

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.

NMFS closed directed fishing for Pacific cod by catcher vessels using pot gear in the BSAI under § 679.20(d)(1)(iii) on September 28, 2007 (72 FR 56016, October 2, 2007). As of October 1, 2007, approximately 529 metric tons of Pacific cod remain in the 2007 Pacific cod TAC allocated to catcher vessels using pot gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully use the 2007 TAC of Pacific cod specified for catcher vessels using pot gear in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels using pot gear in the BSAI. The opening is effective 1200 hrs, A.l.t., October 2, 2007, through 2400 hrs, A.l.t., December 31, 2007.

#### 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 Pacific cod fishery by catcher vessels using pot gear in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 1, 2007.

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.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels using pot gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until October 17, 2007.

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

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

Dated: October 1, 2007.

**Emily H. Menashes**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 07-4955 Filed 10-2-07; 1:38 pm]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 070213033-7033-01]

RIN 0648-XD11

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processor Vessels Using Hook-and-line Gear 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 catcher processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 directed fishing allowance (DFA) of Pacific cod specified for catcher processor vessels using hook-and-line gear in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 2, 2007, until 1200 hrs, A.l.t., December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 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 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 2007 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear in the BSAI as a DFA of 68,105 metric tons (mt) is established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) and a reallocation (72 FR 52493, September 14, 2007). See § 679.20(c)(3)(iii) and (c)(5), and (a)(7)(i)(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2007 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using hook-and-line gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### 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 Pacific cod by catcher processor vessels using hook-and-line gear 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 September 28, 2007.

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: September 28, 2007.

**Emily H. Menashes**

*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 697

[Docket No. 0612243160-7448-02; I.D. 112505A]

RIN 0648-AU07

#### Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

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

**ACTION:** Final rule.

**SUMMARY:** NMFS amends the Federal American lobster (*Homarus americanus*) regulations to implement further minimum carapace length (gauge) increases, an escape vent size increase, and trap reductions in the offshore American lobster fishery, consistent with recommendations for Federal action made by the Atlantic States Marine Fisheries Commission (Commission) and in support of the Commission's Interstate Fishery Management Plan for American Lobster (ISFMP).

**DATES:** Effective November 4, 2007.

**ADDRESSES:** Copies of the American lobster Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this regulatory action are available upon request from Harold Mears, Director, State, Federal and Constituent Programs Office, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Peter Burns, Fishery Management Specialist, (978) 281-9144, fax (978) 281-9117, e-mail [peter.burns@noaa.gov](mailto:peter.burns@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Statutory Authority

These new regulations would modify Federal lobster conservation management measures in the Exclusive Economic Zone (EEZ) under the authority of section 804 of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) 16 U.S.C 5101 *et seq.*, which states, in

the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and, after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nautical miles (nm) offshore. The regulations must be (1) compatible with the effective implementation of an ISFMP developed by the Commission and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

##### Purpose and Need for Management

American lobsters are managed within the framework of the Commission. The Commission serves to develop fishery conservation and management strategies for certain coastal species and coordinates the efforts of the states and Federal Government toward concerted sustainable ends. The Commission, under the provisions of the Atlantic Coastal Act, decides upon a management strategy as a collective and then forwards that strategy to the states and Federal Government, along with a recommendation that the states and Federal Government take action (e.g., enact regulations) in furtherance of this strategy. The Federal Government is obligated by statute to support the Commission's overall efforts. Relevant to this action, the Commission's Lobster Board recommended that the Federal Government create regulations consistent with the measures set forth in the Commission's Lobster ISFMP as identified in Addenda II, III, and IV and XI to Amendment 3 of the ISFMP. As initially adopted, these addenda included management measures for several lobster conservation management areas (LCMAs/Areas) including Area 3, the Outer Cape Cod (Outer Cape) Area and Area 1. Specifically, these measures included an escape vent size increase for both Area 1 and the Outer Cape Area and a series of gauge increases for the Outer Cape Area in addition to the measures considered for Area 3. However, the Commission's American Lobster Management Board (Board), in May 2006, determined that only the Area 3 measures were required and repealed those specific to the Outer Cape Area and Area 1. Consequently, NMFS will implement regulatory measures in three general categories for LCMA 3: (1) Gauge size increases (recommended in Addenda II); (2) an escape vent size

increase (recommended in Addendum IV) and a delay in the implementation of the escape vent size increase until 2010 (Addendum XI); and (3) trap reductions (recommended in Addendum IV and Addendum XI). These regulatory changes serve as the Federal Government's response to the Commission's requested action and are consistent with NMFS' resource objectives, legal mandates, and overall practical/managerial requirements. The management measures for the areas other than Area 3 associated with these addenda and recommended for Federal implementation by the Commission will be addressed in future and ongoing rulemakings.

The Area 3 broodstock and effort control measures relevant to this action directly address the concerns of the most recent stock assessment. The peer-reviewed lobster stock assessment in 2005 showed that the American lobster resource presents a mixed picture (see the Commission Stock Assessment Report No. 06-03, published January 2006 at [www.asmf.org](http://www.asmf.org)). One theme throughout the assessment was the high fishing effort and high mortality rates in all three stock areas. The assessment indicated that there is stable abundance for the Georges Bank (GBK) stock and much of the Gulf of Maine (GOM) stock and decreased abundance and recruitment, yet continued high fishing mortality rates, for the Southern New England (SNE) stock and in Statistical Area 514 (Massachusetts Bay and Stellwagen Bank) in the GOM stock. Of particular concern in the 2005 peer-reviewed stock assessment report is the SNE stock, where depleted stock abundance and recruitment coupled with high fishing mortality rates over the past few years led the stock assessment and peer review panel to recommend additional harvest restrictions. The SNE stock encompasses all of Areas 4, 5, and 6, and part of Areas 2 and 3. Overall, stock abundance in the GOM is relatively high with recent fishing mortality comparable to the past. The GOM stock encompasses all of Area 1, and part of both Area 3 and the Outer Cape Management Area. Currently, high lobster fishing effort levels in GOM continue in concert with high stock abundance, although high effort levels are not likely to be supportable if abundance returns to long-term median levels. The GBK stock seems stable, with current abundance and fishing mortality similar to the 20-year average. The GBK stock encompasses part of Areas 2, 3, and the Outer Cape Management Area. While the report