

At-sea observer reports indicate that catch rates of yellowtail flounder on GB are higher south of 41° 40' N. lat than north of it. Requiring common pool trawl vessels that fish any part of a trip in the Western U.S./Canada Area south of 41° 40' N. lat. to use either a haddock separator trawl or a Ruhle trawl will reduce the catch rate of yellowtail flounder, reduce discards, and is likely to result in the achievement of the TAC, without exceeding it. The Regional Administrator has determined that, because the GB yellowtail flounder trip limit has already been reduced, it is sufficient to implement only a change in gear requirements in order to ensure that the common pool vessels do not exceed the sub-ACL for yellowtail flounder. Based on this information, the Regional Administrator is prohibiting the use of trawl gear, except for the haddock separator trawl and the Ruhle trawl, as specified at § 648.85(a)(3)(ix) and (b)(10)(iv)(J)(3), respectively, by any limited access NE multispecies common pool vessel that harvests, possesses, or lands fish from, or deploys its net during any part of a trip in, the Western U.S./Canada Area south of 41° 40' N. lat. under a NE multispecies DAS, to reduce catches and discards of GB yellowtail flounder, effective July 30, 2010 through April 30, 2011, or until modified by a subsequent action. For any such vessels, other gear may be on board the vessel but must be stowed according to the regulations at § 648.23(b) for the entire trip. For any limited access NE multispecies common pool vessel possessing, harvesting, or landing fish exclusively from the area north of 41° 40' N. lat., all trawl gear, except the haddock separator trawl or Ruhle trawl, must be stowed while transiting the Western U.S./Canada Area south of this line.

The FW 44 final rule (75 FR 18356, April 9, 2010) delayed the opening of the Eastern U.S./Canada Area for vessels using trawl gear until August 1, 2010. To prevent overharvest of yellowtail flounder from closing the Eastern U.S./Canada Area and preventing access to the transboundary stocks of GB cod and GB haddock, the Regional Administrator is prohibiting the use of a flounder net in the Eastern U.S./Canada Area by any limited access NE multispecies common pool vessel, effective August 1, 2010, through April 30, 2011. Common pool trawl vessels will be able to fish in the Eastern U.S./Canada Area only if they are using either a haddock separator trawl or a Ruhle trawl. Any other trawl gear must be stowed according to the regulations and not available for use.

The regulations at § 648.85(a)(3)(iv)(D) specify that, if the Regional

Administrator requires use of a particular gear type in order to reduce catches of stocks of concern, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg) (whole weight) each (i.e., no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited. Therefore, common pool vessels fishing any part of a trip in the Eastern U.S./Canada Area or in the Western U.S./Canada Area south of 41° 40' N. lat. are restricted to these catch limits for the duration of that trip.

If sufficient GB yellowtail flounder common pool sub-ACL remains available, the Regional Administrator may lift these gear restrictions before the end of FY 2010 to allow additional opportunity to achieve the FY 2010 common pool sub-ACLs for the transboundary stocks of GB yellowtail flounder, GB cod, and GB haddock.

Catch will be closely monitored through dealer-reported landings, VMS catch reports, and other available information. Further inseason adjustments to increase or decrease the trip limits, as well as differential DAS measures may be considered, based on updated catch data and projections.

#### Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because notice, comment, and a delayed effectiveness would be impracticable and contrary to the public interest. The regulations at §§ 648.86(o) and 648.85(a)(3)(iv)(D) grant the Regional Administrator the authority to adjust NE multispecies trip limits and to implement gear restrictions in the U.S./Canada Management Area, respectively, to prevent over-harvesting or under-harvesting the common pool sub-ACLs. This action will implement a more restrictive trip limit for GOM cod and restrict the use of trawl gear in a portion of the U.S./Canada Management Area in order to ensure that the common pool sub-ACLs for GOM cod and GB yellowtail flounder are not overharvested, and the biological and economic objectives of the FMP are met.

It is important to take this action immediately because, based on current data and projections, continuation of the status quo will result in reaching the

respective common pool sub-ACLs prior to the end of FY 2010. Attainment of any of the common pool sub-ACLs prior to the end of the FY on April 30, 2011, would result in lower trip limits and/or differential DAS counting for the remainder of FY 2010, and would result in end-of-the-year AMs to be put in place for the common pool in FY 2011. These restrictions could result in the loss of yield of other valuable species caught by vessels in the common pool.

The updated catch information that is the basis for this action only recently became available. The time necessary to provide for prior notice and comment, and delayed effectiveness for this action would prevent NMFS from implementing a reduced trip limit in a timely manner. A resulting delay in the curtailment of catch rate of these stocks could result in less revenue for the fishing industry and be counter to the objective of optimum yield.

The Regional Administrator's authority to decrease trip limits and to implement gear restrictions in the U.S./Canada Management Area for the common pool to help ensure that the common pool sub-ACL for all NE multispecies are harvested, but not exceeded, was considered and open to public comment during the development of Amendment 16 and FW 44. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: July 26, 2010.

**James P. Burgess,**

*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 660

[Docket No.100218107-0199-01]

RIN 0648-XX18

#### Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #1, #2, #3, and #4

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

**ACTION:** Modification of fishing seasons, gear restrictions, and landing and possession limits; request for comments.

**SUMMARY:** NOAA Fisheries announces four inseason actions in the ocean salmon fisheries. Inseason action #1 modified the commercial fishery in the area from Cape Falcon, Oregon to Humbug Mountain, Oregon, and from Humbug Mountain, Oregon to the Oregon/California Border. Inseason action #2 modified the recreational fishery in the area from Cape Falcon, Oregon to Humbug Mountain, Oregon. Inseason action #3 modified the commercial fishery in the area from U.S./Canada Border to Cape Falcon, Oregon. Inseason action #4 modified the commercial fishery from U.S./Canada Border to U.S./Mexico Border.

**DATES:** Inseason actions #1 and #2 were effective on March 15, 2010 until they were replaced by the 2010 management measures on May 1, 2010. Inseason action #3 was effective on June 12, 2010 and remains in effect until the closing date announced in the 2010 annual management measures or through additional inseason action. Inseason action #4 was effective on June 16, 2010 and remains in effect until the closing date of the 2010 salmon season announced in the 2010 annual management measures or through additional inseason action. Comments will be accepted through August 16, 2010.

**ADDRESSES:** You may submit comments, identified by 0648-XX18, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- Fax: 206-526-6736, Attn: Peggy Busby
- Mail: 7600 Sand Point Way NE, Building 1, Seattle, WA, 98115

**Instructions:** No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Peggy Busby, by phone at 206-526-4323.

**SUPPLEMENTARY INFORMATION:** In the 2009 annual management measures for ocean salmon fisheries (74 FR 20610, May 5, 2009), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border. These management measures included 2010 salmon seasons opening earlier than May 1, 2010.

On March 10, 2010, the Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council (Council), Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, and California Department of Fish and Game. The parties to this consultation considered information related to Chinook salmon abundance forecasts, Chinook salmon catch rates, and possible impacts to Sacramento River fall Chinook salmon from the fisheries scheduled to open March 15, 2010. The fisheries opening March 15, 2010 were to occur in the impact area for Sacramento River fall Chinook salmon. Preliminary projections suggested that there would be limited harvest opportunity for Sacramento River fall Chinook salmon and, by moving the opening dates of these fisheries to after May 1, 2010 NMFS and the Council would have more time to evaluate the impacts of these fisheries on the Sacramento River fall Chinook salmon stock.

As a result, on March 10, 2010, the states recommended, and the RA concurred, that NMFS should adopt inseason actions #1 and #2 that would cancel the previously scheduled March 15, 2010 opening date for the (a) commercial fishery in the area from Cape Falcon, Oregon to Humbug Mountain, Oregon, and from Humbug Mountain, Oregon to the Oregon/California Border and (b) the recreational fishery in the area from Cape Falcon, Oregon, to Humbug Mountain, Oregon. Modification of quota and/or fishing seasons by inseason action is authorized by 50 CFR 660.409(b)(1)(i).

In the 2010 annual management measures for ocean salmon fisheries (75 FR 24482, May 5, 2010), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border, beginning May 1, 2010.

The RA consulted with representatives of the Council, Washington Department of Fish and Wildlife, and Oregon Department of

Fish and Wildlife on June 10, 2010. The information considered during this consultation related to Chinook salmon catch to date and Chinook salmon catch rates compared to quotas and other management measures established pre-season.

Inseason action #3 closed the commercial salmon fishery from the U.S./Canada Border to Cape Falcon, Oregon. This action was taken consistent with the 2010 management measures requirement that when it was projected that 35,000 Chinook salmon of the 42,000 Chinook salmon quota had been landed, NMFS would consider inseason action , to modify the open period and add landing and possession limits to extend the fishery through the end of June. On June 10, 2010, the states recommended this action and the RA concurred; inseason action #3 took effect on June 12, 2010, and was effective until it was modified by subsequent inseason action that will be described in a separate federal register notice. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409 (b)(1)(i).

The RA consulted with representatives of the Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife on June 15, 2010. The information considered during this consultation related to catch to date for salmon and incidental halibut harvest, and Chinook salmon catch rates compared to quotas and other management measures established pre-season.

Inseason action #4 closed the retention of Pacific halibut caught incidentally while trolling for salmon in halibut management area 2A (the coasts of Washington, Oregon and California). This action was taken due to attainment of the 2010 incidental halibut harvest quota. On June 15, 2010, the states recommended this action and the RA concurred; inseason action #4 took effect on June 16, 2010. Modification of quota and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i) .

All other restrictions and regulations remain in effect as announced for the 2010 Ocean Salmon Fisheries and previous inseason actions.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the

described regulatory actions was given, prior to the date the action was effective, by telephone hotline number 206-526-6667 and 800-662-9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

#### Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (74 FR 20610, May 5, 2009; 75 FR 24482, May 5, 2010), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, thus allowing fishers access to the available fish at the time the fish were available while ensuring that quotas are not exceeded. The AA also finds good cause to waive the 30-day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon Fishery Management Plan and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: July 27, 2010.

**James P. Burgess,**

*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. 0910131363-0087-02]

RIN 0648-XX93

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock for American Fisheries Act Catcher Vessels in the Inshore Open Access Fishery 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; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock by American Fisheries Act (AFA) trawl catcher vessels participating in the inshore open access fishery in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2010 pollock total allowable catch (TAC) allocated to the inshore open access fishery in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 27, 2010, through 1200 hrs, A.l.t., November 1, 2010.

**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 2010 Bering Sea pollock TAC allocated to the AFA inshore open access fishery in the BSAI is 2,762 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010), and further described at <http://alaskafisheries.noaa.gov/sustainablefisheries/afa/10bsaicoopallocations.pdf>.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region,

NMFS (Regional Administrator), has determined that the B season allowance of pollock TAC allocated to the AFA inshore open access fishery, which is catching pollock for processing by the inshore component in the Bering Sea subarea, has been reached. Therefore, the Regional Administrator is establishing the B season allowance of pollock TAC as the directed fishing allowance. Consequently, in accordance with § 679.20(d)(1)(iii), since this directed fishing allowance has been reached, NMFS is prohibiting directed fishing for pollock by AFA trawl catcher vessels participating in the inshore open access fishery in the Bering Sea subarea.

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 directing fishing for pollock by AFA trawl catcher vessels participating in the inshore open access fishery in the Bering Sea subarea. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 26, 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 27, 2010.

**James P. Burgess,**

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

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