

fewer opiate positives having to be reviewed by medical review officers. The rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Issuance of Final Rule Without Opportunity for Notice and Comment

With respect to the amendments to 49 CFR Part 40 concerning opiate testing levels, the Department has determined that it would be impracticable, unnecessary, or contrary to the public interest to provide an opportunity for notice and comment under 5 U.S.C. 553(b). These amendments are conforming amendments making the Department's drug testing procedures consistent with those of DHHS, as is required under the Omnibus Transportation Employee Testing Act of 1991. Before publishing its amendments to the DHHS Guidelines, DHHS solicited, received, and responded to public comment on the identical provisions. Since there has already been an opportunity for public comment on the substance of the changes and consistency is necessary to avoid confusion in the testing process, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective less than 30 days from the date of publication in the **Federal Register**.

Paperwork Reduction Act

This rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq).

Unfunded Mandates Reform Act of 1995

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

Office of the Secretary of Transportation

List of Subjects in 49 CFR Part 40

Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, the Office of the Secretary amends 49 CFR Part 40 as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

1. The authority citation for Part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322; 49 U.S.C. App. 1301 nt., app. 1434 nt., app. 2717., app. 1618a.

§ 40.29 [Amended]

2. In section 40.29(e)(1), the initial test level for opiates appearing in the table is amended by revising the value "300" to "2000" and deleting the footnote "*" that had specified a 25 ng/ml testing level if the immunoassay test was specific for free morphine.

3. In section 40.29(f)(1), the confirmatory test level for morphine appearing in the table is amended by revising the value from "300" to "2000".

4. In section 40.29(f)(1), the confirmatory test level for codeine appearing in the table is amended by revising the value from "300" to "2000".

5. In section 40.29(f)(1), the table is amended by adding a new line under opiates to read as follows:

§ 40.29 Laboratory analysis procedures.

	Confirmatory test cutoff levels (ng/ml)
* * * * *	
6-Acetylmorphine ⁴	10 ng/ml.
* * * * *	

⁴ Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

Issued this 17th day of November, 1998, at Washington, D.C.

Rodney E. Slater,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

[I.D. 022398A]

Whaling Provisions: Aboriginal Subsistence Whaling Quotas

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

ACTION: Revision of aboriginal subsistence whaling quota.

SUMMARY: The U.S. Government and Russian Federation have concluded bilateral arrangements to ensure that the quotas for bowhead whales and gray

whales set at the 1997 Annual Meeting of the International Whaling Commission are not exceeded. In response, NMFS is revising the 1998 quota for bowhead whales from 77 bowhead whales struck to 75 bowhead whales struck. The gray whale quota for 1998 remains 5 gray whales landed. The revised bowhead quota will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission.

FOR FURTHER INFORMATION CONTACT: Catherine Corson, (301) 713-2322.

SUPPLEMENTARY INFORMATION: So that the 1998 quota of bowhead strikes is not exceeded, the Russian natives may use no more than 7 strikes, and the Alaska Eskimos may use no more than 75 strikes. Each side will ensure that the numbers specified in this paragraph for its native group are not exceeded. The two sides plan to confer on monitoring of the 1999 quota, including any strikes that may be carried forward from 1998.

Likewise, so that the 1998 quota of gray whales is not exceeded, the bilateral arrangements concluded that the Makah Indian Tribe may take no more than five gray whales, and the Russian natives may take no more than 135 gray whales. Each side will ensure that the numbers specified in this paragraph for its native group are not exceeded. The two sides plan to confer on monitoring of the 1999 quota.

Dated: November 16, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312-7021-02; I.D. 111698D]

Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Rate Standards for the First Half of 1999

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 the Pacific halibut and red king crab bycatch rate standards for the first half of 1999.

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 reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1201 hours, Alaska local time (A.l.t.), January 20, 1999, through 2400 hours, A.l.t., June 30, 1999. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., December 24, 1998.

ADDRESSES: Comments should be mailed to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel; or be delivered to 709 West 9th Street, Federal Building, Room 401, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Sue Salvesson, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) 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 North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing these FMPs and governing the U.S. groundfish fisheries appear 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 may 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 may not exceed red king crab bycatch 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 publication of halibut and red king crab bycatch rate standards for each fishery included under the incentive program. 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 1999 effective from January 20, 1999, through June 30, 1999.

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 § 679.20;

(D) Anticipated groundfish harvests;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

At its October 1998 meeting, the Council reviewed halibut and red king crab bycatch rates experienced by vessels participating in the fisheries under the incentive program during 1994-1998. Based on this and other information presented below, the Council recommended halibut and red king crab bycatch rate standards for the first half of 1999. These standards are unchanged from those specified for the past 5 years. Table 1 lists the Council's recommended bycatch rate standards.

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 1999 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

Fishery and quarter	1999 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	7.5
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
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

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 1999 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA—Continued

Fishery and quarter	1999 bycatch rate standard
Qt 2	2.5

Bycatch Rate Standards for Pacific Halibut

The BSAI pollock roe season begins January 20 and ends April 15. In 1998, NMFS closed the inshore and offshore component fisheries for pollock 5 to 8 weeks prior to April 15, depending on the processing component and area. Directed fishing for pollock by the inshore and offshore component fisheries did not reopen until September 1, the start of the pollock non-roe season. Directed fishing for pollock by vessels participating in the community development quota program could continue after the end of roe season. However, the community development quota pollock fishery did not resume until just prior to September 1. As in past years, the directed fishing allowances specified for the 1999 pollock roe season likely will be reached before the end of the roe season on April 15.

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 and limit further bycatch of halibut in the pollock fishery when halibut bycatch restrictions at § 679.21 prohibit directed fishing for pollock by vessels using non-pelagic trawl gear.

The recommended halibut bycatch rate standards for the first calendar quarter BSAI bottom pollock fishery approximate the average rates observed on trawl vessels participating in this fishery during 1998 (7.87 kg halibut/mt groundfish). Though these rates are slightly higher than the average bycatch rate observed during 1994–1997, the recommended halibut bycatch rate standard remains at 7.5 kg halibut/mt groundfish to discourage unacceptably high halibut bycatch rates. The bycatch rate standard for the second quarter remains at 5 kg halibut/mt groundfish even though little fishing for pollock is anticipated during this period.

At its June 1998 meeting, the Council adopted a management measure that would prohibit the use of non-pelagic

trawl gear in the BSAI pollock fishery. NMFS currently is preparing a proposed rule, that if approved, would implement the Council’s intent and further reduce halibut bycatch mortality and bycatch rates in the pollock fishery. At this time, NMFS does not anticipate that the proposed prohibition on the use of non-pelagic trawl gear in the pollock fishery would be effective prior to the 1999 pollock non-roe season on September 1.

Other factors that could affect the spatial and temporal distribution of the directed pollock fishery include the 1999 allocations of pollock among the inshore and offshore fleets under the American Fisheries Act and conservation measures that may be necessary under the Endangered Species Act to mitigate potential fishery impacts on Steller sea lions. At this time, the effect of these changes on halibut bycatch rates in the pollock fishery are unknown.

Data available on halibut bycatch rates in the yellowfin sole fishery during the first and second quarters of 1998 showed average bycatch rates of 9.65 and 6.57 kg halibut/mt of groundfish, respectively. These rates are slightly higher than in past years, but the Council has presumed that a bycatch rate standard of 5.0 kg halibut/mt of groundfish for the yellowfin sole fishery will continue to encourage vessel operators to take action to avoid excessively high bycatch rates of halibut.

For the “other trawl” fisheries, the Council recommended 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 1998 BSAI “other trawl” fishery show first and second quarter halibut bycatch rates of 12.07 and 13.78 kg halibut/mt of groundfish, respectively. Observer data collected from the 1998 GOA “other trawl” fishery show first and second quarter halibut bycatch rates of 26.23 and 57.15 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 Council’s recommended bycatch rate standards for these

fisheries. The Council determined that its recommended halibut bycatch rate standards for the “other trawl” fisheries, including the second quarter GOA fishery, would continue to provide an incentive to vessel operators to avoid unusually high halibut bycatch rates while participating in these fisheries and contribute towards an overall reduction in halibut bycatch rates experienced in the Alaska trawl fisheries. Furthermore, these standards would provide some leniency to those vessel operators that choose to use large mesh trawl gear as a means to reduce groundfish discard amounts. The bycatch rates of halibut and crab could increase for those vessels using large mesh sizes, but the Council recommended maintaining the current bycatch rate standards for the “other trawl” fisheries until data becomes available that would provide a basis for bycatch rate standards for vessels using large mesh trawl gear.

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 yellowfin sole fishery in Zone 1 during the first and second quarters of 1998 averaged 0.01 and 0.03 crab/mt of groundfish, respectively. The average bycatch rates of red king crab experienced in the “other trawl” fishery during the first and second quarter of 1998 were 0.12 and 0.01 crab/mt groundfish, respectively. The low 1998 red king crab bycatch rates primarily were due to trawl closures in Zone 1 that were implemented to reduce red king crab bycatch.

During 1998 through October, the total bycatch of red king crab by trawl vessels fishing in Zone 1 is estimated at 37,000 crab, considerably less than the 100,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. NMFS anticipates that the 1999 red king crab bycatch in Zone 1 will increase relative to 1998 because the bycatch limit will double to 200,000 crab under criteria set out at

§ 679.21(e)(1)(i). The increased bycatch limit as well as the increased abundance of crab upon which the bycatch limit is based could result in increased red king crab bycatch rates, but the magnitude of any such increase is unknown at this time.

In spite of anticipated 1999 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 this level to avoid unusually high crab bycatch rates 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 Council recommendations for bycatch rate standards are appropriately based on the information and considerations

necessary for such determinations under § 679.21(f). Therefore, the Regional Administrator concurs in the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the first half of 1999 as set forth in Table 1. The Regional Administrator may revise the bycatch rate standards when appropriate based on consideration of the information set forth at § 679.21(f)(4).

As required in regulations at §§ 679.2 and 679.21(f)(5), the 1999 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 30;
Month 2: January 31 through February 27;
Month 3: February 28 through April 3;
Month 4: April 4 through May 1;
Month 5: May 2 through May 29;
Month 6: May 30 through July 3;

Month 7: July 4 through July 31;
Month 8: August 1 through August 28;
Month 9: August 29 through October 2;
Month 10: October 3 through October 30;
Month 11: October 31 through November 27; and
Month 12: November 28 through December 31.

Classification

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

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

Dated: November 19, 1998.

Richard W. Surdi,

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

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