

established by the Small Business Administration (SBA). The Commission believes, as discussed below, that the rule adopted in this proceeding will not have a significant economic impact on a substantial number of small entities.

The Commission is making one rule change in this Report and Order. Specifically, the Commission amends Note 1 to paragraph (a) of 47 C.F.R. 1.1206 of its rules so that the expanded service requirements set forth in that note apply to petitions filed pursuant to 47 U.S.C. 332(c)(7)(B)(v) (i.e., petitions for relief from impermissible State and local regulation of personal wireless service facilities on the basis of RF emissions). Thus, petitioners seeking relief under 47 U.S.C. 332(c)(7)(B)(v) must serve a copy of such petitions on those State and local governments that are the subject of the petitions as well as on those State and local governments otherwise specifically identified in the petitions whose actions petitioners argue are inconsistent with federal law. Given that the Commission has received only one petition for relief under 47 U.S.C. 332(c)(7)(B)(v), we do not anticipate that numerous State and local governments will be the subject of such petitions or identified in such petitions. Thus, we do not expect that the service requirement adopted in this Report and Order will impose a significant burden of cost and time on petitioners, including petitioners that are small entities. We believe that this service requirement will facilitate the efficient resolution of petitions seeking relief under 47 U.S.C. 332(c)(7)(B)(v). Moreover, we believe that this requirement will ensure that State and local governments, including those governments that are small entities, have an opportunity to participate in proceedings under 47 U.S.C. 332(c)(7)(B)(v).

Accordingly, the Commission certifies, pursuant to 5 U.S.C. 605(b) of the Regulatory Flexibility Act, as amended by the Contract with America Advancement Act of 1996, that the rule adopted in this Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Report and Order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and a summary will be published in the **Federal Register**

### Report to Congress

The Commission will send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Report and Order (or summary thereof) and the Final Regulatory Flexibility Certification will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

### Ordering Clauses

Accordingly, pursuant to the authority of Sections 4(i), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 332(c)(7), it is ordered that this Report and Order is hereby adopted.

The rule changes set forth in this Report and Order contain an information collection requirement that has not yet been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date of these rule changes.

The motion of the City of Fountain, Colorado, to consider late-filed comments is granted.

The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

### List of Subjects in 47 CFR Part 1

Communications common carriers, Telecommunications, Permit-but-disclose proceedings.

Federal Communications Commission.

**Shirley S. Suggs,**  
*Chief, Publications Group.*

### Rule Change

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 1 as follows:

### PART 1—PRACTICE AND PROCEDURES

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

**Authority:** 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.1206, Note 1 to Paragraph(A) is revised to read as follows:

#### **§ 1.1206 Permit-but-disclose proceedings.** (a) \* \* \*

**Note 1 to Paragraph (A):** In the case of petitions for declaratory ruling that seek Commission preemption of state or local regulatory authority and petitions for relief under 47 U.S.C. 332(c)(7)(B)(v), the petitioner must serve the original petition on any state or local government, the actions of which are specifically cited as a basis for requesting preemption. Service should be made on those bodies within the state or local governments that are legally authorized to accept service of legal documents in a civil context. Such pleadings that are not served will be dismissed without consideration as a defective pleading and treated as a violation of the ex parte rules unless the Commission determines that the matter should be entertained by making it part of the record under § 1.1212(d) and the parties are so informed.

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[I.D. 122200B]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Rate Standards for the First Half of 2001

**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 2001. Publication of these bycatch rate standards is necessary under 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 avoid excessive prohibited species bycatch rates and to promote conservation of groundfish and other fishery resources.

**DATES:** Effective 1201 hours, Alaska local time (A.l.t.), January 20, 2001, through 2400 hours, A.l.t., June 30, 2001. Comments on this action must be

received no later than 4:30 p.m., A.l.t., February 15, 2001.

**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, fax 907-586-7465, e-mail 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 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 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 2001 effective from January 20, 2001, through June 30, 2001.

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 2000 meeting, the Council reviewed halibut and red king crab bycatch rates experienced by vessels participating in the fisheries under the incentive program during 1996-2000. Based on this and other information presented here, the Council recommended halibut and red king crab bycatch rate standards for the first half of 2001. These standards are unchanged from those specified for the past 5 years except for the first quarter BSAI bottom pollock fishery. 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 2001 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.

Fishery and quarter	2001 bycatch rate standard
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch)	
BSAI Midwater pollock:	
Qt 1 .....	1.0
Qt 2 .....	1.0
BSAI Bottom pollock:	
Qt 1 .....	5.0
Qt 2 .....	5.0
BSAI Yellowfin sole:	
Qt 1 .....	5.0
Qt 2 .....	5.0
BSAI Other trawl:	
Qt 1 .....	30.0
Qt 2 .....	30.0
GOA Midwater pollock:	
Qt 1 .....	1.0
Qt 2 .....	1.0
GOA Other trawl:	
Qt 1 .....	40.0

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 2001 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.—Continued

Fishery and quarter	2001 bycatch rate standard
Qt 2 .....	40.0
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole:	
Qt 1 .....	2.5
Qt 2 .....	2.5
BSAI Other trawl:	
Qt 1 .....	2.5
Qt 2 .....	2.5

**Bycatch Rate Standards for Pacific Halibut**

The BSAI pollock combined A/B season currently begins January 20 through June 10. In 2000, the inshore and offshore component fisheries for pollock ended 9 to 12 weeks prior to June 10, depending on the processing component and area. Directed fishing for pollock by the inshore and offshore component fisheries did not reopen until June 10, the start of the pollock combined C/D season. Also, the community development quota (CDQ) pollock fishery ended 9 weeks before the end of the combined A/B season and did not resume until just prior to July 1. As in past years, the directed fishing allowances specified for the 2001 pollock combined A/B season likely will be reached before the end of the combined A/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 recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations.

Since January 1999, nonpelagic trawl gear has been allocated zero mt of the non-CDQ BSAI pollock total allowable catch. In May 2000, NMFS permanently prohibited the use of nonpelagic trawl gear in the BSAI non-CDQ directed pollock fishery (§ 679.24(b)(4)). On June 15, 2000, the Pacific halibut and crab PSC limits and associated bycatch allowances for the BSAI trawl fisheries were reduced under regulations prohibiting the use of nonpelagic trawl gear in the BSAI non-CDQ directed pollock fishery (65 FR 31105, May 16,

2000). Assignment to a fishery for purposes of the vessel incentive program is based on catch composition instead of gear type. A vessel using pelagic trawl gear may be assigned to the BSAI bottom pollock fishery defined at § 679.21(f)(2). The prohibition on the use of nonpelagic trawl gear has reduced the number of hauls assigned to the BSAI bottom pollock fishery and the bycatch rates are lower. The average halibut bycatch rate for the 2000 first and second calendar quarter fisheries was equal to 0.58 and 4.01 kg halibut/mt groundfish, respectively. With the prohibition on the use of nonpelagic trawl gear, the bycatch rates will likely remain low. It is recommended that the halibut bycatch rate standard for the first quarter BSAI bottom pollock fishery be reduced from 7.5 to 5 kg halibut/mt groundfish and the halibut bycatch rate standard for the second quarter remain at 5 kg halibut/mt groundfish.

Other factors that could affect the spatial and temporal distribution of the directed pollock fishery include the 2001 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 2000 showed an average bycatch rate of 0.02 and 0.17 kg halibut/mt of groundfish, respectively. These rates are significantly lower than in past years. The Council and NMFS have presumed that a continued bycatch rate standard of 5.0 kg halibut/mt of groundfish for the yellowfin sole fishery will continue a bycatch rate standard that represents an acceptable level of halibut bycatch in this fishery and will encourage vessel operators to take action to avoid excessively high bycatch rates of halibut.

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 2000 BSAI "other trawl" fishery show first and second quarter halibut bycatch rates of 8.11 and 20.77 kg halibut/mt of groundfish, respectively. Observer data collected from the 2000 GOA "other trawl" fishery show first and second quarter halibut bycatch rates of 22.77

and 54.44 kg halibut/mt of groundfish, respectively.

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 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 would 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 during the first and second quarters of 2000 averaged 0.23 and 0.45 crab/mt of groundfish, respectively. Although these rates are lower than the standards, these rates are significantly higher than bycatch rates experienced in similar quarters in previous years. The average bycatch rates of red king crab experienced in the "other trawl" fishery during the first and second quarter of 2000 were 0.22 and 0.32 crab/mt groundfish, respectively. The low 2000 red king crab bycatch rates primarily were due to trawl closures in Zone 1 that were implemented to reduce red king crab bycatch.

For the period January through October 2000, the total bycatch of red king crab by trawl vessels fishing in Zone 1 is estimated at 74,000 crab, considerably less than the 97,000-red king crab bycatch limit established for the trawl fisheries in Zone 1. NMFS anticipates that the 2001 red king crab bycatch in Zone 1 will be similar to 2000 because the crab bycatch reduction measures and the bycatch limit of 97,000 crab will remain the same.

In spite of anticipated 2001 red king crab bycatch rates being significantly lower than 2.5 red king crab/mt of groundfish, the Council recommended that the red king crab bycatch rate standards be maintained at these levels. These levels continue to represent acceptable rates of bycatch in these fisheries and provide some leniency to those vessel operators who 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 2001 as set forth in Table 1. 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).

As required in regulations at §§ 679.2 and 679.21(f)(5), the 2001 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

- Month 1: January 1 through January 27;
- Month 2: January 28 through February 24;
- Month 3: February 25 through March 31;
- Month 4: April 1 through May 5;
- Month 5: May 6 through June 2;
- Month 6: June 3 through June 30;
- Month 7: July 1 through July 28;
- Month 8: July 29 through September 1;
- Month 9: September 2 through September 29;
- Month 10: September 30 through October 27;
- Month 11: October 28 through December 1; and
- Month 12: December 2 through December 31.

#### **Classification**

NMFS finds that the prevention of excessive prohibited species bycatch rates constitutes good cause to waive the requirement for prior notice and comment period pursuant to 5 U.S.C. 553(b)(B) as such procedures are contrary to the public interest. Because the halibut and red king crab bycatch rate standards for the first half of 2001 must be effective by January 20, 2001, when the Alaska groundfish trawl fishing season opens, NMFS finds for good cause that the implementation of

this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is taken under 50 CFR 679.21(f) and is exempt from OMB review under Executive Order 12866.

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

Dated: January 9, 2001.

**Clarence Pautzke,**

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

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