

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961217360-6360-01; I.D. 112596C]

RIN 0648-A162

Fisheries of the Exclusive Economic Zone off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Prohibited Species Catch Limits for Tanner Crab

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 41 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This rule would adjust the prohibited species catch (PSC) limits for Tanner crab (*Chionoecetes bairdi*) (*C. bairdi*) in Zones 1 and 2 of the Bering Sea. This measure is necessary to protect the *C. bairdi* stock in the Bering Sea, which has declined to a level that presents a serious conservation problem. Changes to the previously proposed 1997 *C. bairdi* prohibited species bycatch allowances for the Bering Sea and Aleutian Islands management area (BSAI) trawl fisheries are also proposed to reflect the proposed adjustment to the *C. bairdi* PSC limits. This measure is intended to accomplish the objectives of the FMP.

DATES: Comments must be received by February 18, 1997.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA)

prepared for the amendment may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501-2252; telephone: 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907-586-7228.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the BSAI in the exclusive economic zone are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*; Magnuson-Stevens Act) and is implemented by regulations for the U.S. fisheries at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Background

Bering Sea crab stocks currently are at relatively low levels, based on recent NMFS bottom trawl survey data. Recruitment and exploitable biomass of Bering Sea Tanner crab (*C. bairdi*) stocks are near historically low levels. The 1995 Tanner crab season produced only 4.5 million lb (2,017 mt) for the 196 vessels participating. This amount is the lowest catch since the fishery reopened in 1988. Preliminary 1996 survey data indicate that the stock decline will continue.

Crab is a bycatch species in the groundfish fisheries. An objective of the FMP is to minimize the impact of groundfish fisheries on crab and other prohibited species, while providing for rational and optimal use of the region's fishery resources. All gear types used to catch groundfish have some potential to catch crab incidentally, but the large majority of crab bycatch occurs in trawl fisheries.

The Council initiated several analyses in January 1995 to examine measures to further limit crab bycatch in the groundfish fisheries. Proposed alternatives included a reduction of existing crab bycatch limits (with an option that the limits be based on crab abundance) and establishment of bycatch limits for snow crab (*C. opilio*).

At its January 1996 meeting, the Council requested that a suite of crab bycatch management measures be examined in one package, so that the impacts of these measures could be analyzed in a comprehensive manner. An additional option of establishing PSC limits for Tanner crab based on abundance thresholds was proposed by the Alaska Crab Coalition in January 1996 and was added to the analysis at the request of the Council.

At its April 1996 meeting, the Council modified the alternatives to include reduced PSC limits for Tanner crab and snow crab. In June 1996, the Council formed an industry work group to review proposed PSC limits for Tanner and snow crab. This work group consisted of three crab fishery representatives, three trawl fishery representatives, and one shoreside processing representative. The group met August 29-30, 1996, and came to a consensus on PSC limits for *C. bairdi* crab. The agreement negotiated by affected industry groups resulted in a proposal for an annual specification of PSC limits for *C. bairdi* based on the total abundance of *C. bairdi* as indicated by the most recent NMFS bottom trawl survey.

At its September 1996 meeting, the Council endorsed the industry work group agreement and took final action on *C. bairdi* PSC limits under Amendment 41 to the FMP. The Council also encouraged the industry work group to continue to pursue an agreement for an appropriate PSC limit for *C. opilio* crab that could be presented to the Council in the near future. Adjustment of the *C. bairdi* PSC Limit.

Amendment 41 would modify the current *C. bairdi* PSC limits of 1,000,000 animals in Zone 1 and 3,000,000 animals in Zone 2 and provide for the annual specification of the revised PSC limits, based on the total estimated abundance of *C. bairdi* as follows:

Zone	Abundance	PSC limit (number of animals)
1	0-150 million crabs.	0.5% of abundance.
	150-270 million crabs.	750,000.
	270-400 million crabs.	850,000.
	over 400 million crabs.	1,000,000.
2	0-175 million crabs.	1.2% of abundance.
	175-290 million crabs.	2,100,000.
	290-400 million crabs.	2,550,000.
	over 400 million crabs.	3,000,000.

Based on the abundance of *C. bairdi* estimated from the 1996 NMFS trawl survey (185 million crabs), the PSC limit for *C. bairdi* in 1997 would be 750,000 crabs in Zone 1 and 2,100,000 crabs in Zone 2. Details of and justification for the proposed PSC limit adjustments under Amendment 41 are as follows:

C. bairdi PSC limits for U.S. trawl vessels in specified BSAI fisheries were first established in 1986 by emergency

rule (51 FR 20652, June 6, 1986) and extended in 1987 under Amendment 10 to the FMP (52 FR 8592; March 19, 1987). In 1987 and 1988, the *C. bairdi* PSC limits were the subject of negotiations between groundfish, crab, and halibut fishery representatives under the premise that measures to limit bycatch of one prohibited species may impact the bycatch rates of another prohibited species. Determination of the PSC limits began with the best available scientific information on the abundance and distribution of the specified crab and halibut species and their rate of bycatch in fisheries for certain species of groundfish. These determinations were reviewed and debated in meetings of the Council's Bycatch Committee. Based on this process, the *C. bairdi* PSC limits were established in 1989 at 1,000,000 animals in Zone 1 and 3,000,000 animals in Zone 2 (54 FR 32642; August 9, 1989). Regulations at § 679.21(e) provide for the apportionment of these PSC limits among trawl fisheries during the annual specification process as fishery-specific bycatch allowances. When a fishery attains its specified bycatch allowance, the zone is closed to that fishery.

The bycatch of *C. bairdi* in the 1995 BSAI groundfish fisheries totaled 2.3 million crabs (923,000 in Zone 1 and approximately 1.3 million in Zone 2), which is reduced significantly from 4.3 million in 1992. About 98 percent of the *C. bairdi* bycatch occurs in the trawl fisheries. The yellowfin sole fishery accounts for most of the Tanner crab bycatch, followed by the rock sole/flathead sole/other flatfish fisheries. Bycatch is highest in NMFS statistical area 509 in Zone 1 and statistical area 513 in Zone 2. Large numbers of Tanner crab also are consistently taken in statistical areas 517 and 521 in Zone 2. Data indicate that the recent level of Tanner crab bycatch in trawl fisheries (1992-95 average of 3.06 million) is high relative to the 1978-87 average of 2.06 million.

The Council's proposed adjustment to the *C. bairdi* PSC limits is an effort to protect further the stocks of Bering Sea Tanner crab by limiting the incidental take of this species when the stock is depressed. The proposed criteria for the annual specification of the *C. bairdi* PSC limits were developed by the Council-appointed industry work group. Although the industry work group did not make recommendations for *C. opilio* PSC limits, the group will meet in the future and attempt to reach consensus on this issue.

Economic Considerations

Estimates based on the Bering Sea simulation model using 1993 and 1994 fishery data indicate that the proposed management measure would lead to a slight decrease in the net benefits to the Nation over the status quo. The approximately \$1.2 million decrease in net benefits using 1993 data and approximately \$2.2 million decrease in net benefits using 1994 data would have resulted in decreases of 0.4 percent and a 0.8 percent, respectively, of the net benefits to the Nation, had the proposed measure been effective during those years. However, given a certain level of uncertainty inherent in the data, and in the model procedures, these predicted changes in net benefits to the Nation are not great enough to indicate an actual change from the status quo.

Implementation of the proposed measure, along with area closures proposed to protect red king crab under Amendment 37 (61 FR 65985, December 16, 1996; final rule cite), may have cumulative effects on groundfish trawl fisheries. As noted by the Council's Scientific and Statistical Committee, time and area closures cause temporal and spatial shifts in groundfish fishery effort. With each additional bycatch restriction, options for the groundfish trawl fleets are reduced, resulting in effort shifts that could increase the bycatch of other prohibited species. However, these tradeoffs will occur with any protection closure that may be implemented. Proposed Changes to the Proposed 1997 Prohibited Species Bycatch Allowances for the BSAI Trawl Fisheries.

As part of the annual BSAI groundfish specification process, the Council recommended PSC allowances for the BSAI trawl fisheries at its September 1996 meeting. NMFS published in the Federal Register the proposed 1997 BSAI groundfish specifications that include the PSC allowances for the trawl fisheries (61 FR 60076, November 26, 1996). Table 7 of the proposed 1997 PSC allowances for the BSAI trawl fisheries would be amended as follows to reflect the proposed adjustments to the *C. bairdi* PSC limits:

TABLE 7.—PROPOSED 1997 PROHIBITED SPECIES BYCATCH ALLOWANCES OF *C. BAIRDI*, TANNER CRAB FOR THE BSAI TRAWL FISHERIES

Trawl fisheries	Zone 1	Zone 2
	(number)	
Yellowfin sole	187,500	1,071,000
Rocksole/flathead sole/otherflat	318,750	357,000

TABLE 7.—PROPOSED 1997 PROHIBITED SPECIES BYCATCH ALLOWANCES OF *C. BAIRDI*, TANNER CRAB FOR THE BSAI TRAWL FISHERIES—Continued

Trawl fisheries	Zone 1	Zone 2
Turbot/arrowtooth/sablefish	0	0
Rockfish	0	6,300
Pacific cod	187,500	182,700
Pollock/Atka mackerel/other	56,250	483,000
Total	750,000	2,100,000

These fishery bycatch allowances reflect the same relative 1997 fishery apportionments of the *C. bairdi* PSC limits as those proposed by the Council at its September 1996 meeting.

Classification

This proposed rule to implement Amendment 41 has been preliminarily determined to be adequate to put before the public for comment. At this time, NMFS has not determined that the FMP amendment this rule would implement is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. Based on the analysis, it was determined that this proposed rule could have a significant economic impact on a substantial number of small entities. In 1995 there were 156 trawl vessels in the BSAI. Those trawl vessels and processors participating in the BSAI groundfish fishery could be affected by this proposed action. Most catcher vessels harvesting groundfish off Alaska are considered small entities and would be affected by the reduced *C. bairdi* PSC limits. The economic impact on small entities that would result from reduced PSC limits could result in a reduction in annual gross revenues of more than 5 percent and would have a significant economic impact on a substantial number of small entities. The 132 trawl catcher vessels that harvested BSAI groundfish in 1993 are considered small entities. Many of these vessels could be affected by the proposed reduced PSC limits, based on the best available information. A copy of this analysis is

available from the Council (see ADDRESSES).

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: December 27, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

2. In § 679.21, paragraph (e)(1)(iii) is removed, paragraphs (e)(1)(iv) through (vii) are redesignated as paragraphs

(e)(1)(iii) through (vi), respectively, and paragraph (e)(1)(ii) is revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(1) * * *

(ii) *Tanner crab (C. bairdi)*. The PSC limit of *C. bairdi* Tanner crabs caught by trawl vessels while engaged in directed fishing for groundfish in Zones 1 and 2 during any fishing year will be specified annually by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. bairdi* Tanner crab as indicated by the NMFS annual bottom trawl survey, using the criteria set out under paragraphs (e)(1)(ii)(A) and (B) of this section.

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

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

(2) Over 150 million to 270 million animals, the PSC limit will be 750,000 animals.

(3) Over 270 million to 400 million animals, the PSC limit will be 850,000 animals.

(4) Over 400 million animals, the PSC limit will be 1,000,000 animals.

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

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

(2) Over 175 million to 290 million animals, the PSC limit will be 2,100,000 animals.

(3) Over 290 million to 400 million animals, the PSC limit will be 2,550,000 animals.

(4) Over 400 million animals, the PSC limit will be 3,000,000 animals.

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