

vessels with an average increase of 10.8 A DAS (ranging from 0.02 to 52.69 A DAS) per vessel. Amendment 13 analyzed the average daily returns by vessel category and concluded that average daily returns while fishing on a DAS would range from \$1,139 to \$2,683 depending on the vessel category. Assuming that additional A DAS were re-allocated to the fishery, individual vessels may realize these net returns. However, net returns may not be uniform within each vessel category because of the variation in number of A DAS that would be expected to return to the fishery (i.e., 0.02 to 52.69 A DAS). Individual vessels would also need to consider other variables in combination with their allocated A DAS to determine the likelihood of exact changes in vessel profitability. The preferred alternative as analyzed within Amendment 13 assumes the DAS usage cap is in place and the NE multispecies fishery is operating based on the DAS allocation procedure specified in the final rule for Amendment 13. In this case, the establishment of a DAS usage cap, as set forth in the final rule, would neither affect the costs of current fishing operations for individual vessels, nor would it impose any additional compliance costs on NE groundfish vessels. DAS allocations to individual vessels would remain unchanged, giving each vessel the same opportunity to earn revenues as they exist in the present fishery. In addition, there would be no change to individual vessel profitability resulting from the maintenance of the present DAS schedule. Furthermore, the NE multispecies fleet has been operating under a DAS usage cap for the past two years as a result of a series of interim and emergency actions taken by NMFS resulting from the Conservation Law Foundation v. Evans litigation (67 FR 50292, August 1, 2002; 68 FR 2919, January 22, 2003; and 68 FR 38234, June 27, 2003). Individual vessels have received reduced DAS allocations based on this cap and have already experienced economic impacts that would be similar to those resulting from the existence of the DAS usage cap for the 2004 fishing season.

Implementing the DAS cap (i.e., capping the DAS baseline at a vessel's 2001 allocation) is critical in order to be consistent with the intent of the Council's goal of fishing capacity reduction. Allowing vessels to have a baseline DAS allocation that exceeds the level of recent historic allocation is counter to the stated goal of Amendment 13's alternatives to control capacity. The non-selected alternative

would also have the potential of slowing rebuilding efforts and would lead to additional DAS reductions in future years, thus resulting in greater adverse economic impacts. Finally, operating the fishery without a DAS usage cap and inserting the extra effort back into the fishery would not be consistent with Amendment 13 and the goals and objectives the Magnuson-Stevens Act and its national standards. A Summary of the Significant Issues Raised by the 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 in the Proposed Rule as a Result of such Comments.

NMFS received thirteen comments on the proposed interim rule. Of these, two comments dealt with economic impacts to small entities (vessels) resulting from the management measures in the proposed interim rule and one comment specifically disagreed with the conclusions of the IRFA. NMFS responded to the comment regarding the IRFA in the response to Comment 4 specified above. NMFS addressed the two comments regarding the economic impacts to small entities in the FRFA analysis in the preamble of this final rule.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 3, 2004.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

#### **PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.82, paragraph (c)(1) introductory text is republished to read as follows:

#### **§ 648.82 Effort-control program for NE multispecies limited access vessels.**

\* \* \* \* \*

(c) *Used DAS baseline*—(1) *Calculation of used DAS baseline.* For all valid limited access NE multispecies DAS vessels, vessels issued a valid small vessel category permit, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest

number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(1)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(1). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (d) of this section.

\* \* \* \* \*

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#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 021101264-3016-02; I.D. 120304C]

#### **Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Management Area 1B**

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

**ACTION:** Closure of directed fishery for Management Area 1B.

**SUMMARY:** NMFS announces that 95 percent of the Atlantic herring total allowable catch (TAC) allocated to Management Area 1B (Area 1B) for 2004 is projected to be harvested by 0001 hrs local time, December 8, 2004. Therefore, effective 0001 hours, December 8, 2004, 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 1B per trip or calendar day until January 1, 2005, when the 2005 period TAC becomes available, except for transiting purposes

as described in this notice. 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 1B.

**DATES:** Effective 0001 hrs local time, December 8, 2004, through 2400 hrs local time, December 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Don Frei, Fisheries Management Specialist, at (978) 281-9221.

**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 2004 TAC allocated to Area 1B (69 FR 17980, April 6, 2004) is 10,000 mt.

The regulations at 50 CFR 648.202 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 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** notifying vessel and dealer permit holders that, effective upon a specific date, vessels may not fish for, catch, possess, transfer or land 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. 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 1B for the 2004 fishing year is projected to be harvested by 0001 hrs local time, December 8, 2004. Therefore, effective 0001 hrs local time, December 8, 2004, 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 1B per trip or calendar day through December 31, 2004; except a vessel may transit, or land herring in Area 1B with more than 2,000 lb (907.2 kg) of herring on board, provided such herring were not caught in Area 1B, and provided all fishing gear is stowed and not available for immediate use as required by § 648.23(b). Effective, 0001 hrs local time, December 8, 2004, 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 1B through December 31, 2004, 2400 hrs local time.

**Classification**

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

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

Dated: December 3, 2004.

**Bruce C. Morehead**

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

[FR Doc. 04-26961 Filed 12-3-04; 2:51 pm]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 031124287-4060-02; I.D. 120204A]**

**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:** 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 2004 total allowable catch (TAC) of Pacific cod allocated to catcher processor vessels using hook and line gear in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), December 4, 2004, through 2400 hrs, A.l.t., December 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 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 2004 TAC of Pacific cod allocated to catcher processor vessels using hook and line gear in the BSAI is 97,795 metric tons as established by the 2004 final harvest specifications for groundfish in the BSAI (69 FR 9242, February 27, 2004) and subsequent reallocations on October 15 (69 FR 61607, October 20, 2004) and November 26 (69 FR 69828, December 1, 2004). See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2004 TAC of Pacific cod allocated to catcher processor vessels using hook and line gear in the BSAI will soon be 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 50 CFR 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 allocated to catcher processor vessels using hook and line gear in the BSAI.

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: December 2, 2004.

**Anne M. Lange,**

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

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