



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521-0640-02]

RIN 0648-XA901

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2012 Bering Sea and Aleutian Islands Atka Mackerel Total Allowable Catch Amount

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2012 total allowable catch (TAC) amount for the Bering Sea and Aleutian Island management area (BSAI) Atka mackerel fishery. This action is necessary because NMFS has determined this TAC is incorrectly specified. This action will ensure the BSAI Atka mackerel TAC is the appropriate amount, based on the best available scientific information for Atka mackerel in the BSAI. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], until the effective date of the final 2012 and 2013 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the Federal Register.

Comments must be received at the following address no later than 4:30 p.m., A.l.t.,

[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2011-0297, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2011-0297 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on that line.
- Mail: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.
- Fax: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.
- Hand delivery to the Federal Building: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will

generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will 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). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

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 Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (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 2012 Atka mackerel TAC in the BSAI was set at 36,800 metric tons (mt) in the Eastern Aleutian District and the Bering Sea subarea, 10,293 mt in the Central Aleutian District, and 1,150 mt in the Western Aleutian District by the final 2011 and 2012 harvest specification for groundfish in the BSAI (76 FR 11139, March 1, 2011).

In December 2011, the Council recommended the 2012 Atka mackerel TACs of 38,500 metric tons (mt) in the Eastern Aleutian District and the Bering Sea subarea, 10,763 mt in the Central Aleutian District, and 1,500 mt in the Western Aleutian District. These amounts are higher in the Eastern Aleutian District and Bering Sea subarea and Central Aleutian District, and the same in the Western Aleutian District than established by the final 2011 and 2012 harvest specification for groundfish in the BSAI (76 FR 11139, March 1, 2011). The TACs recommended by the Council are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2011, which NMFS has determined is the best available scientific information for this fishery.

Regulations at § 679.20(a)(8)(ii)(A) apportion the Atka mackerel TAC allocated to the BSAI Atka mackerel trawl fisheries seasonally to distribute catch over time because Atka mackerel is a principal prey species for Steller sea lions listed as endangered under the Endangered Species Act. The first seasonal apportionment can be harvested quickly, and must reflect the TAC based on the best available scientific information to provide the opportunity to harvest available TAC in a manner consistent with the established Steller sea lion protection measures.

In accordance with § 679.25(a)(1)(iii) and (a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2011 SAFE report for this fishery, the current BSAI Atka mackerel TAC is incorrectly specified. Consequently, the

Regional Administrator is adjusting the 2012 Atka mackerel TACs to 38,500 mt in the Eastern Aleutian District and Bering Sea subarea, 10,763 mt in the Central Aleutian District, and 1,500 mt in the Western Aleutian District.

Pursuant to § 679.20(a)(8), Table 4 of the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011) is revised for the 2012 Atka mackerel TAC consistent with this adjustment. Table 4 includes the Steller sea lion protection measures effective January 1, 2011 (75 FR 77535, December 13, 2010), to insure that the BSAI groundfish fisheries off Alaska are not likely to jeopardize the continued existence of the western distinct population segment of Steller sea lions or adversely modify its designated critical habitat.

TABLE 4—FINAL 2011 AND 2012 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector ¹	Season ^{2,3,4}	2011 allocation by area			2012 allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District ⁵	Western Aleutian District	Eastern Aleutian District/Bering Sea	Central Aleutian District ⁵	Western Aleutian District
TAC	n/a	40,300	11,280	1,500	38,500	10,763	1,500
CDQ reserve	Total	4,312	1,207	161	4,120	1,152	161
	A	2,156	603	80	2,060	576	80
	Critical habitat ⁵	n/a	60	n/a	n/a	55	n/a
	B	2,156	603	80	2,060	576	80
	Critical habitat ⁵	n/a	60	n/a	n/a	55	n/a
ICA	Total	75	75	40	1,000	100	40
Jig ⁶	Total	180	0	0	167	0	0
BSAI trawl limited access	Total	2,859	800	0	3,321	951	0
	A	1,429	400	0	1,661	476	0
	B	1,429	400	0	1,661	476	0
Amendment 80 sectors	Total	32,875	9,198	1,300	29,892	8,560	1,300
	A	16,437	4,599	650	14,946	4,280	650
	B	16,437	4,599	650	14,946	4,280	650
Alaska Groundfish Cooperative	Total	19,181	5,389	755	n/a	n/a	n/a
	A	9,591	2,695	377	n/a	n/a	n/a
	Critical habitat ⁵	n/a	269	n/a	n/a	n/a	n/a
	B	9,591	2,695	377	n/a	n/a	n/a
	Critical habitat ⁵	n/a	269	n/a	n/a	n/a	n/a
Alaska Seafood Cooperative	Total	13,694	3,809	545	n/a	n/a	n/a
	A	6,847	1,904	272	n/a	n/a	n/a
	Critical habitat ⁵	n/a	190	n/a	n/a	n/a	n/a
	B	6,847	1,904	272	n/a	n/a	n/a
	Critical habitat ⁵	n/a	190	n/a	n/a	n/a	n/a

¹ Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtraction of the CDQ reserves, jig gear allocation, and ICAs to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

² Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

³ The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

⁴ Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to November 1.

⁵ Section 679.20(a)(8)(ii)(C) requires the TAC in area 542 shall be no more than 47% of ABC, and Atka mackerel harvests for Amendment 80 cooperatives and CDQ groups within waters 10 nm to 20 nm of Gramp Rock and Tag Island, as described

Table 12 to part 679, in Area 542 are limited to no more than 10 percent of the Amendment 80 cooperative Atka mackerel allocation or 10 percent of the CDQ Atka mackerel allocation.

⁶ Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtraction of the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

Note : Seasonal or sector apportionments may not total precisely due to rounding.

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) and § 679.25(c)(1)(ii) 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 require harvests other than the appropriate allocations for Atka mackerel, based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 13, 2011, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

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.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until [INSERT DATE 15 DAYS AFTER Publication in THE FEDERAL REGISTER].

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: December 22, 2011.

Alan D. Risenhoover,
Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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