

closed, shall be sold (see § 635.23(c)). Persons shall sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part.

\* \* \* \*

11. In § 635.71, paragraphs (b)(1), (b)(3), (b)(14), and (b)(15), are revised to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \*

(b) \* \* \*

(1) Engage in fishing with a vessel that has been issued an Atlantic Tunas or Atlantic HMS permit under § 635.4, unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings any BFT under control (secured to the catching vessel and/or brought on board) with no assistance from another vessel, except as shown by the operator that the safety of the vessel or its crew was jeopardized or other circumstances existed that were beyond the control of the operator.

\* \* \* \*

(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a person aboard a vessel other than one that has on board a valid HMS Angling or Charter/Headboat permit, or an Atlantic tunas Purse Seine category permit as authorized under § 635.23 (b), (c), and (e)(2).

\* \* \* \*

(14) As a person aboard a vessel issued an HMS Angling or Charter/Headboat permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT or fail to report such catch, as specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

(15) As a person aboard a vessel issued an HMS Angling or HMS Charter/Headboat permit, sell, offer for sale, or attempt to sell a large medium or giant BFT retained when fishing under the circumstances specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

\* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[I.D. 112902A]

**Fisheries of the Exclusive Economic Zone off Alaska; Bycatch Rate Standards for the First Half of 2003**

**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 first half of 2003. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program (VIP). 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 avoid excessive prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), January 20, 2003, through 2400 hours, A.l.t., June 30, 2003. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., January 2, 2003.

**ADDRESSES:** Comments may be submitted to Sue Salveson, 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 907-586-7557. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228, fax 907-586-7465, e-mail [mary.furuness@noaa.gov](mailto:mary.furuness@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS 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 FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement the VIP to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must 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 must not exceed red king crab bycatch rate 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. Because the Alaskan groundfish fisheries are closed to trawling from January 1 to January 20 of each year (§ 679.23(c)), the Administrator, Alaska Region, NMFS (Regional Administrator) is promulgating bycatch rate standards for the first half of 2003 effective from January 20, 2003, through June 30, 2003.

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 for that fishery;
- (E) Anticipated seasonal distribution of fishing effort for groundfish; and
- (F) Other information and criteria deemed relevant by the Regional Administrator.

At its October 2002 meeting, the Council reviewed Pacific halibut and red king crab bycatch rates experienced by vessels participating in the fisheries under the incentive program during

1998 2002. The Council recommended that the same rates used in the first half of 2002 be used for the first half of 2003. Along with bycatch rate standards, the industry and the Council are exploring opportunities under fishery cooperatives and other voluntary or mandatory arrangements to control bycatch and optimize the amount of groundfish harvested under halibut and crab bycatch limits. Under § 679.50(k), vessel specific prohibited species bycatch rates from observer data are published weekly on the NMFS, Alaska Region website ([www.fakr.noaa.gov](http://www.fakr.noaa.gov)). The Council's recommended bycatch rate standards are listed in Table 1.

**TABLE 1—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 2003 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.**

Fishery and quarter	2003 bycatch rate standard
Halibut bycatch rate standards(kilogram (kg) of halibut/metric ton (mt) of groundfish catch)	
BSAI Midwater pollock	
Qt 1	
Qt 2	1.0
BSAI Bottom pollock	
Qt 1	
Qt 2	5.0
BSAI Yellowfin sole	
Qt 1	
Qt 2	5.0
BSAI Other trawl	
Qt 1	
Qt 2	30.0
GOA Midwater pollock	
Qt 1	
Qt 2	1.0
GOA Other trawl	
Qt 1	
Qt 2	40.0
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole	
Qt 1	
Qt 2	2.5
GOA Other trawl	
Qt 1	
Qt 2	2.5

**Bycatch Rate Standards for Pacific Halibut**

The Regional Administrator based standards for the first half of 2003 on

the anticipated seasonal fishing effort for groundfish species and on the 1998 2002 halibut bycatch rates observed in the trawl fisheries included under the vessel incentive program. In 2002, the BSAI pollock A season was January 20 through June 10 and the pollock fisheries for processing by the inshore and offshore components ended 9 weeks prior to June 10. Directed fishing for pollock for processing by the inshore and offshore components reopened June 10, the start of the 2002 pollock B season. Also, the community development quota (CDQ) pollock fishery ended 10 weeks before the end of the A season and did not resume until mid-July. In 2003, the proposed A season allowance for Bering Sea pollock (40 percent of the directed fishing allowance) would be available January 20 through June 10, with the remainder available June 10 through November 1. As in past years, the directed fishing allowances specified for the first 2003 pollock season likely will be reached before June 10. In the GOA, the 2003 proposed pollock fishery seasons will be from January 20 to February 25 for the "A" season and from March 10 to May 31 for the "B" season.

As in past years, the halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The average halibut bycatch rates for the BSAI 2002 first and second calendar quarter fisheries are equal to 0.08 and 0.05 kg halibut/mt groundfish, respectively, and the average halibut bycatch rates for the GOA 2002 first calendar quarter fishery is equal to 0.02 kg halibut/mt groundfish. In the GOA, directed fishing for pollock did not occur in the second calendar quarters of 2001 or 2002. Thus, the incidental catch rates of halibut during this time period in 2001 and 2002 are zero. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations.

Since 1999, the use of nonpelagic trawl gear has been prohibited when engaged in directed fishing for non-CDQ pollock in the BSAI (§ 679.24(b)(4)). Even with this prohibition, a vessel using pelagic trawl gear may be assigned to the BSAI bottom pollock fishery defined at § 679.21(f)(2) because assignment to the bottom pollock fishery for purposes of the VIP is based on retained catch composition during a weekly period instead of gear type. If the majority of the catch is pollock, but pollock comprises less than 95 percent of the catch, then a haul is assigned to

the BSAI bottom pollock fishery. The prohibition on the use of nonpelagic trawl gear has reduced the number of hauls assigned to the BSAI bottom pollock fishery. Since the prohibition became effective, the halibut bycatch rates for this fishery are low compared to the halibut bycatch rate standards established for this fishery, with an average halibut bycatch rate for the 2002 first and second calendar quarter fisheries equal to 0.68 and 0.00 kg halibut/mt groundfish, respectively.

Other factors that could affect the spatial and temporal distribution of directed fishing for pollock include the allocations of pollock among the inshore and offshore fleets under the American Fisheries Act and the implementation of conservation measures that are necessary under the Endangered Species Act to mitigate pollock fishery impacts on Steller sea lions. At this time, the effects of these changes on halibut bycatch rates in the pollock fishery are unknown.

Data available on halibut bycatch rates in the BSAI yellowfin sole fishery during the first and second quarters of 2002 showed an average bycatch rate of 5 and 13 kg halibut/mt of groundfish, respectively. These rates are similar to rates experienced in past years. The Council's recommendation to use the same bycatch rates in 2003 as was used in 2002 would continue bycatch rate standards that represent an acceptable level of halibut bycatch in the yellowfin sole fishery while encouraging vessel operators to continue efforts to avoid unacceptably high halibut bycatch rates while participating in this fishery.

For the "other trawl" fisheries, the Council supported a 30-kg halibut/mt of groundfish bycatch rate standard for the BSAI and a 40 kg halibut/mt of groundfish bycatch rate standard for the GOA. Observer data collected from the 2002 BSAI "other trawl" fishery show first and second quarter halibut bycatch rates of 10 and 26 kg halibut/mt of groundfish, respectively. Observer data collected from the 2002 GOA "other trawl" fishery show first and second quarter halibut bycatch rates of 20 and 61 kg halibut/mt of groundfish, respectively.

Since 1997, with the exception of the GOA second quarter "other trawl" fishery, the average bycatch rates experienced by vessels participating in the GOA and BSAI "other trawl" fisheries for the first half of the year have been lower than the specified bycatch rate standards for these fisheries. The Council and NMFS have determined that the recommended halibut bycatch rate standards for the "other trawl" fisheries, including the

second quarter GOA fishery, would continue bycatch rate standards that represent an acceptable level of halibut bycatch in these fisheries and will encourage vessel operators to avoid high halibut bycatch rates while participating in these fisheries. Furthermore, these standards will provide some leniency to those vessel operators who choose to use large mesh trawl gear or other devices as a means to reduce groundfish discard amounts or who are forced to fish in different seasons or fishing grounds under measures implemented to mitigate fishing impacts on Steller sea lions and their critical habitat.

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

For the BSAI yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea, the Council's recommended red king crab bycatch rate standard is 2.5 crab/mt of groundfish. This standard is unchanged since 1992. The red king crab bycatch rates experienced by the BSAI yellowfin sole fishery in Zone 1 for the first and second quarters of 2002 average 0.47 and 1.76 crab/mt of groundfish, respectively. Although these rates are lower than the standards, these rates are higher than bycatch rates experienced in previous years. The average bycatch rates of red king crab experienced in the BSAI "other trawl" fishery during the first and second quarters of 2002 were 0.12 and 0.72 crab/mt groundfish, respectively. The trawl closures in Zone 1 that were implemented to reduce red king crab bycatch are one of the primary reasons the red king crab bycatch rates remain below the standards.

For the period January through October 2002, the total bycatch of red king crab by trawl vessels fishing in

Zone 1 is estimated at 89,944 crab, less than the 97,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. NMFS anticipates that the 2003 red king crab bycatch in Zone 1 will be similar to 2002 because the crab bycatch reduction measures will remain the same.

In spite of anticipated 2003 red king crab bycatch rates being significantly lower than 2.5 red king crab/mt of groundfish, the Council recommended the red king crab bycatch rate standards be maintained at these levels. These levels continue to provide protection against unacceptably high rates of bycatch in these fisheries while providing some leniency to those vessel operators that choose to use large mesh trawl gear as a means to reduce groundfish discard amounts.

The Regional Administrator has determined that the recommended bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). Therefore, the Regional Administrator establishes the halibut and red king crab bycatch rate standards for the first half of 2003 as set forth in Table 1. These bycatch rate standards may be revised and these revisions 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).

As required in regulations at §§ 679.2 and 679.21(f)(5), the 2003 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1: January 1 through February 1;  
Month 2: February 2 through March 1;

Month 3: March 2 through March 29;  
Month 4: March 30 through May 3;  
Month 5: May 4 through May 31;  
Month 6: June 1 through June 28;  
Month 7: June 29 through August 2;  
Month 8: August 3 through August 30;  
Month 9: August 31 through September 27;  
Month 10: September 28 through November 1;  
Month 11: November 2 through November 29; and  
Month 12: November 30 through December 31.

#### **Classification**

This action is taken under 50 CFR 679.21(f) and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement for prior notice and comment pursuant to 5 U.S.C. 553(b)(B) as such procedures are unnecessary. With the exception of the first quarter BSAI bottom pollock halibut bycatch rate standard that was changed in January 2001, all the first and second quarter halibut and red king crab bycatch rate standards have remained unchanged since the start of the 1994 fishing year. NMFS has not received any written comments on these rate standards during public comment opportunities and did not receive any comments from the public at the council's October 2002 meeting.

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

Dated: December 10, 2002.

#### **Bruce C. Morehead,**

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