

period of time within which any interested person may file with the presiding officer any written comments on the proposed regulations and waiver, including proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, the party shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state their arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

**§ 228.20 Recommended decision, certification of the transcript and submission of comments on the recommended decision.**

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Assistant Administrator. The recommended decision shall include:

- (1) A statement containing a description of the history of the proceedings;
- (2) Findings on the issues of fact with the reasons therefor; and
- (3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Assistant Administrator the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Immediately after receipt of the recommended decision, the Assistant Administrator shall give notice thereof in the **Federal Register**, send copies of the recommended decision to all parties, and provide opportunity for the submission of comments. The recommended decision may be reviewed and/or copied in the office of the Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

(d) Within 20 days after the notice of receipt of the recommended decision has been published in the **Federal Register**, any interested person may file with the Assistant Administrator any written comments on the recommended

decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the 20-day period to the Assistant Administrator at the previously mentioned address.

**§ 228.21 Assistant Administrator's decision.**

(a) Upon receipt of the recommended decision and transcript and after the 20-day period for receiving written comments on the recommended decision has passed, the Assistant Administrator shall make a final decision on the proposed regulations and waiver, where applicable. The Assistant Administrator's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Assistant Administrator may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Assistant Administrator's decision shall include:

- (1) A statement containing a description of the history of the proceeding;
- (2) Findings on the issues of fact with the reasons therefor; and
- (3) Rulings on issues of law.

(4) The Assistant Administrator's decision shall be published in the **Federal Register**. If the waiver is approved, the final adopted regulations shall be promulgated with the decision.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[I.D. 121399A]

#### Fisheries of the Exclusive Economic Zone off Alaska; Bycatch Rate Standards for the Second Half of 2000

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

**ACTION:** Pacific halibut and red king crab bycatch rate standards; request for comments.

**SUMMARY:** NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 2000. Publication of these bycatch rate standards is required by regulations implementing the vessel incentive program. This action is necessary to

implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

**DATES:** Effective 1201 hours, Alaska local time (A.l.t.), July 1, 2000, through 2400 hours, A.l.t., December 31, 2000. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., July 27, 2000.

**ADDRESSES:** Comments may be submitted to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907-586-7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

**FOR FURTHER INFORMATION CONTACT:**

Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the U.S. groundfish fisheries and implementing the FMPs appear at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries, and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators also may not exceed red king crab bycatch standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red king crab bycatch rate standards for each fishery included

under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. For purposes of calculating vessel bycatch rates under the incentive program, 2000 fishing months were specified in the **Federal Register** on December 28, 1999 (64 FR 72572).

NMFS published halibut and red king crab bycatch rate standards for the first

half of 2000 in the **Federal Register** (64 FR 72572, December 28, 1999). As required by § 679.21(f)(3) and (4), the Administrator of the Alaska Region, NMFS (Regional Administrator), has established the bycatch rate standards for the second half of 2000 (July 1 through December 31). The Council endorsed these standards at its April 2000 meeting and are set out in Table 1. As required by § 679.21(f)(4), bycatch rate standards are based on the following information:

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under § 679.21(d) and (e);

(D) Anticipated groundfish harvests;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

TABLE 1.— BYCATCH RATE STANDARDS BY FISHERY FOR THE SECOND HALF OF 2000 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.

<i>Fishery</i>	<i>2000 bycatch rate standard</i>
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch)	
BSAI Midwater pollock	1.0
BSAI Bottom pollock	5.0
BSAI Yellowfin sole	5.0
BSAI Other trawl	30.0
GOA Midwater pollock	1.0
GOA Other trawl	40.0
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole	2.5
BSAI Other trawl	2.5

### Bycatch Rate Standards for Pacific Halibut

The halibut bycatch rate standards for the 2000 trawl fisheries are unchanged from those implemented in 1999. The Regional Administrator based standards for the second half of 2000 on anticipated seasonal fishing effort for groundfish species on 1996–1999 halibut bycatch rates observed in the trawl fisheries included under the incentive program.

With the exception of the BSAI yellowfin sole fishery, these bycatch rate standards generally reflect the average halibut bycatch rates observed in the BSAI and GOA trawl fisheries. At times, quarterly bycatch rates have exceeded the bycatch rate standards, but these situations usually represent limited fishing effort (e.g., GOA other trawl fisheries in the 2<sup>nd</sup> and 4<sup>th</sup> quarters). The BSAI yellowfin sole fishery has experienced undesirably high bycatch rates that NMFS and the Council expect to reduce through existing incentives. NMFS anticipates that the formation of American Fisheries Act (AFA) cooperatives should help participating vessels maintain overall bycatch rates of halibut in the yellowfin sole fishery at a minimal level so that the amount of groundfish harvested may be optimized under the AFA PSC sideboard provisions. In determining

these bycatch rate standards, the Regional Administrator considered the annual and seasonal bycatch specifications for the BSAI and GOA trawl fisheries (65 FR 8282, February 18, 2000, and 65 FR 8298, February 18, 2000, respectively). He further recognized that directed fishing for Pacific cod for the inshore component in the Western and Central Regulatory Areas of the GOA is closed for the remainder of the year. The GOA shallow-water and deep-water trawl fishery species complexes are open. In the Bering Sea, the rockfish and rock sole/flathead sole/other flatfish fishery categories will open or reopen on July 4 when seasonal apportionments of halibut bycatch allowances specified for these fisheries become available. The BSAI Pacific cod trawl fishery is closed for the remainder of the year for catcher vessels and is open for catcher processors. The BSAI yellowfin sole fishery is ongoing, and no closure has yet been projected due to crab or halibut bycatch. The Regional Administrator also considered the June 10 opening date of the 2000 Bering Sea pollock 'C/' 'D' season (§ 679.23(e)(2)) and the Gulf of Alaska 'C' and 'D' season pollock fisheries (§ 679.23(d)(2)). The halibut bycatch rate standards for the BSAI yellowfin sole and "bottom pollock" trawl fisheries are each set at 5 kilograms (kg) of halibut per metric ton

(mt) of groundfish. The halibut bycatch rate standard for the BSAI and GOA midwater pollock fisheries (1 kg of halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. This standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery. A bycatch rate standard of 30 kg halibut/mt of groundfish is established for the BSAI "other trawl" fishery. This standard has remained unchanged since 1992. A bycatch rate standard of 40 kg of halibut/mt of groundfish is established for the GOA "other trawl" fishery, which is unchanged since 1994. The considerations that support these bycatch rate standards for the "other trawl" fisheries are unchanged from previous years and are discussed in the **Federal Register** publications of 1995 bycatch rate standards (60 FR 2905, January 12, 1995, and 60 FR 27425, May 24, 1995). Observer data collected from the 1999 GOA "other trawl" fishery show average third and fourth quarter halibut bycatch rates of 18 and 69 kg of halibut/mt of groundfish, respectively. The first quarter rate from 2000 was 23 kg of halibut/mt of groundfish. Observer data from the 1999 BSAI "other trawl" fishery show third and fourth quarter halibut bycatch rates of 6 and 9 kg of halibut/mt of groundfish. The first

quarter rate from the 2000 BSAI "other trawl" fishery was 8 kg of halibut/mt of groundfish.

#### **Bycatch Rate Standards for Red King Crab**

The red king crab bycatch rate standard for the yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the second half of 2000. This standard has remained unchanged since 1992. Through April 8, 2000, the rock sole/flathead sole/other flatfish fishery category had taken 76 percent of its annual red king crab bycatch allowance including the Red King Crab Savings Subarea bycatch limit. The Pacific cod and yellowfin sole

fisheries have taken only 33 percent and 12 percent, respectively, of their bycatch allowances. The Regional Administrator anticipates that the non-pelagic trawl gear closure of the red king crab savings area in Zone 1 will continue to result in low red king crab bycatch rates for the remainder of the year and is maintaining the 2.5 red king crab/mt of groundfish bycatch rate standard.

The Regional Administrator has determined that the bycatch rate standards set forth in Table 1 for the 2<sup>nd</sup> half of 2000 are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). These bycatch rate standards may be revised and published in the

**Federal Register** when deemed appropriate by the Regional Administrator, pending his consideration of the information set forth at § 679.21(f)(4).

#### **Classification**

This action is taken under 50 CFR 679.21(f) and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: June 21, 2000.

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