

Dated: December 16, 1997.

**Bruce C. Morehead,**

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 970801188-7288-02; I.D. 070797C]

RIN 0648-AJ45

#### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Prohibited Species Catch Limit for *Chionoecetes opilio*

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations implementing Amendment 40 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 establish a prohibited species catch (PSC) limit for *Chionoecetes opilio*, a crab species, in a new *C. opilio* Bycatch Limitation Zone (COBLZ) of the Bering Sea. Upon attainment of a *C. opilio* bycatch allowance apportioned to a particular trawl fishery category, the COBLZ will be closed to directed fishing for species in that trawl fishery category. This measure is necessary to further protect the stocks of Bering Sea *C. opilio* by limiting the incidental take of this species thereby mitigating the potential adverse effects of trawl fishing activities on the *C. opilio* stock. This measure is intended to accomplish the objectives of the FMP with respect to the management of the Bering Sea and Aleutian Islands management area (BSAI) groundfish fishery.

**DATES:** Effective January 21, 1998.

**ADDRESSES:** Comments should be sent to Chief, Sustainable Fisheries 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/Final Regulatory Flexibility Analysis (EA/

RIR/FRFA) prepared for the amendment may be obtained from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, 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 (Magnuson-Stevens Act) and is implemented by regulations for the fisheries off Alaska at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Anticipated recruitment of male *C. opilio* crab is at a relatively low level, based on recent NMFS bottom trawl survey data. The 1996 *C. opilio* season produced only 64.6 million lb (29,302 metric tons) for the 235 vessels participating. This is the lowest catch since 1984. Survey data from 1996 indicate that adult males are abundant, but females and pre-recruits (males that have not reached legal commercial size) are becoming less abundant. This was corroborated by the 1997 survey which showed a 78 percent increase in the large male (greater than 102 mm, legal size) population, 45 percent decrease in the pre-recruit (less than 102 mm) male population, and a 22 percent decrease in the small (less than 50 mm) female population. Although the increase in the large male population should lead to a stable abundance of large males, the lack of very small crabs may indicate declining abundance over a longer term.

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 incidentally catch crab, but the large majority of crab bycatch occurs in trawl fisheries for flatfish.

In view of this FMP objective, the Council initiated an assessment in January 1995 of potential measures to further limit crab bycatch in the groundfish fisheries. This Council initiative was also responsive to increasing concern about the potential impact of crab bycatch on declining stocks and future harvests in the commercial crab fisheries. Proposed alternatives included the establishment of bycatch limits for *C. opilio*.

In June 1996, the Council formed an industry work group to review proposed PSC limits for *C. opilio*. This work group consisted of three crab fishery representatives, three trawl fishery representatives, and one shoreside processing representative. The group met November 6-7, 1996, and came to a consensus on a PSC limit for *C. opilio*, based on the best available scientific information on the abundance and distribution of the specified crab species and its rate of bycatch in fisheries for certain species of groundfish. The affected industry groups proposed the following: (1) Establishment of a COBLZ, (2) an annual specification of a PSC limit for *C. opilio* in the COBLZ based on the total abundance of *C. opilio* as indicated by the most recent NMFS bottom trawl survey, and (3) establishment of upper and lower bounds within which the annual *C. opilio* PSC limit must be specified.

At its December 1996 meeting, the Council endorsed the industry work group agreement and adopted it as Amendment 40 to the FMP. The Council recommended that NMFS initiate a rulemaking to implement the amendment. A notice of availability of Amendment 40 was published in the **Federal Register** on July 15, 1997 (62 FR 37860), and invited comment on the amendment through September 15, 1997. One letter containing 3 comments was received during the comment period on the amendment. A proposed rule to implement Amendment 40 was published in the **Federal Register** on August 13, 1997 (62 FR 43307). Comments on the proposed rule were invited through September 29, 1997. No additional comments were received by the end of the comment period on the proposed rule. The comments supported approval of Amendment 40 and the proposed rule with various suggestions for modifications. Comments on the proposed rule are summarized and responded to in the Response to Comments section.

The proposed rule included measures for a *C. opilio* PSC limit in 1997. However, after publication of the proposed rule, it became apparent that the proposed 1997 *C. opilio* PSC limit would not be approached. Consequently, those proposed measures have been removed from this final rule. NMFS anticipates that the Council will specify a 1998 PSC limit (4,654,000 *C. opilio* crab) and the fishery apportionment thereof as part of the 1998 groundfish specification process. *C. opilio* bycatch accrued from January 1, 1998, until the effective date of the final rule would apply to all fisheries that take *C. opilio* in 1998.

NMFS clarifies an erroneous statement made in the preamble to the proposed rule (62 FR 43307 August 13, 1997) which indicated that upon attainment of a *C. opilio* bycatch allowance apportioned to a particular trawl fishery category, the COBLZ would be closed to directed fishing for species in that trawl fishery category, except for pollock with nonpelagic trawl gear, according to § 679.21(e)(7)(i). That statement is corrected to indicate that the COBLZ would be closed to directed fishing for species in that trawl fishery category, except for pollock with pelagic trawl gear. As indicated by the existing exception at § 679.21(e)(7)(i), the bycatch concern is for the nonpelagic trawl gear, not for the pelagic trawl gear. This erroneous statement was not repeated in the text of the proposed regulations published at 62 FR 43307. Therefore, no change from the proposed rule to the final rule is necessary.

NMFS has determined that this action is necessary for the conservation and management of the groundfish fishery of the BSAI and for the resource allocation issue between the groundfish and crab industries. NMFS approved Amendment 40 on October 15, 1997, under section 304(a) of the Magnuson-Stevens Act. Additional information on this action may be found in the preamble to the proposed rule (62 FR 43307) and in the EA/RIR/FRFA.

#### Response to Comments

*Comment 1.* NMFS should modify the stated rationale for Amendment 40 from one that focuses on a conservation problem to one that acknowledges the health of the *C. opilio* resource and the allocation issue between groundfish and crab industries. The trawl industry, in general, believes that the establishment of a *C. opilio* PSC limit is simply a distributive decision. The rationale for Amendment 40 should focus on the allocation aspect of the industry agreement and should plainly state that the groundfish and crab industries have agreed to limit the trawl industry's take of *C. opilio* in the COBLZ to 0.1133 percent of abundance as determined by the annual NMFS bottom trawl survey.

*Response.* NMFS acknowledges that Amendment 40 addresses an allocation issue between groundfish and crab industries. However, NMFS also recognizes that this measure provides protection to stocks of Bering Sea *C. opilio* by limiting the incidental take of this species, thereby mitigating the potentially adverse effects of trawl fishing activities on the *C. opilio* stock. Historically, bycatch management measures instituted for groundfish fisheries in the eastern Bering Sea have

focused on reducing the incidental capture and injury of species traditionally harvested by other fisheries. The total abundance estimates for *C. opilio*, as determined by the NMFS annual trawl survey, have declined steadily since 1993. Although certain segments of the population may have increased (large male segment by 78 percent in 1997), others have declined (pre-recruit male segment by 45 percent and small female segment by 22 percent in 1997). Therefore, a conservative management approach is warranted.

*Comment 2.* If NMFS chooses to retain the current emphasis on addressing a "conservation problem," NMFS should concentrate on the significant level of *C. opilio* discards in the directed *C. opilio* fishery. Between the years 1992 and 1994, according to Alaska Department of Fish and Game (ADF&G) data, an average of 59,267,279 *C. opilio* crab were discarded annually in the directed crab fishery. Assuming a mortality rate of only 20 percent (which is reasonable for a crab fishery that takes place in the winter months), the impact of approximately 12 million dead crab from the directed fishery is far greater than the impact of the *C. opilio* PSC limit of 0.1133 percent of abundance (4.6 million crab for 1998), even assuming the entire PSC limit is taken and all trawl-caught *C. opilio* are killed, which is improbable.

*Response.* NMFS is aware that *C. opilio* discards in the directed *C. opilio* fishery contribute to the overall crab bycatch issue. NMFS also agrees that all sources of mortality are of concern for a resource, such as *C. opilio*, that experiences a reduction in biomass. NMFS and ADF&G are engaged in research initiatives on crab handling mortality and bycatch reduction in the directed crab fisheries. Various crab bycatch proposals for FMP amendments and regulatory amendments were submitted by industry groups to the Council in 1997.

*Comment 3.* Due to the current NMFS catch monitoring programs it may be difficult initially to monitor the *C. opilio* PSC limit in the COBLZ. We accept this unfortunate situation for 1998 alone. Trawl industry support for the *C. opilio* bycatch restrictions was based on tracking the PSC limit against the area specified as the COBLZ. The accord between the industries was landmark and involved a great deal of analysis and negotiation on the part of industry. Implementation of Amendment 40 after 1998 should proceed without modification of the PSC limit or the COBLZ area.

*Response.* Implementation of Amendment 40 in 1998 will proceed without modification of the PSC limit or the area monitored, the COBLZ. The proposed regulations at § 679.21(e)(1)(iii) indicated that through December 31, 1997, the areas to account for *C. opilio* bycatch PSC limit would be accounted for from Federal reporting areas 513, 514, 521, 523, and 524 until changes to recordkeeping and reporting requirements could be made. Due to unanticipated delays in implementing Amendment 40, however, the *C. opilio* PSC limit and the COBLZ will not be effective until January 1, 1998. At that time, the *C. opilio* PSC limit will be monitored in the COBLZ. This will be possible pending changes to the 1998 recordkeeping and reporting requirements that will require fishermen and processors to indicate by citing logbooks and production reports respectively, when fishing occurs in the COBLZ.

#### Changes From the Proposed Rule

For reasons stated above, the regulatory provisions for 1997 implementation of the *C. opilio* PSC limit and the establishment of the COBLZ in 1997 have been deleted.

#### Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 40 is necessary for the conservation and management of the groundfish fishery of the BSAI 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 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. Catcher vessels harvesting groundfish in the BSAI are considered small entities and would be affected by the new *C. opilio* PSC limits. In 1995, 122 trawl catcher vessels harvested BSAI groundfish. Based on the best available information, NMFS anticipates that this rule could result in a greater than 5-percent reduction in gross revenues for any one of these vessels. Therefore, this rule could have a significant economic impact on a substantial number of small entities.

A number of alternatives to the rule which would have lessened the economic impact on small entities were considered and rejected. The no action alternative, that is not establishing a PSC limit for *C. opilio*, was rejected

because it would not accomplish the Council's objective of limiting bycatch, especially if the BSAI allocations of flatfish are increased in the future. The alternative of establishing a fixed limit of *C. opilio* that, upon attainment, would close affected trawl fisheries in Zone 2 (Federal reporting areas 508, 509, 512, and 516) unless the optimum limit was specified prior to the fishing season, was rejected because if the optimum limit was not correctly specified in advance, certain trawl fisheries (e.g., yellowfin sole fishery) could be adversely impacted. Another alternative was to set a fixed limit for Zone 2 of *C. opilio* within a specific percentage of the NMFS bottom trawl index. This alternative was rejected because Zone 2 does not correspond to crab distribution as does the preferred COBLZ, which was proposed specifically for *C. opilio* bycatch management. Alternatives that addressed modifying reporting requirements for small entities or the use of performance rather than design standards for small entities were not considered. Such alternatives were not relevant to this action. Exemptions for small entities from this action would not be appropriate in that the objective of the action to further limit *C. opilio* bycatch in the BSAI groundfish fisheries would not be adequately addressed. No steps to minimize the potential significant economic impacts on small entities have been taken. No comments on the IRFA were received during the public comment period for the proposed rule. A copy of the EA/RIR/FR is available from the Council (see ADDRESSES).

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 16, 1997.

**Rolland A. Schmitt,**  
Assistant Administrator for Fisheries,  
National Marine Fisheries Services.

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.*, and 3631 *et seq.*

2. In § 679.2, the definitions of “*C. Opilio* Bycatch Limitation Zone” and “U.S.-Russian Boundary” are added in alphabetical order to read as follows:

#### § 679.2 Definitions

\* \* \* \* \*

*C. Opilio* Bycatch Limitation Zone (COBLZ) (see § 679.21(e)(7)(iv)(B)).

\* \* \* \* \*

*U.S.-Russian Boundary* means the seaward boundary of Russian waters as defined in Figure 1 of this part.

\* \* \* \* \*

3. In § 679.21, paragraphs (e)(1)(iii) through (vi) are redesignated as paragraphs (e)(1)(iv) through (vii), respectively, a new paragraph (e)(1)(iii) is added, paragraphs (e)(3)(ii)(A) and (C) and (e)(6) are revised, paragraphs (e)(7)(iv) through (vii) are redesignated as paragraphs (e)(7)(v) through (viii), and a new paragraph (e)(7)(iv) is added to read as follows:

#### § 679.21 Prohibited species bycatch management.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) *C. opilio*. The PSC limit of *C. opilio* caught by trawl vessels while engaged in directed fishing for groundfish in the COBLZ will be specified annually by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. opilio* as indicated by the NMFS annual bottom trawl survey using the following criteria:

(A) *PSC Limit*. The PSC limit will be 0.1133 percent of the total abundance, unless;

(B) *Minimum PSC Limit*. If 0.1133 percent multiplied by the total abundance is less than 4.5 million, then the minimum PSC limit will be 4.5 million animals; or

(C) *Maximum PSC Limit*. If 0.1133 percent multiplied by the total abundance is greater than 13 million, then the maximum PSC limit will be 13 million animals.

\* \* \* \* \*

(3) \* \* \*

(ii) *Red king crab, C. bairdi, C. opilio, and halibut*—(A) *General*. For vessels engaged in directed fishing for groundfish in the GOA or BSAI, the PSC limits for red king crab, *C. bairdi*, *C. opilio*, and halibut will be apportioned to the trawl fishery categories defined in paragraphs (e)(3)(iv)(B) through (F) of this section.

\* \* \* \* \*

(C) *Incidental catch in midwater pollock fishery*. Any amount of red king crab, *C. bairdi*, *C. opilio*, or halibut that is incidentally taken in the midwater pollock fishery as defined in paragraph (e)(3)(iv)(A) of this section will be counted against the bycatch allowances specified for the pollock/Atka mackerel/

“other species” category defined in paragraph (e)(3)(iv)(F) of this section.

\* \* \* \* \*

(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 annual *C. opilio* 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 annual *C. opilio* 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**.

(7) \* \* \*

(iv) *C. opilio, C. Opilio Bycatch Limitation Zone (COBLZ), closure*—(A) *C. opilio Bycatch Allowance*. Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the COBLZ bycatch allowance, or seasonal apportionment thereof, of *C. opilio* specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the **Federal Register** the closure of the COBLZ, as defined in paragraph (e)(7)(iv)(B) of this section, to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(B) *C. Opilio Bycatch Limitation Zone*. The *C. Opilio* Bycatch Limitation Zone is an area defined as that portion of the Bering Sea Subarea north of 56°30' N. lat. that is west of a line connecting the following coordinates in the order listed:

56°30' N. lat., 165°00' W. long.  
58°00' N. lat., 165°00' W. long.  
59°30' N. lat., 170°00' W. long.  
and north along 170°00' W. long. to its intersection with the U.S.-Russian Boundary.

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