

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 100 metric tons as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008), for the period 1200 hrs, A.l.t., April 1, 2008, through 1200 hrs, A.l.t., July 1, 2008.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and "other species." This inseason adjustment does not apply to fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This inseason adjustment does not apply to vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries

data in a timely fashion and would delay the closure of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 20, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 21, 2008.

**Emily H. Menashes,**

*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 680

[Docket No. 080516675-8677-01]

RIN 0648-AW88

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

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

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** NMFS issues this final rule, a correcting amendment to the regulations governing the Bering Sea and Aleutian Islands crab fisheries. This action is necessary to correct a rule that was published on March 2, 2005 (70 FR 10173). This final rule is intended to promote the goals and objectives of the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

**DATES:** Effective June 26, 2008.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** Bering Sea and Aleutian Islands (BSAI) crab fisheries are managed under the

authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) in accordance with the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). 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) between June 2002 and April 2003, and all trailing amendments, including those reported to Congress on May 6, 2003. In June 2004, the Council consolidated its actions on the Program into one Council motion, which is contained in its entirety in 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.

The Notice of Availability for these amendments 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). Shortly thereafter, NMFS also published a final rule (March 18, 2005; 70 FR 13097) to correct OMB control numbers provided in the March 2, 2005 final rule, and a second final rule (June 8, 2005; 70 FR 33390) to ensure that the March 2, 2005 final rule conforms to the statutory requirements and intent of the Program, to provide clarification regarding the Program's regulatory requirements, and to correct minor technical errors.

#### Need for Corrections

With this correction, NMFS seeks to ensure that the March 2, 2005 final rule conforms to the statutory requirements and intent of the Program. The March 2, 2005 final rule implemented regulations that establish the maximum amount of individual processing quota (IPQ) that may be issued in the Bristol Bay red king crab *Paralithodes camtschatica* (BBR) quota share (QS) fishery, and the Bering Sea snow crab *Chionoecetes opilio* (BSS) QS fishery. However, NMFS recently discovered that these regulations are not consistent with the statutory requirements of the Program.

Section 3.4 of Amendment 18 to the FMP limited the maximum amount of

IPQ that could be issued in the BBR and BSS QS fisheries. That section, which the Secretary is required to approve and implement, states that “[t]he amount of IPQ in any year shall not exceed the percentage of the TAC [total allowable catch] for crab as follows: For opilio [BSS crab QS fishery], IPQ percentage times a TAC (after CDQ [community development quota] allocations) of 175 million pounds. For Bristol Bay red king crab [BBR crab QS fishery], IPQ percentage times a TAC (after CDQ allocations) of 20 million pounds.” The “IPQ percentage” referred to in section 3.4 is described in section 2.4.1 of Amendment 18 as follows: “90 [percent] of GHL (or TAC) would be issued as IPQs - the remaining 10 [percent] would be considered open delivery.” Therefore, to determine the maximum amount of IPQ that can be issued in the BBR crab QS fishery according to the procedure established in section 3.4 of Amendment 18, 90 percent is multiplied by 20,000,000 pounds to yield 18,000,000 pounds. Similarly, to determine the maximum amount of IPQ that can be issued in the BSS crab QS fishery according to the procedure established in section 3.4 of Amendment 18, 90 percent is multiplied by 175,000,000 pounds to yield 157,500,000 pounds.

This calculation is explicitly described and calculated in section 3.6.2.3 of the Regulatory Impact Review that was prepared for the Program. For the BSS crab QS fishery, the option adopted by the Council in Amendment 18 to the FMP and approved by the Secretary limits IPQs to 157.5 million pounds, or 90 percent of 175 million pounds (the percentage of the TAC for which IPQs are issued times 175 million pounds). In the BBR crab QS fishery, the option adopted by the Council in Amendment 18 to the FMP and approved by the Secretary limits IPQs to 18 million pounds, or 90 percent of 20 million pounds.

However, the March 2, 2005 final rule implemented regulations at § 680.40(j)(3) that incorrectly specified the maximum amount of IPQ that would be issued in the BBR and BSS crab QS fisheries as follows: “The amount of IPQ issued in any crab fishing year shall not exceed: (i) 175,000,000 raw crab pounds (79,378.6 mt) in the BSS crab QS fishery; and (ii) 20,000,000 raw crab pounds (9,071.8 mt) in the BBR crab QS fishery.” These regulations are inconsistent with the statutory requirement to implement the Council’s motion by regulation. NMFS is

modifying regulations at § 680.40(j)(3) to clarify that the amount of IPQ issued in any crab fishing year shall not exceed 157,500,000 raw crab pounds (71,441.5 mt) in the BSS crab QS fishery, and 18,000,000 raw crab pounds (8,164.7 mt) in the BBR crab QS fishery. This change is necessary to correctly implement the Council’s motion as required by section 313(j)(1) of the Magnuson-Stevens Act.

#### Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final rule is necessary for the conservation and management of the BSAI crab fisheries. The Regional Administrator also has determined that this final rule 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 Executive Order 12866. Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Through this action, NMFS seeks to ensure that the regulations implementing the Program conform to the statutory requirements and intent of the Program and to provide clarification regarding the Program’s regulatory requirements. Pursuant to 5 U.S.C. 553(b)(B), the NOAA Assistant Administrator for Fisheries finds good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable, unnecessary, and contrary to the public interest for the following reasons. First, the Program’s statutory requirements concerning the maximum amount of IPQ that can be issued by NMFS in the BBR and BSS crab QS fisheries are non-discretionary. Section 3.4 of Amendment 18 to the FMP, which the Secretary is required to implement under section 313(j)(1) of the Magnuson-Stevens Act, limited the maximum amount of IPQ that could be issued in the BBR and BSS QS fisheries. NMFS has no discretion with respect to the terms of the calculations. As such, prior notice and an opportunity for public comment are unnecessary as the agency has no choice but to implement regulations that are consistent with the statute. Second, corrections and clarifications to ensure the rule’s compliance with the intent of the Program must be made immediately in

order to provide the regulated community with adequate and accurate information to establish the appropriate amount of IPQ to be issued for the upcoming crab fishing year. Harvesters and processors must apply to receive IFQ and IPQ, respectively, by August 1 for the upcoming crab fishing year. In order to allow the public to effectively plan and determine whether they will apply for IFQ or IPQ and to have a reasonable expectation about what the total amount of IPQ may be in the BBR and BSS crab QS fisheries, this regulation will need to be effective before that date. Prior notice and an opportunity for public comment on these measures are impracticable and contrary to the public interest because the time necessary to provide such procedures would lead to the realization of the very harm sought to be avoided by this rule. In contrast, waiving those procedures does not affect the regulated public in ways not previously analyzed and discussed in the Environmental Impact Statement and Regulatory Impact Review prepared for the Program.

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

Alaska, Fisheries.

Dated: May 21, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 680 is corrected by making the following correcting amendments:

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

■ 1. The authority citation for 50 CFR part 680 continues to read as follows:

**Authority:** 16 U.S.C. 1862; Pub. L. 108–199; Pub. L. 109–241; Pub. L. 109–479.

#### § 680.40 [Corrected]

■ 2. Correct § 680.40 as follows:

a. In paragraph (j)(3)(i), remove the phrase “175,000,000 raw crab pounds (79,378.6 mt)” and add in its place the phrase “157,500,000 raw crab pounds (71,441.5 mt)”;

b. In paragraph (j)(3)(ii), remove the phrase “20,000,000 raw crab pounds (9,071.8 mt)” and add in its place the phrase “18,000,000 raw crab pounds (8,164.7 mt)”.

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