

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

RIN 0648-BA82

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: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) submitted Amendment 41 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) to NMFS for review. If approved, Amendment 41 would amend the Bering Sea and Aleutian Islands Crab Rationalization Program (CR program) by establishing a process for eligible harvesters, processors, and affected communities to request an exemption from regional delivery requirements. Federal regulations require that crab harvested with regionally designated individual fishing quota (IFQ) be landed within the designated region; likewise, crab purchased with regionally designated individual processing quota (IPQ) must be processed within the designated region. Natural and man-made situations can disrupt fishing and processing activity making regional delivery requirements untenable in some seasons. Amendment 41 is necessary to prevent disruption to the CR Program fisheries, while providing for the sustained participation of the communities intended to benefit from the regional delivery requirements. This proposed action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Comments on the amendment must be received on or before February 11, 2013.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2012-0032, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal,

first click the "submit a comment" icon, then enter NOAA-NMFS-2011-0147 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on that line.

- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586-7557.

- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802.

- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 41, the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis, the categorical exclusion prepared for this action, and the Environmental Impact Statement, RIR, Final Regulatory Flexibility Analysis, and Social Impact Analysis prepared for the CR Program may be obtained from the Alaska Region Web site at <http://www.alaskafisheries.noaa.gov/sustainablefisheries.htm>.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that

each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 41 to the FMP is available for public review and comment.

The king and Tanner crab fisheries in the exclusive economic zone of the BSAI are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act. Amendments 18 and 19 amended the FMP to include the CR Program. Regulations implementing these amendments were published on March 2, 2005 (70 FR 10174), and are located at 50 CFR part 680.

The CR Program is a catch share program for nine BSAI crab fisheries that allocates those resources among harvesters, processors, and coastal communities. Under the CR Program, NMFS issued quota share (QS) to eligible harvesters based on participation during a set of qualifying years in one or more of the nine CR Program fisheries. QS is an exclusive, revocable privilege allowing the holder to harvest a specific percentage of the annual total allowable catch (TAC) in a CR Program fishery.

A QS holder's annual allocation, called IFQ, is expressed in pounds and is based on the amount of QS held in relation to the total QS pool for that fishery. NMFS issues IFQ in three classes: Class A IFQ, Class B IFQ, and Class C IFQ. Three percent of IFQ is issued as Class C IFQ for captains and crew. Ninety percent of the remaining IFQ is issued as Class A IFQ and 10 percent is issued as Class B IFQ.

NMFS issued processor quota share (PQS) to qualified individuals and entities based on processing activities in CR Program fisheries during a period of qualifying years. PQS is an exclusive, revocable privilege to receive deliveries of a fixed percentage of the annual TAC from a CR Program fishery. A PQS holder's annual allocation is called IPQ. NMFS issues IPQ at a one-to-one correlation between the amount of IPQ and Class A IFQ issued for a given CR Program fishery. Class A IFQ must be delivered to a processor holding a matching amount of IPQ; Class C IFQ

and Class B IFQ may be delivered to any registered crab receiver.

The CR Program established regional delivery requirements to preserve the historic geographic distribution of deliveries in the crab fisheries. NMFS assigned a regional designation to QS and PQS for seven of the nine CR Program fisheries. The regional delivery requirements are structured so that crab harvested with regionally designated IFQ must be delivered to a processor with matching regionally designated IPQ and processed in the designated region. These regional delivery requirements are intended to ensure that coastal communities historically active as crab processing ports continue to receive economic benefits from crab deliveries and to encourage the development of shorebased processing capacity in specific isolated communities.

The Council adopted Amendment 41 to the FMP at its December 2010 meeting. Amendment 41 allows IFQ holders, IPQ holders, and communities to request and receive from NMFS an exemption to regional delivery requirements. Amendment 41 would apply to QS and PQS that has a regional designation for the North Region or South Region. NMFS assigned a North Region designation or a South Region designation to the QS and PQS in six CR Program fisheries: Bristol Bay red king crab, Bering Sea snow crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, Saint Matthew Island blue king crab, and Pribilof Islands red and blue king crab. The North Region is north of 54°20' N. latitude. The South Region is south of 54°20' N. latitude.

NMFS also assigned a West Region designation to a portion of the Western Aleutian Islands golden king crab QS and PQS; the remaining QS and PQS in that fishery is undesignated and may be delivered without regional limitation. Eastern Bering Sea Tanner crab QS and PQS, and Western Bering Sea Tanner crab fishery QS and PQS, do not have a regional designation. Amendment 41 would not apply to QS and PQS issues for these fisheries.

In recommending Amendment 41, the Council recognized that weather conditions or other natural or man-made circumstances can hinder harvesting activities and restrict access to processing facilities in the North or South Region. Natural or man-made catastrophes could result in lost revenue to harvesters, processors, and communities. Safety risks increase when harvesters attempt to meet regional delivery requirements in inclement weather (e.g., icing

conditions) and other potentially unsafe situations. Unforeseen delays in delivering crab could result in deadloss (crab that die before being processed). Harvesters may avoid or delay the harvest of regionally designated IFQ, thereby increasing the potential for unharvested crab or crab harvested later in the fishing season than would have been otherwise required for a given TAC level. Such changes in fishing behavior could result in unused IPQ, increased processing cost, loss of market share, and loss of revenue to remote communities dependent on revenues from crab deliveries and processing.

The Council recognized that the purpose of prohibiting holders of regionally designated Class A IFQ and IPQ from delivering and processing crab outside of the designated region ensures that each region retains the economic benefits from deliveries within the region. Therefore, under Amendment 41, deliveries of regionally designated Class A IFQ outside of the region would need to be negotiated among IFQ holders, IPQ holders, and representatives of affected communities. The Council also recognized that any exemption must include requirements for IFQ holders and IPQ holders to make efforts to avoid the need for an exemption and to limit the amount of IFQ and IPQ subject to the exemption. The Council recommendation supports the existing regional delivery requirements while establishing a process to mitigate disruptions in a CR Program fishery that would restrict the ability of participants to meet the delivery requirements.

The Council also recognized the potential for insurmountable administrative difficulties if NMFS specified the conditions for granting an exemption and then determined whether those conditions existed in a particular situation. Therefore, the Council recommended a system of civil contracts between harvesters, processors, and community representatives as the means of establishing the exemption from the regional delivery requirements.

Under Amendment 41, the parties—Class A IFQ holders, IPQ holders, and affected communities—would develop private contractual arrangements that specify when, and under what terms, they could request and receive an exemption from NMFS. The contract terms would not be established in the FMP or in regulation. The parties would enter into two private contractual arrangements—a framework agreement and an exemption contract—before the specified IFQ and IPQ would be exempt from the regional delivery requirements.

These contracts would govern the roles and responsibilities of the parties to the contract and would establish each party's specific obligations. The goal is that, through the framework agreement process, the parties would plan for adverse conditions and would agree to take steps to reduce the need for an exemption. Then, in the event that the mitigation was unsuccessful in averting the need for an exemption, the parties would agree to an exemption contract and jointly apply to NMFS for an exemption from the regional delivery requirement. If any party to a framework agreement or exemption contract believes that any other party did not comply with their contractual obligation, that party could seek redress as a private civil matter.

Amendment 41 does not prescribe specific conditions or terms of agreement for the framework agreement or exemption contract. Section 2.4.2 of the analysis provides background about the range of private arrangements that the Council considered and that the parties might put in the framework agreement and the exemption contract. In negotiating the framework agreement, the Council expects that the parties would consider mechanisms and operating practices that would limit the need to seek an exemption from the regional delivery requirements. The Council anticipates that the framework agreement would define the steps that the parties would take prior to the crab fishing season to avoid seeking an exemption during the fishery. A framework agreement could include an agreement among IFQ holders, whereby they aggregate a certain percentage of their IFQ to address inseason factors that could otherwise prevent compliance with regional delivery requirements. For example, the framework agreement could prioritize the harvest of North Region Class A IFQ while setting aside a portion of South Region Class A IFQ until the North Region Class A IFQ has been harvested and delivered to matching North Region IPQ. The Council anticipates that the framework agreement would also address the circumstances that would trigger requesting an exemption. If those circumstances occurred, the Council anticipates that the framework agreement would describe the steps that the parties would take to mitigate the adverse effects of the exemption on the affected community. The framework agreement might include steps to compensate the community that was losing the processing, the economic activity from the processing, and the tax revenues from the processing.

The CR Program also limits the amount of PQS and IPQ that may be owned or used by an individual. Under Amendment 41, NMFS would suspend the requirement that any IPQ used at a facility through a custom processing arrangement accrue against the IPQ use cap of the owners of that facility for all Class A IFQ and IPQ included in the exemption. IPQ holders will continue to be subject to the IPQ use cap for other crab processing that does not occur through an exemption from the regional delivery requirements.

NMFS is soliciting public comments on proposed Amendment 41 through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 41, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. All comments received by the end of the comment period on Amendment 41, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment

41. Comments received after that date will not be considered in the approval/disapproval decision on Amendment 41. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

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

Dated: December 10, 2012.

Lindsay Fullenkamp,

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

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