

Dated: May 10, 2000.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991221345-0108-02; I.D. 113099B]

RIN 0648-AL30

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibition of Nonpelagic Trawl Gear in the Bering Sea and Aleutian Islands Pollock Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 57 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This action consists of three regulatory changes. First, it prohibits the use of nonpelagic trawl gear in the directed non-community development quota (CDQ) pollock fisheries of the Bering Sea and Aleutian Islands (BSAI). Second, it makes the performance standard for pelagic trawl gear applicable at all times to vessels in the directed non-CDQ pollock fishery in the BSAI. Third, it reduces the crab and Pacific halibut (halibut) bycatch limits established for the BSAI groundfish trawl fisheries. This action is necessary to address bycatch reduction objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and is intended to further the goals and objectives of the FMP.

DATES: Effective June 15, 2000.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228.

FOR FURTHER INFORMATION CONTACT:
Nina Mollett, (907) 586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries of the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it, under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

Background and Need for Action

The objective of Amendment 57 is to reduce bycatch in the BSAI pollock fishery. The amendment and its implementing regulations are designed to comply with the Magnuson-Stevens Act, which emphasizes the importance of reducing bycatch to maintain sustainable fisheries. National standard 9 of the Magnuson-Stevens Act mandates that conservation and management measures minimize bycatch, to the extent practicable, and minimize mortality where bycatch cannot be avoided.

NMFS published the proposed rule to implement Amendment 57 in the **Federal Register** on December 29, 1999 (64 FR 73003). The public comment period ended on February 14, 2000. NMFS approved Amendment 57 on March 8, 2000.

The final action to implement the amendment has three parts.

1. Prohibition on the Use of Nonpelagic Trawl Gear in the BSAI Directed Non-CDQ Pollock Fishery

This rule prohibits nonpelagic trawling for non-CDQ pollock in the BSAI. Since January 1999, the entire BSAI pollock TAC, except for the CDQ fishery, has been allocated to pelagic trawl gear.

The prohibition is expected to reduce bycatch on a permanent basis (for the past 2 years the nonpelagic trawl ban has been in effect through allocation of zero TAC) while imposing a relatively low cost on the fishery. Pollock is the only fishery where both pelagic and nonpelagic trawl gear are used. Pelagic gear has a substantially lower bycatch rate for halibut and crab. Most fishing for pollock in the BSAI was conducted with pelagic gear even before 1999.

2. Performance Standard

The existing performance standard for pelagic trawl gear at § 679.7(a)(14) prohibits a vessel engaged in directed fishing for pollock, when directed fishing for pollock with nonpelagic trawl gear is closed, from having 20 or more crabs of any species, with a carapace width of more than 1.5 inches (38 mm) at the widest dimension, on board at any one time. Crabs were

chosen for the standard because they inhabit the seabed and, if caught with trawl gear, indicate that the trawl has been in contact with the bottom. The standard is revised to make it applicable at all times to vessels engaged in a directed fishery for non-CDQ pollock in the BSAI because all vessels, except those fishing for CDQ pollock, are prohibited from using nonpelagic trawl gear.

3. Prohibited Species Catch (PSC) Limits

The final rule reduces the bycatch limit for halibut and crab caught using trawl gear in the BSAI. The CDQ program will continue to receive 7.5 percent of each PSC limit, in accordance with § 679.21(e)(1), which contains the existing limits for each PSC species in the BSAI. The current halibut PSC allowance is 3,775 metric tons (mt). Crab bycatch limits vary according to abundance and spawning biomass as determined by annual surveys.

This final rule reduces the halibut PSC limit by 100 mt to 3,675 mt. The rule reduces the PSC allowance for red king crabs by 3,000 animals, for *Chionoecetes (C.) bairdi* crabs by 50,000 animals, and for *C. opilio* crabs by 150,000 animals. The rule reduces the *C. bairdi* crabs allowance by 20,000 in Zone 1 and by 30,000 in Zone 2, reflecting the larger fishery there.

The Council recommended these reduced PSC limits after considering data on bycatch rates from vessels using pelagic gear while the performance standard was in effect. Two other options were considered: Option 1 would have reduced only the halibut bycatch limit, and Option 2 would have reduced bycatch by lesser amounts for halibut and the three PSC crab species. The Council chose Option 3 because it more realistically conforms to the amount of bycatch likely to be avoided as a result of the prohibition on nonpelagic trawl gear. The analysis of all options and alternatives is contained in the EA/RIR, the Initial Regulatory Flexibility Analysis, and the FRFA that were prepared for this action.

Pollock CDQ Fisheries

Under this final rule, vessels fishing for CDQ pollock are not subject to the prohibition on the use of nonpelagic trawl gear. The structure of the CDQ program provides a strong incentive to the CDQ groups and their harvesting partners to use fishing gear and fishing techniques that minimize the bycatch of non-target groundfish and prohibited species. Under this final rule, the CDQ program will receive a reduced allocation of PSC, because it will continue to receive a 7.5 percent

allocation of what will be a reduced overall PSC allowance. Therefore, although the prohibition the use of on nonpelagic trawl gear will not apply to the CDQ fisheries, the collateral reduction in PSC allowance will increase the effect of the existing incentive for CDQ groups to minimize the bycatch of PSQ species.

Fishing Trip Definition

This final rule also changes the "fishing trip" definition contained in § 679.2. Under the new definition, when a vessel begins fishing with a new gear type, it must start recordkeeping for a new fishing trip. This change enables, for example, a vessel legitimately fishing with bottom trawl gear for yellowfin sole, and under a maximum retainable bycatch restriction for pollock (see § 679.20(e)), to keep clear records if it switches to directed fishing for pollock using pelagic gear.

Changes From Proposed to Final Rule

One technical change was made from the proposed rule to this final rule. This change clarifies that the performance standard applies at all times to non-CDQ trawl vessels in the directed fishery for pollock in the BSAI, but that the performance standard has not changed for vessels fishing in the GOA (§ 679.7((a)(14)).

Response to Comments

NMFS received one letter during the public comment period, from the Alaska Marine Conservation Council. The letter supported the amendment and rulemaking in general but expressed disappointment that the Council and NMFS did not set a separate halibut bycatch allowance for the directed pollock fishery in the BSAI that, when reached, would require closure of the directed fishery for pollock. The EA/RIR/IRFA for Amendment 57 considered a regulatory amendment that would have split out pollock from the pollock/Atka mackerel/other species category and accounted for PSC bycatch separately. The RIR/IRFA analysis indicated potential problems with this regulatory amendment. According to the analysis, the directed pollock fishery generates about \$382 for the fishery per pound of halibut caught, as opposed to less than \$50 per pound for other groundfish fisheries examined. If the pollock fishery were to meet its PSC limit in the BSAI, resulting in a closure of the fishery, major costs could be incurred, the magnitude of which would depend in part on the amount of remaining pollock TAC. In view of these potentially high costs, compared to the benefits of holding the pollock fishery

more strictly accountable for its bycatch, managers might tend to apportion more halibut PSC to the pollock category than warranted by historical catch records. In that case, the halibut PSC limit for other groundfish fisheries would be correspondingly lower, and amount to a cost to those fisheries that would not occur if the fishery were not split. Finally, the bycatch of halibut and crab in the pollock fishery is very low; only about 3 percent of trawl halibut bycatch mortality and less than 0.4 percent of crab taken in the trawl fisheries. NMFS believes it would be more appropriate to work with the Council to develop measures that would result in meaningful reductions of overall bycatch in the fisheries that are responsible for taking greater proportions of bycatch.

In light of the high costs associated with a separate halibut bycatch allowance, and the relatively small gains in bycatch reduction that would result, NMFS believes that the proposed action is fully consistent with national standard 9's mandate to minimize bycatch "to the extent practicable."

Classification

This action has been determined to be not significant for purposes of E.O. 12866. This rule imposes no new reporting, recordkeeping, or compliance requirements.

NMFS has prepared an FRFA that describes the economic impact this rule is expected to have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Analysis of catch data from 1997 to 2000 indicates that no vessels will be adversely affected by the Council's preferred alternative with respect to buying and using new gear because all vessels currently eligible to fish for pollock in the BSAI under the American Fisheries Act (AFA) fish with pelagic gear. In 1996, five small catcher vessels used bottom trawl gear only. This number dropped to two vessels in 1997. In 1999 and 2000, no vessels deployed bottom gear in the BSAI pollock fishery because bottom trawling for pollock was closed those years through the annual specifications process. This action only has the effect of making permanent a prohibition on the use of bottom trawl gear in the pollock fishery that has already been in place since January 1999.

Of the approximately 120 catcher vessels that are eligible to fish for pollock in the BSAI under the AFA, approximately 60 are small entities, and these vessels have fished for pollock exclusively with pelagic trawl gear for the past 2 years. None of the 21 catcher

processors eligible to fish for pollock under the AFA are small entities under the Regulatory Flexibility Act. The crab performance standard may pose some unquantifiable inconvenience to vessel operators fishing with pelagic gear, as it is intended to discourage them from trawling on the bottom. To the extent that they have chosen to fish on the bottom in the past, economic theory suggests that they were probably gaining some economic advantage the past 2 years.

The reductions in overall PSC limits for halibut, red king crab, Tanner crab, and snow crab are not expected to cause significant impacts to small entities, as the reductions are based on the expected improvement in bycatch rates and are not expected to constrain fishing activity. The actual improvement in bycatch from using the cleaner pelagic gear occurred in 1999 when the Council began eliminating bottom trawling for pollock on an annual basis. Many factors operate to influence bycatch in the fisheries, but to the extent that bycatch was reduced in the pollock fishery through the use of cleaner gear, the other trawl fisheries (e.g., rock sole, yellowfin sole, Pacific cod) may have received an unintended increase since 1999. This action constrains the other trawl fisheries by removing their unintended increase estimated as: halibut—100 mt; red king crabs—3,000 animals; *C. bairdi* crabs—50,000 animals; and *C. opilio* crabs—160,000 animals. The reductions in PSC limits turn the PSC savings in the pollock fishery into a conservation savings as intended rather than just a reallocation between target fisheries. The pollock fishermen will be no worse off than they were before the process of prohibiting nonpelagic trawls in the pollock fishery began.

Under this final rule, CDQ vessels are not subject to the prohibition on the use of nonpelagic trawl gear because they have a built-in incentive to minimize bycatch. Once a group has reached its allocation of any PSC species, all of its member vessels must stop fishing and forego any remaining CDQ allocations of groundfish species for the season.

The CDQ groups will not be affected very much by this exemption, as they primarily use pelagic gear to fish for pollock. In 1998, for example, only 2 percent of the approximately 85,000 mt of pollock harvested under the CDQ program was harvested using bottom trawl gear. Furthermore, the catcher vessels that have harvested pollock CDQ thus far are larger catcher vessels, owned by the shoreside processors, which are CDQ partners and; therefore, are not small entities under the RFA.

Under this final rule, CDQ groups will continue to receive 7.5 percent of all PSC limits, which, since the overall limits will be reduced, will result in reduced Prohibited Species Quota (PSQ) allocations to CDQ groups. These reductions constitute an added incentive to improve techniques for minimizing bycatch. The reductions are small in proportion to the total PSQ allocations, but it is possible that they could result in some loss of CDQ groundfish. This could happen if a group reached one of its PSQ allocations before it otherwise would have, and was required to stop fishing for CDQ groundfish species.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 10, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 679 is amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

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

2. In § 679.2, the definition of “*fishing trip*”, paragraph (1) is amended by redesignating paragraph (1)(iv) as paragraph (1)(v), adding a new paragraph (1)(iv), and removing the final word, “*or*,” from paragraph (1)(iii), to read as follows:

§ 679.2 Definitions.

* * * * *

Fishing trip means:

(1) * * *

(iv) The vessel begins fishing with different type of authorized fishing gear; or

* * * * *

3. In § 679.7, paragraph (a)(14) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(14) *Trawl gear performance standard*—(i) *BSAI*. Use a vessel to participate in a non-CDQ directed fishery for pollock using trawl gear and have on board the vessel, at any particular time, 20 or more crabs of any species that have a carapace width of more than 1.5 inches (38 mm) at the widest dimension.

(ii) *GOA*. Use a vessel to participate in a directed fishery for pollock using trawl gear when directed fishing for pollock with nonpelagic trawl gear is closed and have on board the vessel, at any particular time, 20 or more crabs of any species that have a carapace width of more than 1.5 inches (38 mm) at the widest dimension.

* * * * *

4. In § 679.20, paragraph (a)(5)(i)(B) is removed and paragraph (a)(5)(i)(C) is redesignated as paragraph (a)(5)(i)(B).

5. In § 679.21, paragraphs (e)(1)(ii)(A) through (C), (e)(1)(iii)(A) through (B), (e)(1)(iv)(A) through (C), and (e)(1)(v) are revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(A) When the number of mature female red king crabs is at or below the threshold of 8.4 million mature crabs or the effective spawning biomass is less than or equal to 14.5 million lb (6,577 mt), the Zone 1 PSC limit will be 32,000 red king crabs.

(B) When the number of mature female red king crabs is above the threshold of 8.4 million mature crabs and the effective spawning biomass is greater than 14.5 million lb but less than 55 million lb (24,948 mt), the Zone 1 PSC limit will be 97,000 red king crabs.

(C) When the number of mature female red king crabs is above the threshold of 8.4 million mature crabs and the effective spawning biomass is equal to or greater than 55 million lb, the Zone 1 PSC limit will be 197,000 red king crabs.

(iii) * * *

(A) *Zone 1*. When the total abundance of *C. bairdi* crabs is:

(1) 150 million animals or less, the PSC limit will be 0.5 percent of the total abundance, minus 20,000 animals.

(2) Over 150 million to 270 million animals, the PSC limit will be 730,000 animals.

(3) Over 270 million to 400 million animals, the PSC limit will be 830,000 animals.

(4) Over 400 million animals, the PSC limit will be 980,000 animals.

(B) *Zone 2*. When the total abundance of *C. bairdi* crabs is:

(1) 175 million animals or less, the PSC limit will be 1.2 percent of the total abundance, minus 30,000 animals.

(2) Over 175 million to 290 million animals, the PSC limit will be 2,070,000 animals.

(3) Over 290 million to 400 million animals, the PSC limit will be 2,520,000 animals.

(4) Over 400 million animals, the PSC limit will be 2,970,000 animals.

(iv) * * *

(A) *PSC Limit*. The PSC limit will be 0.1133 percent of the total abundance, minus 150,000 *C. opilio* crabs, unless:

(B) *Minimum PSC Limit*. If 0.1133 percent multiplied by the total abundance is less than 4.5 million, then the minimum PSC limit will be 4.350 million animals; or

(C) *Maximum PSC Limit*. If 0.1133 percent multiplied by the total abundance is greater than 13 million, then the maximum PSC limit will be 12,850 million animals.

(v) *Halibut*. The PSC limit of halibut caught while conducting any trawl fishery for groundfish in the BSAI during any fishing year is an amount of halibut equivalent to 3,675 mt of halibut mortality.

* * * * *

6. In § 679.24, paragraph (b)(4) is added to read as follows:

§ 679.24 Gear limitations.

* * * * *

(b) * * *

(4) *BSAI pollock nonpelagic trawl prohibition*. No person may use nonpelagic trawl gear to engage in directed fishing for non-CDQ pollock in the BSAI.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990720198-9307-02; I.D. 070799B]

RIN 0648-AM36

Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Bycatch Percentages, Gulf of Alaska; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule for maximum retainable bycatch (MRB) percentages for the Gulf of Alaska (GOA), which was published in the *Federal Register* on December 6, 1999.

DATES: Effective January 5, 2000.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7008.