In recent years the fee waiver for state and local government entities rule has been applied more broadly than envisioned in *Fees for Services*. We have waived fees in cases where the filer has been a state or local government entity acting in a proprietary capacity as a carrier. For example, the fee waiver has been applied where states, state agencies and local transportation authorities and districts have submitted filings to acquire rail lines, usually for operation by a third party. We also have waived fees where the filer has been a quasi-government corporation. For example, waivers have been granted if the filer demonstrated that it was created through legislation designed to meet a public purpose.

Public corporations are created by statute for public purposes only and the interests of public corporations are the exclusive property and domain of the government. Private corporations, on the other hand, are created for private, rather than purely public, purposes and their powers are exercised for the profit or advantage of the stockholders. Quasi-public (or quasi-governmental) corporations, commonly referred to as public service corporations, have the appearance of being public, but in many respects they are private. Quasi-public corporations are private corporations that have special powers or privileges of a public nature, such as the power of eminent domain, to enable them to carry out those functions that benefit the public; but they also exercise their powers to further the interests of their stockholders. Corporations are not considered public merely because they are creatures of legislation or established to promote the public interest. In our view, only the true public corporation should qualify for a waiver. Whether a corporation should be considered public or not depends on the terms of its charter and the laws under which it has been organized.

We are not, through this policy, seeking to inhibit parties from using our processes, or to undercut transactions by which, for example, local bodies attempt to facilitate continued rail service. But Congress has directed us to collect appropriate fees, and we must make every effort to conform our fee assessment and collection practices to the policy of full cost recovery that underlies the IOAA and Circular No. A–25. Thus, filers must henceforth clearly demonstrate that they are true public corporations in order to qualify for the fee waiver. Fees will be assessed to *any entity* (a state or local governmental entity, a quasi-governmental entity, or a government-subsidized transportation company) that owns or proposes to own a carrier, or that is a shipper, and comes before the Board in that capacity. *See Fees for Services* at 71. Fees will also be assessed to quasi-governmental corporations or government-subsidized transportation companies for *any filing* submitted for which there is a fee. The fee waiver will be available to a state or local government entity that is not acting in the capacity of a carrier or shipper. Thus, for example, a state or local entity filing an adverse (or third party) abandonment proposal would benefit from the waiver rule because the filer would not be appearing as a carrier or as a shipper.

Entities that do not qualify for the fee waiver may request a fee waiver or reduction in fees under 49 CFR 1002.2(e)(2), which provides that in extraordinary situations the Board will waive or reduce fees. The requestor must show that the waiver or reduction is in the best interest of the public or that payment of the fee would impose an undue hardship on the requestor.

As a final matter, we are clarifying the process by which waiver requests will be administered at the Board. Currently, a waiver request must be submitted at the time the related filing is submitted, and a filing (other than a tariff) not accompanied by the appropriate fee is deficient. *See* 49 CFR 1002.2(e)(2)(i), 1002.2(b). Waiver requests are considered only when accompanied by the related filing; waiver requests submitted in advance of the filing to which they relate are not accepted. When a waiver request is accompanied by the related filing and the appropriate fee, the filing is processed immediately, the fee is deposited, and the waiver request is acted upon in due course. If the waiver is granted, the filer receives a refund from the U. S. Department of the Treasury.

We understand that some parties may find it financially burdensome to submit the fee and then run the risk that the waiver will not be granted. We will permit parties to file waiver requests without submitting the fees; however, as we sometimes need to review the substantive document in order to determine whether the waiver ought to be granted, we will not accept a waiver request unless the substantive document is also filed. Moreover, if a waiver request is filed with the related filing but without the appropriate fee, we will be unable to process the substantive filing until the fee issue is resolved. Therefore, whenever a waiver request is filed without an appropriate fee, the substantive filing will be processed only after the waiver request has been granted or, if the request is denied, upon receipt of the appropriate fee. A filer seeking a waiver and prompt processing of a filing should, therefore, submit the fee, the related filing and the waiver request simultaneously.

The legal and policy bases underlying rule 1002.2(e)(1) already have been established in *Fees for Services*. Thus, we do not propose a new rule or policy here, but rather announce a stricter adherence to a policy that has already been established and was never formally changed. For that reason, we do not seek public comment on this announcement that we will henceforth follow this policy more literally.

Decided: November 29, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, Commissioner Clyburn.

Vernon A. Williams,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 080900A]

RIN 0648–A028

Fisheries of the Exclusive Economic Zone Off Alaska; Rebuilding Overfished Fisheries

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

ACTION: Approval of fishery management plan amendment.

SUMMARY: NMFS announces the approval of Amendment 15 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). This amendment is necessary to implement a plan to rebuild the overfished stock of St. Matthew blue king crab. This action is intended to ensure that conservation and management measures continue to be based on the best scientific information available and is intended to achieve, on a continuing basis, the optimum yield from the affected crab fisheries.

DATES: The amendment was approved on November 29, 2000.

ADDRESSES: Copies of Amendment 15 to the FMP, and the Environmental Assessment (EA) prepared for the amendment are available from the Sustainable Fisheries Division, Alaska

Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS declared the stock of St. Matthew blue king crab (*Paralithodes platypus*) overfished on September 24, 1999, because the spawning stock biomass was below the minimum stock size threshold as defined in the FMP. NMFS notified the North Pacific Fishery Management Council (Council) once NMFS determined that the stock was overfished (64 FR 54791, October 8, 1999). The Council developed a rebuilding plan within 1 year as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In June 2000, the Council adopted Amendment 15, the rebuilding plan, to accomplish the purposes outlined in the national standard guidelines to rebuild the overfished stock. Amendment 15 specifies a time period for rebuilding the stock that satisfies the Magnuson-Stevens Act. The rebuilding plan is estimated to allow St. Matthew blue king crab to rebuild, with a 50 percent probability, within 10 years. The stock will be considered ''rebuilt '' when the stock reaches the maximum sustainable yield stock size level in 2 consecutive years.

The rebuilding plan consists of a framework that references the State of Alaska's harvest strategy, bycatch control measures, and habitat protection measures.

The rebuilding plan will use the harvest strategy developed by the Alaska Department of Fish and Game and adopted by the Alaska Board of Fisheries (Board). The FMP defers to the State of Alaska the authority to develop harvest strategies, with oversight by NMFS and the Council. The rebuilding harvest strategy should result in more spawning biomass, because more large male crab would be conserved and fewer juveniles and females would die due to incidental catch and discard mortality. This higher spawning biomass would be expected to produce good year-classes when environmental conditions are favorable.

The rebuilding plan also references the bycatch reduction measures and habitat protection measures adopted by the Board in March 2000. The Board adopted gear restrictions to reduce bycatch of sub-legal and female blue king crab in the directed fishery. To protect the habitat of egg-bearing females, the Board took action to close State waters around St. Matthew Island, Hall Island, and Pinnacles Island to crab fishing. Protection of habitat and reduction of bycatch will reduce mortality on juvenile and egg-bearing female crabs, thus allowing a higher percentage of each year-class to contribute to spawning and future landings.

An EA was prepared for Amendment 15 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and the socio-economic impacts of the alternatives. A copy of the EA can be obtained from NMFS (see **ADDRESSES**).

A notice of availability for the proposed Amendment 15 to the FMP, which described the proposed amendment and invited comments from the public, was published in the **Federal Register** on August 29, 2000 (65 FR 52405). Comments were invited until October 30, 2000.

Response to Comments

NMFS received one public comment on Amendment 15.

Comment: The comment requested that NMFS include additional analysis in the EA, however, it did not recommend approval or disapproval of the amendment. The comment advanced these concerns about the EA: (1) the costs associated with monitoring bycatch of blue king crab in the trawl fishery were not analyzed; (2) the discussion of higher probabilities of rebuilding under alternative rebuilding scenarios is insufficient; and (3) further evaluation of the economic impacts of implementing a stricter rebuilding time and probability is needed.

Response: NMFS determined that the existing EA is sufficient for decision making, complies with applicable law, and additional analysis would not change the components of the rebuilding plan. The EA represents the best scientific information available, as certified by the Alaska Fisheries Science Center. For the following reasons, NMFS does not believe modification of the EA is warranted.

1. The decision not to enact measures to reduce bycatch of blue king crab in the trawl fisheries was based on the fact that, according to observer data, blue king crab is not a measurable component of trawl bycatch. Thus, an analysis of the costs associated with monitoring a bycatch limit or a closed area would not change the conclusion that trawl bycatch is not a significant source of blue king crab mortality.

2. The rebuilding time period satisfies the requirements of section 304(e)(4)(A) of the Magnuson–Stevens Act. The rebuilding plan is estimated to allow the St. Matthew blue king crab stock to rebuild, with a 50 percent probability, to the B_{msy} level within 10 years. A 50 percent rebuilding probability within 10 years is the estimated probability recommended in the NMFS technical guidance for rebuilding overfished stocks. This probability of rebuilding includes the conservative parameter that stock will be considered 'rebuilt' when the stock size reaches the Bmsy in 2 consecutive years. The stock assessment experts that developed the model used to estimate the rebuilding times and probabilities determined that a 50 percent probability best represented reality given the biology of the species and our current level of scientific information. However, the EA also analyzes the alternatives at a 90 percent probability. The alternative that would achieve rebuilding at a 90 percent probability within 10 years is the no fishing alternative, which the EA analyzes. The exercise of estimating rebuilding probabilities provides managers an idea of the potential outcomes of different alternatives and to help assure that the chosen alternative will rebuild the stock within 10 years. One of the measures that predicts success of this rebuilding plan is that it is estimated to rebuild the stock in 12 years with a 90 percent probability. In other words, NMFS predicts that there is a 90 percent probability that the estimated spawning biomass will be above the B_{msy} level of 22 million lb (9,679.2 metric tons) for 2 years within 12 years.

3. Information on the percentage of a crab catcher vessel's total crab catch that is comprised of St. Matthew blue king crab is not substantially relevant to the decision making. The comment implies that this information would lead to a more conservative rebuilding plan because most catcher vessels do not depend on this fishery as a sole source of income. The rebuilding harvest strategy provides a balance between being sufficiently conservative to rebuild the stock and prevent overfishing, yet to allow some fishing during the rebuilding period once the stock increases in abundance to above the MSST. A fishery will occur when the stock abundance warrants it, regardless of each individual vessel's other sources of income.

NMFS determined that Amendment 15 to the FMP is consistent with the Magnuson–Stevens Act and other applicable laws and approved Amendment 15 on November 29, 2000. Additional information on this action is contained in the August 29, 2000, notice of availability (65 FR 52405).

No regulatory changes are necessary to implement this FMP amendment.

Dated: November 30, 2000.

Clarence Pautzke,

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

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