

subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), do not apply. Prior to the recent amendment of the FFDCA, EPA had treated such rulemaking as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence that the RFA is inapplicable. Nonetheless, the Agency has previously assessed whether establishing tolerances or exemptions from tolerance, raising tolerance levels, or expanding exemptions adversely impact small entities and concluded, as a generic

matter, that there is no adverse impact. (46 FR 24950) (May 4, 1981).

Pursuant to 5 U.S.C. 801(a)(1)(A) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

**List of Subjects**

*40 CFR Part 180*

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

*40 CFR Part 185*

Environmental protection, Food additives, Pesticides and pests.

*40 CFR Part 186*

Environmental protection, Animal feeds, Pesticides and pests.

Dated: March 14, 1997.

**Penelope A. Fenner-Crisp,**

*Acting Director, Office of Pesticide Programs.*

Therefore, 40 CFR Chapter I is amended as follows:

1. In part 180:

**PART 180—[AMENDED]**

a. The authority citation of part 180 continues to read:

**Authority:** 21 U.S.C. 346a and 371.

b. In § 180.449 by revising paragraph (a) to read as follows:

**§ 180.449 Avermectin B<sub>1</sub> and its delta-8,9-isomer; tolerances for residues.**

(a) Tolerances are established for the combined residues of the insecticide avermectin (a mixture of avermectins containing greater than or equal to 80% avermectin B<sub>1a</sub>(5-*O*-dimethyl avermectin A<sub>1a</sub>) and less than or equal to 20% avermectin b(5-*O*-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A<sub>1a</sub>) and its delta-8, 9-isomer in or on the following commodities:

Commodity	Parts per million	Expiration/Revocation Date
Cattle, fat .....	0.015 ppm	September 1, 1999
Cattle, mbyp .....	0.02 ppm	September 1, 1999
Cattle, meat .....	0.02 ppm	September 1, 1999
Citrus, dried pulp .....	0.10 ppm	September 1, 1999
Citrus, oil .....	0.10 ppm	September 1, 1999
Citrus, whole fruit .....	0.02 ppm	September 1, 1999
Cottonseed .....	0.005 ppm	September 1, 1999
Hops, dried .....	0.2 ppm	September 1, 1999
Milk .....	0.005 ppm	September 1, 1999
Potatoes .....	0.005 ppm	September 1, 1999

\* \* \* \* \*

**§ 186.300 [Removed]**

2. In part 185:

**PART 185—[AMENDED]**

a. The authority citation for part 185 is revised to read as follows:

**Authority:** 21 U.S.C. 348.

**§ 185.300 [Removed]**

b. By removing § 185.300 in its entirety.

3. In part 186:

**PART 186—[AMENDED]**

a. The authority citation for part 186 is revised to read as follows:

**Authority:** 21 U.S.C. 348.

b. By removing § 186.300 in its entirety.

[FR 97-7352 Filed 3-21-97; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 961217360-7052-02; 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:** Final rule and technical amendment.

**SUMMARY:** NMFS implements Amendment 41 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) as recommended by the North Pacific Fishery Management Council (Council). The implementing regulations of Amendment 41 adjust the prohibited species catch (PSC) limits for Tanner crab (*Chionoecetes bairdi*) in Zones 1 and 2 of the Bering Sea and change the 1997 *C. bairdi* PSC allowances for the Bering Sea and Aleutian Islands management area (BSAI) trawl fisheries to reflect the adjustment to the *C. bairdi* PSC limits. These measures are necessary to protect the *C. bairdi* stock in the Bering Sea, which has declined to a level that presents a serious conservation problem. They are intended to accomplish the objectives of the FMP with respect to the management of the BSAI groundfish fishery.

**EFFECTIVE DATE:** April 23, 1997.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) 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:**

**Background**

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 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.

Recruitment and exploitable biomass of Bering Sea *C. bairdi* stocks are at relatively low levels based on recent NMFS bottom trawl survey data. The 1995 *C. bairdi* 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. Survey data from 1996 indicate that the stock decline will continue.

The groundfish fisheries incidentally catch crab. 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.

In June 1996, the Council formed an industry work group to review proposed PSC limits for *C. bairdi*. 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 recommended that NMFS proceed to implement a revision to the *C. bairdi* PSC limits under Amendment 41 to the FMP.

NMFS published a proposed rule in the **Federal Register** on January 2, 1997 (62 FR 85). Public comment on the FMP amendment was invited through January 31, 1997, and on the proposed regulations through February 18, 1997. No comments were received.

**Changes From the Proposed Rule**

The final rule reflects two minor changes from the proposed rule: minor adjustments to the *C. bairdi* PSC allowances for the BSAI trawl fisheries and a technical amendment described below.

The proposed rule reflected *C. bairdi* PSC allowances for the BSAI trawl fisheries that were recommended by the Council at its September 1996 meeting as part of the annual BSAI groundfish specification process. The Council recommended minor adjustments to the *C. bairdi* PSC allowances for the BSAI trawl fisheries at its December 1996 meeting. The adjustments are to the fishery apportionments, not to the total PSC limit. Table 7 of the final 1997 BSAI groundfish harvest specifications (62 FR 7168, February 18, 1997) is amended to reflect the adjustments to the *C. bairdi* PSC apportionments as in the proposed rule (62 FR 85, January 2, 1997) and the minor adjustments to these fishery apportionments as recommended by the Council at its December 1996 meeting.

**Technical Amendment**

A proposed regulation at § 679.21(e)(1)(ii) referred to the annual notification of PSC limits at § 679.21(e)(6). Inadvertently, revisions to paragraph (e)(6) of that section to indicate that NMFS is to provide notification to the public of the annual *C. bairdi* PSC limit were not proposed. The final rule revises the regulation at § 679.21(e)(6) to provide for public notification of the annual *C. bairdi* PSC limit.

Based on the abundance of *C. bairdi* estimated from the 1996 NMFS trawl survey (185 million crabs), the PSC limit for *C. bairdi* for 1997 is 750,000 crabs in Zone 1 and 2, 100,000 crabs in Zone 2.

2. The *C. bairdi* PSC allowances for the BSAI trawl fisheries are adjusted to be as follows:

TABLE 7.—FINAL 1997 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES

Trawl fisheries	Zone 1	Zone 2
<i>C. bairdi</i> Tanner crab, number of animals:		
Yellowfin sole .....	276,316	1,071,000
Rocksole/flathead sole/otherflat .....	296,052	357,000
Turbot/arrowtooth/sablefish .....	0	0
Rockfish .....	0	7,000
Pacific cod .....	133,224	195,000
Pollock/Atka mackerel/other .....	44,408	470,000
<b>Total .....</b>	<b>750,000</b>	<b>2,100,000</b>

**Classification**

The Regional Administrator determined that Amendment 41 is necessary for the conservation and management of the BSAI fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Council prepared an FRFA as part of the RIR, which describes the impact this rule would have on small entities. Many trawl vessels and processors participating in the BSAI groundfish fishery could be affected by this action. Most catcher vessels harvesting groundfish off Alaska are considered small entities and would be affected by the reduced *C. bairdi* PSC limits. The 132 trawl catcher vessels that harvested BSAI groundfish in 1993 are considered small entities. Reduced PSC limits could reduce annual gross revenues by more than 5 percent. NMFS has taken steps to minimize economic impacts on small entities by structuring the annual specification process of the PSC *C. bairdi* limit to be responsive to the total *C. bairdi* abundance as estimated annually. Alternative 1, the status quo, was rejected as more burdensome on small entities because status quo bycatch limits for *C. bairdi* established for Bering Sea fisheries may be too high given current status of crab stocks, and bycatch may impact crab rebuilding and future crab harvests by pot fisheries. Alternative 2 was rejected because the major assumption regarding assessment of impacts for Alternative 2 is that crab stock abundance will remain relatively stable, or that the trawl fishery will adapt to changes in crab abundance. If crab stocks continue to decline, bycatch will account for a higher proportion of the total annual mortality.

**List of Subjects in 50 CFR Part 679**

Fisheries, Reporting and recordkeeping requirements.

Dated: March 17, 1997.

**Rolland A. Schmitten**,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended 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.*

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 paragraphs (e)(1)(ii) and (e)(6) are revised to read as follows:

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(e) \* \* \* (1) \* \* \*

(ii) *Tanner crab (C. bairdi)*. The PSC limit of *C. bairdi* 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* crabs 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* crabs 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* crabs 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.

\* \* \* \* \*

(6) *Notification*—(i) *General*. NMFS will publish annually in the **Federal Register** the annual red king crab PSC limit, and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required under this paragraph (e).

(ii) *Public comment*. Public comment will be accepted by NMFS on the proposed annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period of 30 days from the date of publication in the **Federal Register**.

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