

available, except for transiting purposes as described in this notice. This action is based on the determination that 95 percent of the Atlantic herring TAC allocated to Area 2 for 2009 is projected to be harvested by April 14, 2009.

Regulations governing the Atlantic herring fishery require publication of this notification to advise vessel and dealer permit holders that no TAC is available for the directed fishery for Atlantic herring harvested from Area 2.

**DATES:** Effective 0001 hrs local time, April 15, 2009, through January 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Aja Peters-Mason, Fishery Management Specialist, (978) 281-9195.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of optimum yield, domestic and foreign fishing, domestic and joint venture processing, and management area TACs. The 2009 TAC allocated to Area 2 (72 FR 17807, April 10, 2007) is 30,000 mt. The initial TAC included a Research Set Aside of 900 mt that was restored to the fishery when it was not allocated for research (73 FR 74631, December 9, 2008).

The regulations at § 648.201 require the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor the Atlantic herring fishery in each of the four management areas designated in the Fishery Management Plan (FMP) for the Atlantic herring fishery and, based upon dealer reports, state data, and other available information, to determine when the harvest of Atlantic herring is projected to reach 95 percent of the TAC allocated. When such a determination is made, NMFS is required to publish notification in the **Federal Register** of this determination. Effective upon a specific date, NMFS must notify vessel and dealer permit holders that vessels are prohibited from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip or calendar day in or from the specified management area for the remainder of the closure period. Transiting of Area 2 with more than 2,000 lb (907.2 kg) of herring on board is allowed under the conditions specified below.

The Regional Administrator has determined, based upon dealer reports and other available information, that 95 percent of the total Atlantic herring TAC allocated to Area 2 for the 2009 fishing year is projected to be harvested. Therefore, effective 0001 hrs local time, April 15, 2009, federally permitted vessels may not fish for, catch, possess,

transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Area 2 per trip or calendar day through January 1, 2010. Vessels transiting Area 2 with more than 2,000 lb (907.2 kg) of herring on board may land this amount provided such herring was not caught in Area 2 and provided all fishing gear is stowed and not available for immediate use as required by § 648.23(b). Effective April 15, 2009, federally permitted dealers are also advised that they may not purchase Atlantic herring from federally permitted Atlantic herring vessels that harvest more than 2,000 lb (907.2 kg) of Atlantic herring from Area 2 through 2400 hrs local time, January 1, 2010.

**Classification**

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

The Assistant Administrator for Fisheries, NOAA (AA), 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 Atlantic herring fishery for Management Area 2 until January 1, 2010, under current regulations. The regulations at § 648.201(a) require such action to ensure that Atlantic herring vessels do not exceed the 2009 TAC. The Atlantic herring fishery opened for the 2009 fishing year at 0001 hours on January 1, 2009. Data indicating the Atlantic herring fleet will have landed at least 95 percent of the 2009 TAC have only recently become available.

If implementation of this closure is delayed to solicit prior public comment, the quota for this fishing year will be exceeded, thereby undermining the conservation objectives of the FMP. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the thirty (30) day delayed effectiveness period for the reasons stated above.

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

Dated: April 8, 2009.

**Alan D. Risenhoover,**

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

[FR Doc. E9-8496 Filed 4-9-09; 4:15 pm]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 090123054-9591-02 ]

**RIN 0648-XM12**

**Magnuson-Stevens Act Provisions;  
Fisheries of the Northeastern United States;  
Northeast Multispecies Fishery; 2009 Georges Bank Cod Fixed Gear Sector Operations Plan and Agreement, and Allocation of Georges Bank Cod Total Allowable Catch**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Georges Bank (GB) Cod Fixed Gear Sector (Fixed Gear Sector) Fishing Year (FY) 2009 Operations Plan and Agreement, approved by the Administrator, Northeast (NE) Region, NMFS (Regional Administrator), and allocates a hard total allowable catch (TAC) of GB cod to the Fixed Gear Sector. Framework Adjustment 42 (FW 42) to the NE Multispecies Fishery Management Plan (FMP) authorized allocation of up to 20 percent of the annual GB cod TAC to the Fixed Gear Sector. Pursuant to that authorization, the Fixed Gear Sector submitted an Operations Plan and Sector Contract, entitled "Georges Bank Cod Fixed Gear Sector Fishing Year 2009-2010 Operations Plan and Agreement" (together referred to as the Sector Agreement), and an Environmental Assessment (EA), and requested an allocation of GB cod, consistent with the FMP. This action results in authorization of the Sector Operations Plan for FY 2009 and allocation of 503.8 mt of GB cod to the Fixed Gear Sector.

**DATES:** Effective May 1, 2009, through April 30, 2010.

**ADDRESSES:** Copies of the Sector Agreement, EA, and the Final Regulatory Flexibility Analysis (FRFA) are available from the Northeast Regional Office: Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Melissa Vasquez, Fishery Management Specialist, phone (978) 281-9166, fax

(978) 281-9135, e-mail  
*Melissa.Vasquez@NOAA.gov*.

**SUPPLEMENTARY INFORMATION:** A proposed rule soliciting public comment on the Sector Agreement for the Fixed Gear Sector was published in the **Federal Register** on February 12, 2009, (74 FR 7029) with public comment accepted through February 27, 2009. The Regional Administrator approved the FY 2009 Sector Operations Plan, after review of the public comments, and based on a determination that the Operations Plan and Agreement are consistent with the goals of the FMP and applicable law and are in compliance with the regulations governing the development and operation of a sector as specified under § 648.87. Details pertaining to the principal regulations applying to the Fixed Gear Sector, the process of review and approval of sectors, and facts regarding the Fixed Gear Sector's submission of the FY 2009 Sector Agreement are contained in the proposed rule. An EA entitled "Georges Bank Cod Fixed Gear Sector: An Environmental Assessment," which analyzes the impacts of the proposed Fixed Gear Sector operations, was also prepared and is available to the public (see **ADDRESSES**).

On January 16, 2009, NMFS published a proposed interim action (74 FR 2959) that proposed measures intended to reduce overfishing on certain groundfish stocks. The proposed rule soliciting public comment on the Sector Agreement for the Fixed Gear Sector referenced three proposed interim measures that would impact operations of the Fixed Gear Sector: A 3,506-mt overall U.S. GB cod TAC; an expanded Gulf of Maine (GOM) differential Day-at-Sea (DAS) counting area that overlaps the GB Cod Hook Sector Area (Hook Sector Area); and elimination of the current prohibition on leasing DAS between sector vessels and non-sector vessels. On April 13, 2009, NMFS published a temporary final rule that differs from the proposed interim rule. This final rule approving the Fixed Gear Sector's FY 2009 Sector Operations Plan incorporates the changes implemented by the temporary final rule.

The Fixed Gear Sector was authorized to fish in FYs 2006, 2007, and 2008, and, based upon the GB cod landings history of its members, was allocated <1.0, 10.7, and 14.0 percent, respectively, of the annual GB cod TACs.

The 2009 Fixed Gear Sector Agreement contains the same elements and exemptions as the 2008 Fixed Gear

Sector Agreement and Operations Plan. The Fixed Gear Sector Agreement will be overseen by a Board of Directors and a Sector Manager. The Fixed Gear Sector's GB cod TAC is based upon the number of Fixed Gear Sector members and their qualifying historical landings of GB cod. The GB cod TAC is a "hard" TAC, meaning that, once the TAC is caught, Fixed Gear Sector vessels may not fish under a NE multispecies DAS, possess or land GB cod or other regulated species managed under the FMP (regulated species), or use gear capable of catching groundfish (unless fishing under charter/party or recreational regulations). Should the hard TAC be exceeded, the Sector's allocation in the following year will be reduced by an amount equivalent to the overharvest.

The FY 2009 Sector Agreement contains exemptions from the following restrictions of the FMP: The GB cod trip limit; the GOM, GB, and Southern New England (SNE) limits on the number of hooks fished; and the GB Seasonal Closure Area when using hook gear. Justification for the proposed exemptions and analysis of the potential impacts of the Operations Plan are contained in the EA.

A total of 23 Fixed Gear Sector members signed the FY 2009 Fixed Gear Sector Contract. The GB cod TAC calculation is based upon the historical cod landings of the participating Fixed Gear Sector vessels, regardless of gear used. The allocation percentage is calculated by dividing the sum of total landings of GB cod landed by Fixed Gear Sector members in FY 1996 through 2001 by the sum of the total accumulated landings of GB cod landed by all NE multispecies vessels for the same time period. Based upon the qualifying landings histories of the Fixed Gear Sector members, the Fixed Gear Sector's share of the overall U.S. portion of the GB cod TAC is 11.64 percent, or 1,110,689 lb (503.8 mt) (11.64 percent times the fishery-wide U.S. portion of the GB cod target TAC of 9,541,607 lb (4,328 mt)). This is a larger TAC than the 408-mt TAC contained in the proposed rule for this action because the temporary final rule implements a 4,328-mt U.S. share of the GB cod target TAC rather than the 3,506-mt target TAC previously proposed.

The Sector Contract contains procedures for the enforcement of the Operations Plan, a schedule of penalties, and provides the authority to the Fixed Gear Sector Manager to issue stop fishing orders to members of the Fixed Gear Sector. Participating vessels are required to land fish only in

designated landing ports and are required to provide the Fixed Gear Sector Manager with a copy of the Vessel Trip Report (VTR) within 48 hr of offloading. Dealers purchasing fish from participating vessels are required to provide the Fixed Gear Sector Manager with a copy of the dealer report on a weekly basis. On a monthly basis, the Fixed Gear Sector Manager must transmit to NMFS aggregate catch data from dealer slips and aggregate discard data from the VTRs. After 90 percent of the Fixed Gear Sector's allocation has been harvested, the Fixed Gear Sector Manager is required to provide NMFS with aggregate reports on a weekly basis. A total of 1/12 of the Fixed Gear Sector's GB cod TAC, minus a reserve, is allocated to each month of the fishing year. GB cod quota that is not landed during a given month will be rolled over into the following month. The harvest rules do not preclude a vessel from fishing under the charter/party or recreational regulations, provided the vessel fishes under the applicable charter/party and recreational rules, on separate trips.

For each fishing trip, participating vessels are required to fish under the NE multispecies DAS program regulations to account for any incidental groundfish species that they may catch while fishing for GB cod. In addition, participating vessels are required to call the Sector Manager prior to leaving port. All legal-sized cod caught must be retained, landed and counted against the Fixed Gear Sector's aggregate allocation. Participating vessels may not fish with or have on board gear other than jigs, non-automated demersal longline, handgear, or sink gillnets. Participating Fixed Gear Sector vessels fishing with hook gear may use an unlimited number of hooks in the Sector Area, as defined under § 648.87, and are exempt from the GB Seasonal Closure Area during May.

### Comments and Responses

Seven comments were received that addressed this action. Four comments were from commercial fishing industry groups, one from an environmental organization, one from the New England Fishery Management Council (Council), and one from an individual. Six of the commenters supported approval of the operations plan and no commenters opposed it.

*Comment 1:* The Fixed Gear Sector, GB Cod Hook Sector (Hook Sector), and Cape Cod Commercial Hook Fishermen's Association (CCCHFA) each commented that the FY 2009 GB cod TAC reduction proposed in the Secretarial interim action will likely

result in an early end to the fishing year for the Fixed Gear Sector. All three recommended allowing the existing sectors to transfer or lease cod quota in FY 2009 to mitigate the impact of the proposed TAC reduction, and suggested that the proposed interim reduction in DAS and the proposed SNE Closure Area would minimize additional mortality on associated stocks of concern.

*Response:* This action allocates a larger GB cod TAC to the Fixed Gear Sector than was proposed because the temporary final rule implements a 4,328-mt U.S. share of the GB cod target TAC rather than the 3,506-mt target TAC previously proposed. However, this is still a reduction from FY 2008. The proposed FY 2009 Operations Plan and Agreement did not contain provisions for quota transfers or leases between existing sectors and, thus, the Council and public have not had an opportunity to comment on such measures. Further, the EA contains no analysis of quota transfers or leases. Because the public has not had opportunity to consider allowing quota transfers and leases among the existing sectors, nor review an analysis of this measure, quota transfers and leases are not authorized under this action.

*Comment 2:* The GB cod TAC proposed for allocation to the Fixed Gear Sector was based on the 3,506-mt U.S. fishery-wide GB cod target TAC published in the proposed interim action. In a comment on the proposed rule, the Council asserted that the GB cod TAC proposed to be allocated to the Fixed Gear Sector was incorrectly based on the estimated TAC for the entire GB cod stock, including the portion of that TAC that is caught by Canadian vessels in Canadian waters (1,173 mt for 2009). The Council stated that the Fixed Gear Sector's GB cod TAC should be based on 2,333 mt (3,506 mt — 1,173 mt).

*Response:* The 3,506-mt figure was correct, and was based on the 4,679-mt estimated TAC for the entire GB cod stock (4,679 mt - 1,173 mt) that was proposed for FY 2009. Accordingly, the Fixed Gear Sector TAC was correct as proposed. However, this action allocates a larger GB cod TAC (503.8 mt) to the Fixed Gear Sector than was proposed (408 mt) because the temporary final rule implements a 4,328-mt U.S. share of the GB cod target TAC rather than the 3,506-mt target TAC previously proposed.

*Comment 3:* The Hook Sector, Fixed Gear Sector, CCCHFA, Environmental Defense Fund, Midcoast Fishermen's Association and Island Institute; and one individual supported the approval of the Fixed Gear Sector's FY 2009

Operations Plan and Agreement. These comments each stated that the operations of the Fixed Gear Sector have reduced discards of GB cod, increased accountability, and improved profitability for members.

*Response:* NMFS agrees and has approved the FY 2009 Operations Plan and Agreement. A Letter of Authorization will be issued to each member of the Fixed Gear Sector exempting them, conditional upon their compliance with the Sector Contract, from the 3,600-hook limit in the GB Regional Management Area (RMA), the 2,000-hook limit in the GOM and SNE RMAs, the GB Seasonal Closure Area when using hook gear, and the GB cod possession restrictions as specified in §§ 648.80, 648.81, and 648.86, respectively.

#### Classification

NMFS has determined that this final rule is consistent with the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

Pursuant to 5 U.S.C. 553(d)(1), the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this rule is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act because it provides the basis for NMFS to grant, effective with the start of the fishing year on May 1, 2009, Fixed Gear Sector members exemptions from the following regulations implementing the FMP:

1. GB cod trip limits;
2. GB Seasonal Closure Area when using hook gear; and
3. GOM, GB, and SNE limit on number of hooks fished.

Because the Fixed Gear Sector will be fishing under a hard TAC for GB cod, effort controls (i.e., exemptions 1–3 above) are not necessary to constrain the impact of the Fixed Gear Sector on the GB cod stock. Should the Fixed Gear Sector's allocated GB cod TAC be harvested, participating vessels would no longer be allowed to fish under a NE multispecies DAS, possess or land GB cod or other regulated species managed under the FMP, or use gear capable of catching groundfish (unless fishing under recreational or charter/party regulations). Fixed Gear Sector members will be required to fish under their current NE multispecies DAS allocation to account for any other regulated NE multispecies that they may catch while fishing for GB cod and are restricted to using hook gear or sink gillnets only.

In order for GB cod to be allocated to the Fixed Gear Sector and the Fixed Gear Sector authorized to fish in FY

2009, the Fixed Gear Sector must submit an Operations Plan and Sector Contract to the Regional Administrator for approval. The Fixed Gear Sector submitted its FY 2009 Operations Plan on September 30, 2008, followed by signed Sector Contracts on October 1, 2008, and an EA on November 14, 2008. On January 16, 2009, NMFS published a proposed interim action that proposed measures intended to reduce overfishing on certain groundfish stocks, based on a new benchmark stock assessment completed in August 2008. Three of the proposed interim measures would have impacted operations of the Fixed Gear Sector: A 3,506-mt overall U.S. GB cod TAC; an expanded Gulf of Maine Differential DAS counting area that overlaps the Hook Sector Area; and elimination of the current prohibition on leasing DAS between sector vessels and non-sector vessels. NMFS also published a proposed rule soliciting comment on the proposed Operations Plan of the Fixed Gear Sector on February 12, 2009, and specifically solicited comment on the interaction of the proposed interim action and the proposed sector operations. The comment period on the proposed sector operations plan ended on February 27, 2009. On April 13, 2009, NMFS published a temporary final rule that differs from the proposed interim rule. The Regional Administrator approved the FY 2009 Sector Operations Plan, after review of the public comments and a determination that the Operations Plan and Agreement are consistent with the goals of the FMP and applicable law, and are in compliance with the regulations governing the development and operation of a sector as specified under § 648.87.

Implementation of the Sector Operations Plan is meant to mitigate adverse economic impacts that resulted from Amendment 13 and FW 42 to the FMP by granting exemptions to the Fixed Gear Sector. Establishing an effective date 30 days after the publication of this final rule would prevent the Fixed Gear Sector from commencing sector operations with the start of the fishing year on May 1, 2009. Delaying the implementation beyond May 1, 2009, would result in an unnecessary economic loss to the members of the Fixed Gear Sector because vessels would be prevented from fishing in a month when 15 percent of the annual GB cod landings historically occur, and when the price for GB cod is highest. During the month of May, landings of cod by hook gear are at their highest, and the Fixed Gear Sector is exempt from both hook limits

and a seasonal closure of a large portion of its historic fishing area while using hook gear. Further, vessels participating in the Fixed Gear Sector in FY 2008 are currently operating under the exemptions above. Delaying implementation beyond May 1, 2009, would create a gap in the annual exemptions for this sector, forcing these vessels to remove gear currently in the water at a high expense.

This final rule is exempt from the procedures of Executive Order (E.O.) 12866 because this action contains no implementing regulations. This final rule does not contain policies with federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively. There are no Federal rules that duplicate, overlap, or conflict with this final rule.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the 2009 GB Cod Fixed Gear Sector Operations Plan and allocation of GB cod TAC. The FRFA incorporates the economic impacts identified in the Initial Regulatory Flexibility Analysis (IRFA), which was summarized in the preamble of the proposed rule and the corresponding analysis in the EA prepared for this action. A description of why this action was considered, along with the objectives of, and the legal basis for, this rule are contained in the preamble to this rule, as well as in sections 1.0, 2.0, and 3.0 of the EA prepared for this action, which are not repeated here.

*Summary of the Issues Raised by Public Comments in Response to the IRFA. A Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments*

No public comments pertaining to the IRFA or the economic effects of this action were received.

*Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply*

The Small Business Administration size standard for small commercial fishing entities is \$4 million in average annual receipts, and the size standard for small charter/party operators is \$6.5 million in average annual receipts. All permitted and participating vessels in the groundfish fishery, including prospective Fixed Gear Sector members, are considered to be small entities because gross sales by any one entity (vessel) do not exceed this threshold, and, therefore there is no disproportionate impact between large

and small entities. While an entity may own multiple vessels, available data make it difficult to determine which vessels may be controlled by a single entity. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. All permitted and participating vessels in the groundfish fishery, including prospective Fixed Gear Sector members, are considered to be small entities because gross sales by any one entity (vessel) do not exceed this threshold. The number of prospective participants in the Fixed Gear Sector is 23, substantially less than the total number of active vessels in the groundfish fishery. Only these 23 vessels would be subject to the regulatory exemptions and operational restrictions proposed for the Fixed Gear Sector for FY 2009.

*Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Action*

This rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

*Description of Steps the Agency Has Taken to Minimize the Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes*

This action allocates a GB cod TAC of 503.8 mt to the Fixed Gear Sector. Once the GB cod TAC is harvested, participating vessels will not be allowed to fish under a NE multispecies DAS, possess or land GB cod, or other regulated species managed under the NE multispecies FMP, or use gear capable of catching groundfish (unless fishing under recreational or charter/party regulations). Vessel owners intending to fish in the Fixed Gear Sector during FY 2009 may only fish with hook gear or sink gillnets. Under the proposed Operations Plan, members will be exempt from several restrictions of the FMP described in the preamble to this rule and in the EA.

The Fixed Gear Sector fishermen and the Chatham, MA, and Harwichport, MA, communities are dependent upon GB cod and other groundfish. The Amendment 13 restrictions that reduced the GB cod trip limit had a disproportionate affect on these fishermen and communities. According to Amendment 13, Chatham's overall community dependence on NE multispecies as a percentage of total fisheries revenues from federally permitted vessels averaged about 71 percent, and it was likely that at least some of the active groundfish vessels in Chatham and Harwichport were even

more than 71-percent dependent on the NE multispecies fishery.

Cod, skate wings, and monkfish comprised the largest proportion of Fixed Gear Sector landings (40.70 percent, 23.62 percent, and 9.78 percent, respectively, in FY 2007). During FY 2007, members of the Fixed Gear Sector made 632 trips; landed 721,315 lb (327,183 kg) of cod, 418,679 lb (189,910 kg) of skate wings, 173,270 lb (78,594 kg) of whole monkfish, and 20,209 lb (9,167 kg) of monkfish tails; and generated approximately \$ 1,348,859, \$ 230,273, \$ 344,807, and \$ 62,648 in revenue from those species, respectively (assuming dockside prices of \$ 1.87, \$ 0.55, \$ 1.99, and \$ 3.10 per lb (\$ 4.11, \$ 1.21, \$ 4.38 and \$ 6.82 per kg), respectively). Fixed Gear Sector members also landed various other species, which increased their revenue. In general, the operation of the Fixed Gear Sector would continue to mitigate the negative economic impacts that result from the current suite of regulations that apply to the groundfish fishery (most recently FW 42). The Fixed Gear Sector, by fishing under rules that are designed to meet their needs (as well as the conservation requirements of the FMP), is afforded a larger degree of flexibility and efficiency, which result in economic gains. For example, Fixed Gear Sector members are able to plan their fishing activity and income in advance with more certainty due to the fact that there is a cod TAC, which is apportioned to each month of the year. They are able to maximize their efficiency (revenue per trip) due to the exemption from trip limits and limits on the number of hooks fished. Two hundred seventy-three of the Fixed Gear Sector's 632 trips (43 percent) in FY 2007 landed more than the daily GB cod trip limit (1,000 lb/day; 454 kg/day) in place for the common pool vessels (non-sector vessels). This resulted in an additional 349,705 lb (158,624 kg) (46 percent of the Fixed Gear Sector's FY 2007 cod landings) being landed, rather than discarded. For some vessel owners in the Fixed Gear Sector, participation in the Fixed Gear Sector enables their businesses to remain economically viable.

In contrast, under the No Action Alternative, the Fixed Gear Sector members would have remained in the common pool and fished under the regulations implemented in Amendment 13 and subsequent actions. Because cod usually represents a high proportion of total fishing income for Cape Cod-based fixed gear vessels, revenues for such vessel owners are very sensitive to regulations that impact

how and when they can fish for cod, such as trip limits and restrictions on the number of hooks fished. Under the common pool rules implemented by FW 42 (e.g., differential DAS counting) and Amendment 13 (restrictive daily trip limits for cod), it is likely that Fixed Gear Sector vessels would experience revenue losses in comparison to the proposed action. It is more likely under the No Action alternative that disruption to the Chatham and Harwichport communities would occur. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to Fixed Gear Sector members that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Regional Administrator. The guide and this final rule will be available upon request.

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

Dated: April 8, 2009.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. E9-8508 Filed 4-13-09; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0810141351-9087-02]

**RIN 0648-XO63**

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Directed Fishing With Trawl Gear by American Fisheries Act Catcher Processors in Bycatch Limitation Zone 1 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 with trawl gear, other than pelagic trawl gear for walleye pollock, by American Fisheries Act (AFA) trawl catcher processors in Bycatch Limitation Zone 1 of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the sideboard limit of the 2009 bycatch allowance of red king crab in Zone 1 specified for AFA trawl catcher processors in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), April 7, 2009, through 2400 hrs, A.l.t., December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907-586-7269.

**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 sideboard limit of the 2009 bycatch allowance of red king crab in Zone 1 specified for the AFA trawl catcher processors in the BSAI is 1,231 crab as established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.64(a)(2) and (3), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the sideboard limit of red king crab in Zone 1 specified for the AFA catcher processors in the BSAI will be caught. Therefore, NMFS is prohibiting directed fishing with trawl gear in Zone 1, other than pelagic trawl gear for walleye pollock, by AFA trawl catcher processors in the BSAI.

#### **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 fishing

with trawl gear, other than pelagic trawl gear for walleye pollock, by AFA trawl catcher processors in 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 April 6, 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 § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: April 8, 2009.

**Alan D. Risenhoover,**

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

[FR Doc. E9-8510 Filed 4-13-09; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0910091344-9056-02]

**RIN 0648-XO32**

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District of the Gulf of Alaska**

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

**ACTION:** Temporary rule; modification of a closure.

**SUMMARY:** NMFS is reopening directed fishing for pollock in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to fully use the 2009 total allowable catch (TAC) of pollock specified for the West Yakutat District of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), April 8, 2009, through 2400 hrs, A.l.t., December 31, 2009. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 28, 2009.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648-XO32, by any one of the following methods: