

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the herring fishery for Management Area 1A until January 1, 2012, under current regulations. The regulations at § 648.201(a) require such action to ensure that herring vessels do not exceed the 2011 sub-ACL allocated to Area 1A. The herring fishery opened for the 2011 fishing year on January 1, 2011. Data indicating the herring fleet will have landed at least 95 percent of the 2011 sub-ACL allocated to Area 1A have only recently become available. If implementation of this closure is delayed to solicit prior public comment, the sub-ACL for Area 1A for this fishing year can be exceeded, thereby undermining the conservation objectives of the FMP. NMFS further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: October 24, 2011.

**Steven Thur,**

*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. 101126521-0640-02]

**RIN 0648-XA794**

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod and Octopus 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 Pacific cod by vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to limit incidental catch of octopus by vessels using pot gear to fish for Pacific cod the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 24, 2011, through 2400 hrs, A.l.t., December 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 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 Magnuson-Stevens Fishery Conservation and Management Act requires that conservation and management measures prevent overfishing. The 2011 octopus overfishing level in the BSAI is 528 metric tons (mt) and the acceptable biological catch (ABC) is 396 mt as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011). NMFS closed directed fishing for octopus on January 13, 2011 (76 FR 3044, January 19, 2011) and prohibited retention of octopus on September 1, 2011 (76 FR 55276, September 7, 2011).

As of October 15, 2011, approximately 530 mt of octopus has been harvested in the BSAI. Vessels using pot gear have significant incidental catch of octopus and have taken the vast majority of octopus in the BSAI. Substantial fishing effort by vessels using pot gear is being directed at remaining amounts of Pacific cod in the BSAI. If vessels using pot gear were allowed to continue fishing for Pacific cod in the BSAI then further

incidental catch of octopus would occur.

The Regional Administrator has determined, in accordance with § 679.20(d)(3), that prohibiting directed fishing for Pacific cod by vessels using pot gear in BSAI is necessary to prevent further incidental catch of octopus by the Pacific cod sector.

#### 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, would delay prohibiting directed fishing for Pacific cod by vessels using pot gear in the BSAI and allow further incidental catch of octopus by the Pacific cod sector. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 20, 2011.

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: October 24, 2011.

**Steven Thur,**

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

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