

Salmon Plan. Prior notice and opportunity for public comment is impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the status of the fisheries and the time the limits to which the fishery must be adjusted to control harvest rates in the fishery must be in place. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

The AA finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: September 19, 2002

Virginia M. Fay,
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. 020920218-2218-01; 091902C]

RIN 0648-AQ47

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Reallocation of Pacific Sardine

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

ACTION: Emergency rule, Reallocation of Pacific sardine.

SUMMARY: NMFS announces the reallocation of the remaining Pacific sardine harvest guideline in the U.S. exclusive economic zone off the Pacific coast. The Coastal Pelagics Species Fishery Management Plan (FMP) requires that NMFS conduct a review of the fishery 9 months after the beginning of the fishing season on January 1, and

reallocate any unharvested portion of the harvest guideline, with 50 percent allocated north and south of Pt. Piedras Blancas, California. The allocation north of Pt. Piedras Blancas was reached on September 14, 2002, and the fishery was closed until the scheduled time for reallocation on October 1, 2002. This action reallocates the remainder of the harvest guideline earlier than the date specified in the FMP in order to minimize the negative economic effects on fishing and processing, primarily in the Pacific northwest, that would result from delaying the reallocation.

DATES: Effective September 20, 2002 to December 31, 2002.

FOR FURTHER INFORMATION CONTACT:

James J. Morgan, Southwest Region, NMFS, 562-980-4036.

SUPPLEMENTARY INFORMATION: On December 27, 2001, NMFS published a notification of a harvest guideline of 118,442 mt for Pacific sardine in the **Federal Register** (66 FR 66811) for the fishing season January 1, 2002, through December 31, 2002. The harvest guideline was allocated as specified in the FMP, that is, one-third (39,481 mt) for Subarea A, which is north of 35° 40' N. lat. (Pt. Piedras Blancas, California) to the Canadian border; and two-thirds (78,961 mt) for Subarea B, which is south of 35° 40' N. lat. to the Mexican border.

Section 5.2.2 of the FMP requires that the NMFS, Southwest Regional Administrator, (1) conduct a review of the fishery 9 months after the beginning of the fishing season, and (2) reallocate the total unharvested portion of the harvest guideline, if any, equally between Subarea A and Subarea B. However, this year, the allocation to Subarea A was harvested by September 14, 2002, and the fishery was closed (67 FR 58733).

At its September 2002 meeting, the Pacific Fishery Management Council (Council) received a report on the status of the sardine fishery and heard public comments regarding the effects of closing the fishery in Subarea A and waiting for reallocation to occur on October 1, 2002. The fishing industry in the Pacific northwest has the capacity and the markets to continue fishing operations. Weather conditions tend to deteriorate in the Pacific northwest this time of year and fishery virtually ends around October 1, 2002; therefore, delaying reallocation will have a negative economic impact on the industry at a time when there is adequate resource available for all users. Based on this information, the Council determined, by majority vote, that an emergency existed and recommended to

NMFS that emergency action be taken to reallocate the available resource before the date specified in the FMP.

The harvest guideline is not likely to be reached by the end of the fishing season on December 31, 2002; however, allocating the unharvested portion earlier than the scheduled date so that existing markets can be satisfied will increase the likelihood of achieving optimum yield. As long as the harvest guideline is not exceeded, there will be no impact on the status of the resource.

A total of 39,481 mt has been landed in Subarea A. A total of 31,671 mt has been landed in Subarea B. Based on this data, 47,290 mt remains of the 118,442-mt harvest guideline. Therefore, 23,645 mt is allocated north of Pt. Piedras Blancas (Subarea A) and 23,645 is allocated south of Pt. Piedras Blancas (Subarea B).

Classification

The Assistant Administrator for Fisheries, NMFS, finds that early reallocation of Pacific sardine available for harvest avoids an unnecessary economic hardship and therefore constitutes good cause to waive the requirement to provide prior notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B). Keeping the fishery operating would likely increase landings of between 5,000 and 10,000 mt the rest of the year in Oregon and Washington. At an ex-vessel price of \$100/mt this would generate between \$500,000 and \$1 million in revenues for fishermen. There is about a 50 percent recovery rate for processed product (most of which is packed as bait), and, at a sales price of \$400/mt, the revenues to processors would be between \$1 million and \$2 million. While firm employment figures are not available, it is estimated that as many as 500 or more employees work on sardine processing lines. They would continue working for two weeks or more if the weather holds up to support fishing. At \$7/hour (the estimated prevailing wage rate in these communities), or \$60 per week, this would provide income of between \$30,000 and \$60,000 in direct payments to labor for the one or two-week period. Such communities generally have income multipliers in the area of 2.5 to 3.0; therefore, the direct income to fishermen and to processing line employees would translate to several million in overall income impacts for the local communities.

Because this is a substantive rule that relieves a restriction, the 30 day delayed effectiveness provision of the Administrative Procedure Act does not apply.

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

This emergency rule is exempt from the analysis required by the Regulatory Flexibility Act because the rule is not subject to the notice and comment provisions of the Administrative Procedure Act 5 U.S.C. 553.

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

Dated: September 20, 2002.

William T. Hogarth,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 091902D]

Fisheries of the Exclusive Economic Zone Off Alaska; Trawl Gear in the Chum Salmon Savings Area of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting fishing with trawl gear in the Chum Salmon Savings Area of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 limit of non-chinook salmon caught by vessels using trawl gear in the Catcher Vessel Operation Area (CVOA).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 21, 2002, until 1200 hrs, A.l.t., October 14, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands 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 2002 limit of non-chinook salmon caught by vessels using trawl gear for the CVOA, is 42,000 animals, § 679.21(e)(7)(vii). The CVOA is defined as that part of the BSAI that is south of 56°00' N. lat. and between 163°30' W. long. and 167°30' W. long. (Figure 2 to 50 CFR part 679).

In accordance with § 679.21(e)(7)(vii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 limit of non-chinook salmon caught by vessels using trawl gear in the CVOA has been reached. Consequently, the Regional Administrator is prohibiting fishing with trawl gear in the Chum Salmon Savings Area defined at Figure 9 to 50 CFR part 679.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, 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 contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2002 limit of non-chinook salmon caught by vessels using trawl gear in the CVOA, and therefore reduce the public's ability to use the fishery resource.

The Assistant Administrator for Fisheries, NOAA 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 section 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 20, 2002.

Virginia M. Fay,

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. 011218304-1304-01; I.D. 091902E]

Fisheries of the Exclusive Economic Zone Off Alaska; Thornyhead Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of thornyhead rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of thornyhead rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the 2002 total allowable catch (TAC) specified for thornyhead rockfish in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 21, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228, or mary.furuness@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (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 2002 TAC allocation of thornyhead rockfish for the Western Regulatory Area was established as 360 metric tons by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 6, 2002).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the 2002 TAC specified for thornyhead rockfish in the Western Regulatory Area of the GOA has been achieved. Therefore, NMFS is