from review under Executive Order 12866. Actual notice of the reapportionments was provided to the affected fishers.

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

**Dated:** December 15, 2009.

**Emily H. Menashes,**

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

[FR Doc. E9-30175 Filed 12-17-09; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0912011420-91423-01]

**RIN 0648-AY39**

#### Fisheries of the Exclusive Economic Zone Off Alaska, Steller Sea Lions; Correction

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

**ACTION:** Correcting amendments.

**SUMMARY:** This action makes a correction to regulations at 50 CFR part 679. It corrects a final rule that erroneously removed regulations in 50 CFR part 679 concerning the harvest limit area for Atka mackerel in the Aleutian Islands. NMFS intended this final rule to modify regulations detailing management of Atka mackerel total allowable catch. However, due to incorrect instructions in the regulatory text, NMFS inadvertently removed the regulations governing Atka mackerel management in the harvest limitation area. This correcting amendment reinstates those regulations.

**DATES:** Effective December 18, 2009.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907-586-7228.

#### SUPPLEMENTARY INFORMATION:

##### Background

Groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI) are managed under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Regulations implementing the FMP appear at 50 CFR part 679. General

regulations governing U.S. fisheries also appear at 50 CFR part 600.

NMFS has determined that an error exists in the regulations at § 679.20(a)(8)(ii). This final rule will correct an error that resulted when NMFS inadvertently removed regulations that govern the maximum amount of Atka mackerel total allowable catch (TAC) that may be taken from the harvest limitation area (HLA) in the BSAI. NMFS published a final rule implementing HLA regulations on January 2, 2003 (68 FR 204), to ensure that fishery management of Atka mackerel in the BSAI is not likely to jeopardize the continued existence or adversely modify or destroy designated critical habitat for the Endangered Species Act (ESA)-listed western distinct population segment of Steller sea lions (*Eumetopias jubatus*). These regulations primarily focused on spatial and temporal harvest restrictions on Steller sea lion prey species, including Atka mackerel.

On September 14, 2007, NMFS published a final rule that attempted to modify regulations at 50 CFR 679.20(a)(8)(ii) to clarify the allocation of Atka mackerel between non-American Fisheries Act trawl catcher/processors, commonly known as the Amendment 80 sector, and other trawl vessels, commonly known as the BSAI trawl limited access sector (72 FR 52668). It was NMFS's intent to modify only regulations in the introductory text at § 679.20(a)(8)(ii) to address the allocation of Atka mackerel between the Amendment 80 sector and the BSAI trawl limited access sector, and not regulations in § 679.20(a)(8)(ii)(A) through (C) that established spatial and temporal harvest restrictions. However, the instructional text in the final rule published on September 14, 2007, inadvertently removed regulations in § 679.20(a)(8)(ii)(A) through (C) (72 FR 52719). NMFS's intent to keep regulations in § 679.20(a)(8)(ii)(A) through (C) intact was indicated in the preamble to the September 14, 2007, final rule in response to a public comment. NMFS stated that "NMFS did not propose regulations that would have modified existing regulations concerning management of Atka mackerel in the HLA as part of the [September 14, 2007 final rule]. NMFS will manage the HLA fisheries in compliance with existing regulations." (72 FR 52705). This correcting amendment corrects the inadvertent removal of regulations in § 679.20(a)(8)(ii)(A) through (C), and reinstates them.

**Classification**

Pursuant to 5 U.S.C. 553(b)(B), the Acting Assistant Administrator of Fisheries (AA) finds good cause to waive prior notice and opportunity for public comment, as notice and comment would be impracticable and contrary to the public interest. Through this action, NOAA seeks to correct the inadvertent removal of regulations in § 679.20(a)(8)(ii)(A) through (C), and reinstate them. Prior notice and an opportunity for public comment on this action would be impracticable and contrary to the public interest for the following reasons. Corrections to ensure the rule's compliance with the intent of the HLA Program must be made immediately since establishing limits on Atka mackerel fishing in the HLA is critical for conservation and management of the groundfish fisheries off Alaska and for assessing the impact of these fisheries on other aspects of the marine environment. Failure to limit Atka mackerel fishing in the HLA would be inconsistent with management measures designed to avoid jeopardizing the continued existence and adverse modification of designated critical habitat for Steller sea lions as required under the ESA. Fishing in the HLA fishery is ongoing, and the lack of limitations in the HLA could result in greater harvest of Atka mackerel by vessels than allowed under current Steller sea lion management measures. Failure to limit fishing in the HLA would remove limitations on vessels that are currently constrained by those limitations and would provide an incentive for increased harvests in the HLA. As such, prior notice and an opportunity for public comment on these measures are impracticable and contrary to the public interest because

NMFS only recently discovered these errors and must ensure the uninterrupted, comprehensive and rational management of the fisheries consistent with the MSA and ESA.

Additionally, for the reasons listed above, the AA finds good cause to waive the 30-day delay in the effective date under 5 U.S.C. 553(d)(3), as such procedures would be contrary to the public interest. Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

The Acting AA for NMFS has determined that this action is consistent with the MSA and other applicable law.

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

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 14, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 679 is corrected as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

■ 1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

■ 2. In § 679.20, revise paragraph (a)(8)(ii) to read as follows:

**§ 679.20 General limitations.**

\* \* \* \* \*

(a) \* \* \*

(8) \* \* \*

(ii) *ITAC allocation to Amendment 80 and BSAI trawl limited access sectors.*

The remainder of the Atka mackerel TAC, after subtraction of the jig gear allocation, CDQ reserve, and incidental catch allowance for the BSAI trawl limited access sector and vessels using non-trawl gear, will be allocated as ITAC to the Amendment 80 and BSAI trawl limited access sectors.

(A) *Seasonal Allowances.* The Atka mackerel TAC specified for each subarea or district will be divided equally, after subtraction of the jig gear allocation and reserves, into two seasonal allowances corresponding to the A and B seasons defined at § 679.23(e)(3).

(B) *Overages and Underages.* Within any fishing year, unharvested amounts of the A season allowance will be added to the B season allowance and harvests in excess of the A season allowance will be deducted from the B season allowance.

(C) *Harvest limit area (HLA) limits.* Atka mackerel harvest is limited in the HLA, as defined in § 679.2, as follows:

(1) For the HLA, the Regional Administrator will establish an HLA harvest limit of no more than 60 percent of the seasonal TAC as specified in paragraph (a)(8)(ii)(A) of this section.

(2) *CDQ fishing.* A CDQ group is prohibited from exceeding the CDQ portion of the percentage of annual Atka mackerel in areas 542 and/or 543 specified in paragraph (a)(8)(ii)(C)(1) of this section for the HLA.

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[FR Doc. E9-30181 Filed 12-17-09; 8:45 am]

**BILLING CODE 3510-22-S**