



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227-0066]

RTID 0648-XY108

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the Herring Savings Area 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; modification of closure.

SUMMARY: NMFS is opening the Summer Herring Savings Area 2 in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent the underharvest of the 2020 pollock total allowable catch (TAC) and facilitate pollock harvest by the American Fisheries Act (AFA) inshore sector, AFA mothership sector, and Community Development Quota (CDQ) program in the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 1, 2020, through 2400 hours, A.l.t., August 15, 2020. 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 for public inspection with the Office of the Federal Register*].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2019-0074, by either of the following methods:

- *Federal e-Rulemaking Portal.* Go to:
<https://www.regulations.gov/docket?D=NOAA-NMFS-2019-0074>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: 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 by NMFS. 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), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

More information and data is available from NMFS at

<https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/inseason-fisheries-management-alaska>.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI 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 (Magnuson-Stevens 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.

Pursuant to the final 2020 and 2021 harvest specifications for groundfish in the BSAI, the total prohibited species catch (PSC) limit for herring is 2,532 metric tons (mt). The 2020 herring bycatch allowance of 2,299 mt specified for the trawl midwater pollock fishery in the BSAI has been reached. Prior to 2020, the PSC limit had not been reached in the pollock A season, and since 2010 has only been reached in the pollock B season once. NMFS recently became aware of concerns that the pollock sectors would not be able to respond to the unexpected conditions presented in 2020. The sectors' primary concerns are closure of the Herring Savings Areas will increase the length of the fishing season, increase bycatch of both Chinook and chum salmon, increase fishing and observer costs, and reduce fish quality, which will have a disproportionate impact on smaller shoreside vessels. As of June 3, 2020, NMFS has determined that approximately 495,000 mt of pollock TAC remains unharvested for the AFA inshore sector, AFA mothership sector, and CDQ program in the Bering Sea subarea of the BSAI.

Pursuant to the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020) and § 679.21(e)(7)(vi), NMFS prohibited directed fishing for pollock in the Herring Savings Areas of the BSAI on June 15, 2020 (85 FR 35381, June 10, 2020). The Herring Savings Areas are presented in Figure 4 to 50 CFR part 679. Review of the Bering Sea pollock fishery shows that closure of the Summer Herring Savings Area 2 (HSA 2) for the AFA inshore sector, AFA mothership sector, and

CDQ program may lead to the underharvest of the 2020 pollock TAC, based on the factors analyzed below.

The area of the HSA 2 is the most productive fishing grounds for these pollock sectors and is closest to the more accessible fishing ports. Closure of HSA 2 starting July 1 through August 15 will force these pollock sectors and CDQ program participants to fish in less productive areas that are further from the most accessible fishing ports. Fishing less productive grounds combined with more time to transit to open fishing grounds will lengthen the time required to fish during the pollock B season (June 10 to November 1, as defined at § 679.23(e)(2)(ii)). Also, longer fishing seasons will increase fishing and observer expenses. As a result, while the average last day of fishing for these sectors is October 2 (for 2010 to 2019), the HSA 2 closure may potentially extend fishing to November 1, 2020, and may prevent the full harvest of the pollock TAC.

Additionally, closing HSA 2 could force the pollock sectors and CDQ participants to areas with higher salmon bycatch. This, in combination with the factors analyzed in the preceding paragraph, also could extend fishing to the end of the season and compound pollock TAC and salmon bycatch concerns. Fishing later in the B season has been observed to increase the bycatch of other species including Chinook salmon. As analyzed in Amendment 110 to the FMP (81 FR 37534, June 10, 2016), historical salmon PSC rates observed in pollock fishery indicate the closure of the HSA 2 will move these fisheries to areas with higher salmon bycatch and delay these fisheries to time periods of higher Chinook salmon abundance.

For these reasons, closure of the HSA 2 will force the pollock sectors to fish in less productive areas, in areas with higher salmon bycatch, and further distances from

fishing ports, which will lengthen fishing over the B season and compound salmon bycatch issues. NMFS has determined that this may lead to the underharvest of the pollock TAC in the B season. To prevent the underharvest of the pollock TAC, NMFS will open the HSA 2 for the AFA inshore and mothership sectors and the CDQ program. This action does not include the AFA catcher/processor sector because it is already prohibited from directed fishing for pollock during the B pollock season in the Catcher Vessel Operational Area (CVOA) (see § 679.22(a)(5) and Figure 2 to 50 CFR part 679). The fishery for pollock in the CVOA overlaps with the HSA 2.

Opening the HSA 2 likely will not result in any conservation concerns for the Bering Sea herring stock. The 2010 to 2019 herring PSC for all pollock sectors in the B season ranges from 47 mt to 2,229 mt with an average of 765 mt. Adding the highest B season herring PSC from the most recent 10 years (2,229 mt) to the current 2020 A season herring PSC of 2,923 mt for all sectors equals 5,152 mt, or about 2 percent of the State of Alaska's estimate for 2020 of herring mature biomass for spawning aggregations in the Bering Sea. However, it is important to note that this is based on the highest B season herring PSC previously caught by all pollock sectors over the most recent 10 years (not an average or anticipated PSC for the remainder of the 2020); that this inseason adjustment only applies to the AFA inshore and mothership sectors and the CDQ program and does not include the AFA catcher/processor sector; and that this year's PSC varied from previous years. For the 2020 A season, the herring PSC was 52 percent catcher/processors and 48 percent inshore/mothership/CDQ, while the 2010 through 2019 average is 31 percent catcher/processors and 69 percent inshore/mothership/CDQ. Finally, NMFS notes that additional herring PSC outside the HSAs will continue

regardless of whether the PSC limit is reached in any given year, that there is no overall herring PSC limit, and that a total annual herring bycatch of 2 to 3 percent is close to the historical herring bycatch exploitation rates prior to the implementation of the herring PSC limit (56 FR 15063, April 15, 1991). When implementing the herring PSC limit (Amendment 16a to the FMP), NMFS anticipated that the groundfish trawl fishery's herring bycatch under the 1 percent of the herring biomass limit for a given fishing year would likely approach 2 to 3 percent by the end of a fishing year (56 FR 15063, April 15, 1991).

NMFS consulted with the Council at their June 2020 meeting, and the Council, after receiving oral and written public comment on this issue, unanimously recommended that NMFS use its inseason authority to provide for opening and management, including the potential closure, of the Summer Herring Savings Area 2, throughout the relevant time period (July 1 – August 15). Also, the Council and NMFS considered consistency with the Magnuson-Stevens Act's 10 National Standards and sought to balance the competing demands of the National Standards (16 U.S.C. 1851). Specifically, the Council and NMFS recognized the need to balance and be consistent with both National Standard 9 and National Standard 1. National Standard 9 requires that conservation and management measures minimize bycatch to the extent practicable. National Standard 1 requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. This inseason adjustment provides the opportunity to monitor herring PSC and minimize salmon PSC, consistent with Amendments 16a and 110 of the FMP, while also providing an opportunity to fully harvest the pollock TAC.

Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), (a)(2)(iii)(D), and (b)(1), (6), (7), and (8), NMFS is terminating the previous closure for HSA 2 only and is opening directed fishing for pollock in the HSA 2 by the AFA inshore sector, AFA mothership sector, and CDQ program in the Bering Sea subarea of the BSAI. This inseason adjustment is based on the determination that it is necessary to prevent underharvest of the pollock TAC and that opening the HSA 2 for the AFA inshore sector, AFA mothership sector, and CDQ program is the least restrictive adjustment necessary to achieve the pollock TAC in the Bering Sea subarea of the BSAI. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) the current catch of pollock in the Bering Sea subarea of the BSAI, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery, (3) the high historical prohibited species bycatch rates for Chinook and chum salmon observed in the pollock fishery, and (4) potential economic loss to these fisheries.

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 opening of the HSA 2 to directed fishing for pollock in the BSAI. Without this inseason adjustment, NMFS could

not allow the fishery for pollock in the Bering Sea subarea of the BSAI to be harvested in an expedient manner. In particular, this inseason adjustment is intended to allow the affected sectors to fish at more productive fishing grounds, earlier in the season, when there is less salmon bycatch. Any delay will undermine these goals and their ability to harvest their full TAC. For similar reasons, the affected sectors need notice of the re-opening at the earliest possible opportunity so they can plan and conduct fishing operations in a timely manner. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 3, 2020.

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 date of filing for public inspection with the Office of the Federal Register]*.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: June 12, 2020.

Hélène M.N. Scalliet,
Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 2020-13078 Filed: 6/16/2020 8:45 am; Publication Date: 6/17/2020]