Administrator, as the case may be, determines that any one of the considerations set forth in paragraph (a)(1), (2) or (3) of this section applies, he or she, as the case may be, will deny the permit application.

* * * * *

■ 16. Revise § 227.3 to read as follows:

§ 227.3 Materials which do not satisfy the environmental impact criteria set forth in subpart B.

If the material proposed for ocean dumping does not satisfy the environmental impact criteria of subpart B of this part, the Administrator or the Regional Administrator, as the case may be, will deny the permit application.

Subpart B—[Amended]

■ 17. Amend § 227.6 by revising paragraph (e) to read as follows:

§ 227.6 Constituents prohibited as other than trace contaminants.

* * * * *

(e) The criteria stated in paragraphs (c)(2) and (3) of this section are mandatory. The availability of acceptable procedures was announced in the **Federal Register** in 1991 and 1996.

* * * * *

Subpart F—[Amended]

■ 18. Amend part 227 by removing and reserving subpart F, consisting of § 227.23 through § 227.26.

Subpart G—[Amended]

■ 19. Amend § 227.27 by removing footnote 1 from paragraph (b) and revising paragraph (d) to read as follows:

§ 227.27 Limiting permissible concentration (LPC).

* * * * *

(d) Appropriate sensitive benthic marine organisms means two or more species that together represent filter-feeding, deposit-feeding, and burrowing characteristics. These organisms shall be chosen from among the species that are most sensitive for each type they represent, and that are documented in the scientific literature and accepted by EPA as being reliable test organisms to determine the anticipated impact on the site.

PART 228—[AMENDED]

■ 20. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 21. Amend § 228.2 by revising paragraph (a) to read as follows:

§ 228.2 Definitions.

(a) The term disposal site means a finally approved and precise geographical area within which ocean dumping of wastes is permitted under conditions specified in permits issued under sections 102 and 103 of the Act. Such sites are identified by boundaries established by coordinates of latitude and longitude for each corner, or by coordinates of latitude and longitude for the center point and a radius in nautical miles from that point. Boundary coordinates shall be identified as precisely as is warranted by the accuracy with which the site can be located with existing navigational aids or by the implantation of transponders, buoys or other means of marking the site.

* * * * *

■ 22. Amend § 228.3 by revising paragraph (b) to read as follows:

§ 228.3 Disposal site management responsibilities.

* * * * *

(b) Each site, upon final designation, will be assigned to either an EPA Regional office or to EPA Headquarters for management. These designations will be consistent with the delegation of authority in § 220.4 of this chapter. The designated management authority is fully responsible for all aspects of the management of sites within the general requirements specified in § 220.4 and this chapter. Specific requirements for meeting the management responsibilities assigned to the designated management authority for each site are outlined in §§ 228.5 and 228.6.

■ 23. Amend § 228.4 by revising paragraph (b) to read as follows:

§ 228.4 Procedures for designation of sites.

* * * * *

(b) *Special permits.* Areas where ocean dumping is permitted subject to the specific conditions of individual special permits, will be designated by promulgation in this part 228, and such designation will be made based on environmental studies of each site, regions adjacent to the site, and on historical knowledge of the impact of waste disposal on areas similar to such sites in physical, chemical, and biological characteristics. All studies for the evaluation and potential selection of dumping sites will be conducted in accordance with the requirements of §§ 228.5 and 228.6. The Administrator may, from time to time, designate specific locations for temporary use for disposal of small amounts of materials under a special permit only without disposal site designation studies when such materials satisfy the Criteria and the Administrator determines that the quantities to be disposed of at such sites will not result in significant impact on the environment. Such designations will be done by promulgation in this part 228, and will be for a specified period of time and for specified quantities of materials.

* * * * *

§ 228.5 [Amended]

■ 24. Amend § 228.5 by removing and reserving paragraph (c).

■ 25. Revise § 228.8 to read as follows:

§ 228.8 Limitations on times and rates of disposal.

Limitations as to time for and rates of dumping may be stated as part of the promulgation of site designation. The times and the quantities of permitted material disposal will be regulated by the EPA management authority so that the limits for the site as specified in the site designation are not exceeded. This will be accomplished by the denial of permits for the disposal of some materials, by the imposition of appropriate conditions on other permits and, if necessary, the designation of new disposal sites under the procedures of § 228.4. In no case may the total volume of material disposed of at any site under special permits cause the concentration of the total materials or any constituent of any of the materials being disposed of at the site to exceed limits specified in the site designation.

■ 26. Amend part 228 by removing and reserving § 228.14.

[FR Doc. E8–28842 Filed 12–9–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XM17

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod 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; reallocation.

SUMMARY: NMFS is reallocating projected unused amounts of Pacific cod from catcher vessels using trawl gear, catcher vessels using pot gear, and vessels using jig gear to American Fisheries Act (AFA) catcher processor vessels, catcher processor vessels using pot gear, and catcher processor vessels using hook–and–line gear in the Bering Sea and Aleutian Islands management area (BSAI). These actions are necessary to allow the 2008 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective December 5, 2008, until 2400 hours, A.l.t., December 31, 2008.

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 2008 Pacific cod TAC in the BSAI is 170,720 metric tons (mt) as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008). Pursuant to § 679.29(a)(7)(ii), the allocations of the Pacific cod TAC are 73,844 mt to catcher processor vessels using hook–and–line gear, 2,274 mt to catcher processor vessels using pot gear, 12,737 mt to catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) using pot gear, 3,506 mt to AFA trawl catcher processors, and 33,692 mt to catcher vessels using trawl gear. The allocation to vessels using jig gear is 260 mt and the allocation to catcher vessels less than 60 feet (18.3m) LOA using hook–and–line or pot gear is 5,210 mt after four reallocations (73 FR 11562, March 4, 2008; 73 FR 19748, April 11, 2008; 73 FR 49962, August 25, 2008; and 73 FR 52797, September 11, 2008).

As of December 1, 2008, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that catcher vessels using trawl gear will not be able to harvest 2,850 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(ii). The Regional Administrator has determined that the projected unharvested amount is unlikely to be harvested by any of the other catcher vessel sectors described in § 679.20(a)(7)(iii)(A). Furthermore, the Regional Administrator has also determined that other trawl sectors will be unable to utilize the full unharvested amount and that catcher vessels greater than or equal to 60 feet (18.3m) LOA using pot gear will not be able to harvest any additional amounts. Therefore, in accordance with § 679.20(a)(7)(iii)(B), NMFS apportions 1,200 mt of Pacific cod from catcher vessels using trawl gear to AFA trawl catcher processors, 1,607 mt of Pacific cod from catcher vessels using trawl gear to catcher processor vessels using hook–and–line gear, and 43 mt from catcher vessels using trawl gear to catcher processors using pot gear.

The Regional Administrator has also determined that catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear will not be able to harvest 1,315 mt of Pacific cod. Furthermore, the Regional Administrator has determined that catcher processor vessels using pot gear will be unable to utilize the full unharvested amount. Therefore, in accordance with § 679.20(a)(7)(iii)(C), NMFS is reallocating 772 mt of Pacific cod allocated to catcher vessels greater than 60 feet (18.3 m) LOA using pot gear to catcher processor vessels using pot gear and 543 mt of Pacific cod allocated to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear to catcher processor vessels using hook–and–line gear.

The Regional Administrator has also determined that vessels using jig gear will be unable to harvest 80 mt of Pacific cod. The Regional Administrator has also determined that catcher vessels less than 60 feet (18.3m) LOA using hook–and–line or pot gear and catcher vessels greater than or equal to 60 feet (18.3 m) LOA using hook–and–line gear will be unable to harvest additional Pacific cod. Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS is reallocating 80 mt of Pacific cod allocated to jig vessels to catcher processor vessels using hook–and–line gear.

The allocations for Pacific cod specified in the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008) and four reallocations (73 FR 11562, March 4, 2008, 73 FR 19748, April 11, 2008, 73 FR 49962, August 25, 2008, and 73 FR 52797, September 11, 2008) are revised as follows: 180 mt to vessels using jig gear, 76,074 mt to catcher processor vessels using hook–and–line gear, 11,422 mt to catcher vessels using pot gear, 3,089 mt to catcher processor vessels using pot gear, 4,706 mt to AFA catcher processor vessels using trawl gear, and 30,842 mt to catcher vessels using trawl gear.

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 reallocation of Pacific cod. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. 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 as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 1, 2008.

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 5, 2008.

Emily H. Menashes,

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

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