

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 680**

[Docket No.: 060404093–6093–01; I.D. 033106A]

RIN 0648–AU24

**Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes changes to the regulations implementing the Crab Rationalization Program. This action is necessary to correct two discrepancies in the scope of the sideboard protections for Gulf of Alaska (GOA) groundfish fisheries provided in a previous rulemaking. Specifically, this action would remove the sideboard restrictions from vessels that did not generate Bering Sea snow crab (*Chionoecetes opilio*) quota share and would apply the sideboards to federally permitted vessels operating in the State of Alaska (State) parallel fisheries. This proposed rule is intended to promote the goals and objectives of the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs (FMP), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law.

**DATES:** Written comments must be received no later than May 9, 2006.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Records Administrator. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Fax: 907–586–7557.
- E-mail: 0648–AU24–

sideboard680.22@noaa.gov. Include in the subject line of the e-mail the following document identifier: GOA sideboards. E-mail comments, with or without attachments, are limited to 5 megabytes.

- Webform at the Federal eRulemaking Portal: [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov). Follow the instructions at that site for submitting comments.

Copies of the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA), prepared for this action and copies of the Bering Sea Aleutian Islands Crab Fisheries Final Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis/Social Impact Assessment (EIS/RIR/IRFA/SIA) prepared for the Crab Rationalization Program are available from NMFS at the mailing address specified above or from the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington, 907–586–7228 or [gretchen.harrington@noaa.gov](mailto:gretchen.harrington@noaa.gov).

**SUPPLEMENTARY INFORMATION:** In January 2004, the U.S. Congress amended section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Public Law 108–199, section 801). As amended, section 313(j)(1) requires the Secretary of Commerce to approve and implement by regulation the Crab Rationalization Program (Program), as it was approved by the North Pacific Fishery Management Council (Council). In June 2004, the Council consolidated its actions on the Program into Amendment 18 to the FMP. Additionally, in June 2004, the Council developed Amendment 19 to the FMP, which represents minor changes necessary to implement the Program.

A notice of availability for Amendments 18 and 19 was published in the **Federal Register** on September 1, 2004 (69 FR 53397). NMFS published a proposed rule to implement Amendments 18 and 19 on October 29, 2004 (69 FR 63200). NMFS approved Amendments 18 and 19 on November 19, 2004. NMFS published a final rule to implement Amendments 18 and 19 on March 2, 2005 (70 FR 10174) and a final rule (70 FR 13097; March 18, 2005) to correct OMB control numbers provided in the final rule dated March 2, 2005 (70 FR 10174). NMFS also published two final rules (70 FR 33390; June 8, 2005, and 70 FR 75419; December 20, 2005) to correct certain provisions in the final rule dated March 2, 2005 (70 FR 10174).

NMFS intends to correct two aspects of the sideboard provisions in the regulations implementing the Program. One change would remove the sideboard limits from vessels that did not generate Bering Sea snow crab quota share under the Program. The second change would clarify that the sideboards apply to federally permitted vessels that

fish in the State parallel groundfish fisheries. These changes are necessary to implement the Program's sideboard provisions.

State parallel fisheries occur in State waters but are opened at the same time as Federal fisheries in Federal waters. State parallel fishery harvests are considered part of the Federal total allowable catch (TAC) and federally-permitted vessels move between State and Federal waters during the concurrent parallel and Federal fisheries. The State opens the parallel fisheries through emergency order by adopting the groundfish seasons, bycatch limits, and allowable gear types that apply in the adjacent Federal fisheries.

**Sideboard Provisions**

Sideboard limits restrict the ability of vessels whose histories resulted in Bering Sea snow crab quota share, or fishing under License Limitation Program (LLP) licenses derived from those vessels, to participate in GOA groundfish fisheries. The purpose of the sideboard limits is to prevent vessels that traditionally participated in the Bering Sea snow crab fishery from using the flexibility of the Program to increase their participation in the GOA groundfish fisheries, and primarily the GOA Pacific cod fishery. Historically, the Bering Sea snow crab fishery and GOA groundfish fisheries operated concurrently from January through March, meaning that a crab vessel owner had to decide whether to fish for Bering Sea snow crab or GOA groundfish but could not participate fully in both fisheries. With crab rationalization, vessel owners have the flexibility to fish for snow crab during a greatly extended season, or to lease their crab individual fishing quota (IFQ) and not fish at all. This increased flexibility for crab fishermen could lead to increases in fishing effort in GOA groundfish fisheries, especially the Pacific cod fishery, and could negatively affect the other participants in those fisheries.

This concern about spillover effects is limited primarily to the GOA where the Pacific cod TAC is not allocated among gear types. In the BSAI, most of the Pacific cod TAC is allocated to vessels using longline and trawl gear, and LLP license restrictions prevent the entry of new pot vessels into the BSAI Pacific cod fishery. Hence, snow crab fishermen who wish to increase their groundfish fishing activity would do so primarily in the GOA Pacific cod fishery.

The GOA groundfish sideboard restrictions are intended to apply to any crab vessel that: (1) Is not authorized

under the American Fisheries Act, (2) has a fishing history that generated any amount of Bering Sea snow crab quota share, (3) has an LLP license earned in whole or in part by the crab fishing history of such vessels, or (4) is fishing under an LLP license derived in whole or in part from a vessel in (1) through (4). Those snow crab vessels subject to GOA groundfish sideboard restrictions are limited, in the aggregate, from harvesting an amount of each GOA groundfish species that exceeds the percentage of each species that such vessels retained, in the aggregate, from 1996 to 2000, relative to the total retained catch of each species by all groundfish vessels during the same period. The sideboard restrictions also are apportioned by season and/or area for each GOA groundfish TAC that is apportioned by season or area.

Some additional sideboard restrictions and exemptions for GOA Pacific cod do not apply to other GOA groundfish species. Any vessel subject to GOA groundfish sideboards that landed less than 50 mt (110,231 lb) of GOA groundfish between 1996 and 2000, is prohibited from engaging in directed fishing for GOA Pacific cod at all times. Additionally, any vessel that landed less than 100,000 pounds (45.4 mt) of Bering Sea snow crab and more than 500 mt (1,102,311 lb) of GOA Pacific cod between 1996 and 2000 is exempt from the GOA Pacific cod sideboard restrictions. These sideboard restrictions also apply to any vessel fishing under an LLP license earned by the crab fishing history of such vessel.

NMFS notified all persons who own a vessel or hold a LLP license subject to the sideboard restrictions by issuing amended Federal fisheries permits and LLP licenses to each affected vessel owner or LLP license holder. The amended Federal fisheries permits and LLP licenses display the type of sideboard restriction on the face of the permit or license.

#### **Need for Regulatory Changes**

This action proposes two changes to the regulations governing sideboard protections for the GOA groundfish fisheries at 50 CFR part 680.22. The first change would remove the sideboard restrictions from vessels whose histories did not generate Bering Sea snow crab quota share. The second change would clarify that the sideboard restrictions apply to federally permitted vessels that fish in the State parallel groundfish fisheries.

The Council intended the sideboards to apply to vessels that qualify for Bering Sea snow crab quota share under the Program. The proposed rule for the

Program included regulatory language to this effect (69 FR 63200, October 29, 2004). However, this language was changed in the final rule to apply the sideboards to vessels that had landings during the qualifying period. This change has the unintended consequence of applying the sideboards to vessels that did not qualify for quota share. NMFS proposes to change the regulatory language to reflect the original language in the Program's proposed rule. NMFS received no public comments on this aspect of the Program's proposed rule.

The existing regulations restrict participation in Federal fisheries but not in the adjacent State waters fisheries. This omission in the regulations would allow vessels whose history generated quota share to increase their participation in the groundfish fisheries. NMFS proposes to change the regulations to clarify that the GOA groundfish sideboard directed fishing closures apply to federally permitted vessels while fishing in the State parallel fisheries.

The Council developed the sideboard limits to prevent vessels that traditionally participated in the Bering Sea snow crab fishery from using the flexibility of the Program to increase their participation in the GOA groundfish fisheries, primarily the GOA Pacific cod fishery. Amendment 18 does not specifically apply the sideboard limits to vessels operating in the State parallel fisheries. Amendment 18 required cooperatives to limit their members' aggregate Pacific cod catch in both Federal and State waters to the sideboard amount. In a letter dated June 2, 2004, NMFS requested that the Council remove the requirement that cooperatives manage the sideboard fishing activity of their members because NMFS determined this provision was not practical or enforceable. In the same letter, NMFS informed the Council that it would manage the groundfish sideboards through fleet-wide directed fishing closures for Federal waters and the parallel fishery in State waters. The Council removed the cooperative management requirement paragraph in Amendment 19. However, deleting this paragraph had the effect of removing from the FMP the sideboard limits for vessels fishing in State waters.

NMFS finds it necessary to apply the sideboard limits to federally permitted vessels fishing in State parallel fisheries in order to implement the FMP. Without this regulatory change, vessels that traditionally participated in the Bering Sea snow crab fishery could use the flexibility of the Program to increase their participation in the GOA

groundfish fisheries, and primarily the GOA Pacific cod fishery, because they could circumvent the directed fishing closures by fishing in State waters. NMFS has notified the public that it will implement the sideboard limits in the State parallel fisheries in the preamble to the proposed and final rules for the Program and in the notice of availability for Amendments 18 and 19.

#### **Classification**

NMFS has determined that the proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for it are included at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

#### *Number and Description of Small Entities Directly Regulated by the Proposed Action*

One hundred and ninety-five entities are subject to the sideboard regulations and fish in the GOA groundfish fisheries. A fishing operation is considered to be a small entity for RFA purposes if its total annual gross receipts, from all sources, is less than \$4 million. The 2004 gross revenue data from the State fishticket database is readily available and includes revenue from all fishing operations in Alaska and adjacent EEZ waters. Based on these data, as many as 189 of the 195 entities may be considered small.

#### *Impacts on Directly Regulated Small Entities*

The Council created the sideboards with the expressed purpose of restricting the owners of vessels acquiring snow crab quota share from using the resulting increased operational flexibility to expand their participation in the already fully subscribed GOA groundfish fisheries. The proposed regulatory changes are necessary owing to the introduction of two inconsistencies that exist between the Program provisions and the language in the implementing

regulations. These corrections will implement the sideboards as intended by the Council and mandated by section 313(j) of the Magnuson-Stevens Act.

*Sideboards on vessels without quota share.* Six small entities, as defined for RFA purposes, would be directly regulated by the removal of the sideboard provisions from vessels that did not generate snow crab quota shares. These six are currently, although inadvertently, subject to the economic burden of the sideboard restrictions, despite not having qualified for snow crab quota shares. The proposed action would lift this uncompensated burden from these six small entities by removing their sideboard restrictions.

*Sideboards in the State parallel groundfish fisheries.* As promulgated, the current language may allow federally permitted vessels to circumvent the Program's sideboards by fishing only in the State parallel groundfish fisheries in the GOA. Since the start of the 2006 A season Pacific cod fishery (the first GOA groundfish opening following implementation of the current Program provisions), no vessels prohibited by these sideboard provisions from fishing for Pacific cod have fished in the State parallel fisheries. The fact that no vessels currently are exploiting this loophole in the regulations is testament to the clear intent that the sideboards apply to the State parallel fisheries, and the plain language understanding of the term "GOA." This action proposes to correct the sideboard provisions of the Program's implementing regulations, by applying them to federally permitted vessels fishing in State parallel groundfish fisheries. Therefore, the preferred action has no economic effects beyond those considered in the EIS/RIR/IRFA/SIA prepared for the Program (see **ADDRESSES**).

Sideboard restrictions prevent adverse spillover effects in other fisheries from an influx of effort from the rationalized crab fisheries. The Crab Rationalization Program, because it issued quota share to vessel owners and provided them the ability to form cooperatives, provides these directly regulated entities huge economic benefits, as discussed in the EIS/RIR/IRFA/SIA prepared for the

Program (see **ADDRESSES**). As discussed in that analysis, the sideboard limits prevent these participants from using these benefits to increase their effort in the GOA groundfish fisheries. The sideboard restrictions provide the sideboarded vessels the ability to maintain their historic harvest levels in GOA groundfish fisheries therefore they do not make the sideboarded vessels worse-off economically. Vessels with minimal harvests in the snow crab fisheries and substantial harvests in the Pacific cod fishery would be exempt from the sideboard restrictions, since these vessels have little dependence on the crab fisheries. In addition, vessels with less than a minimum historic harvest from GOA groundfish fisheries are not permitted to participate in GOA groundfish fisheries.

The proposed action does not likely have the potential to impose disproportionate impacts on small entities, relative to large entities. The regulatory change applying the sideboard constraints to State waters during the parallel fisheries would provide all qualifying vessels, large and small, a level playing field upon which to operate, as had been the intention of the Council from the outset. Because this change merely rescinds an unintentional and unexploited regulatory loophole, the only possible effect is to codify the commonly held understanding among the fishing industry of the sideboard rule.

This proposed rule does not have the potential to significantly reduce profits for small entities. The absence of cost data precludes quantitative estimation of potential impacts on profitability, although these would be expected to be minimal, because no vessels chose to exploit this loophole in the 2006 A season (the first groundfish fishery after sideboard implementation).

This regulation does not impose new recordkeeping and reporting requirements on any directly regulated small entities.

This analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

No significant alternatives to the proposed rule exist that accomplish the stated objectives, are consistent with applicable statutes, and would

minimize the economic impact of the proposed rule on small entities. A no action alternative was considered, but was rejected because it did not meet the objectives of the Program's sideboard provisions. No significant adverse effects are shown for this action.

#### List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 17, 2006.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 680 as follows:

#### **PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for part 680 continues to read as follows:

**Authority:** 16 U.S.C. 1862.

2. In § 680.22, paragraph (a)(1)(i) is revised and paragraph (f) is added to read as follows:

#### **§ 680.22 Sideboard protections for GOA groundfish fisheries.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) Any non-AFA vessel that made a legal landing of Bering Sea snow crab (*C. opilio*) between January 1, 1996, and December 31, 2000, that generated any amount of Bering Sea snow crab (*C. opilio*) fishery QS; and

\* \* \* \* \*

(f) *Sideboard protections in the State of Alaska parallel groundfish fisheries.* Vessels subject to the sideboard restrictions under paragraph (a) of this section, that are required to have a Federal Fisheries Permit and/or LLP license, shall be subject to the regulations of this section while participating in any groundfish fishery in State waters adjacent to the GOA opened by the State of Alaska and for which the State of Alaska adopts a Federal fishing season.

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