

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: April 23, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 030417091-3091-01; I.D. 040903B]

RIN 0648-AR00

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Resources of the Gulf of Mexico; Commercial Shrimp Fishery of the Gulf of Mexico; Control Date

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

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This notice announces that the Gulf of Mexico Fishery Management Council (GMFMC) is considering additional management measures to limit entry into the commercial fishery for shrimp in the exclusive economic zone of the Gulf of Mexico (Gulf EEZ). Possible measures include the establishment of a limited entry program to control participation or effort in the commercial shrimp fishery. If a limited entry program is established, the GMFMC is considering December 6, 2003, as a possible control date.

DATES: Comments must be submitted by May 29, 2003.

ADDRESSES: Comments should be directed to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida 33619-2266; Fax: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727-570-5305.

SUPPLEMENTARY INFORMATION: The commercial fishery for shrimp in the Gulf EEZ is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the GMFMC, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

Amendment 11 to the FMP was approved by NMFS on October 17, 2001, and a final rule implementing the actions described in Amendment 11 was promulgated on August 7, 2002 (67 FR 51074). Those regulations, effective September 6, 2002, included a requirement for all vessel owners or operators who harvest shrimp in the Gulf EEZ to obtain a commercial vessel permit. Owners or operators had 90 days to comply; commercial shrimp vessels harvesting shrimp from the Gulf EEZ on or after December 5, 2002, were required to have this Federal vessel permit onboard. For the purposes of the FMP, shrimp is defined to include the following species: brown, pink, white, rock, seabob, and royal red shrimp.

The GMFMC anticipates that future action may be necessary to control effort in the Gulf of Mexico shrimp fishery by restricting the number of participants. The GMFMC has been advised by NMFS that the shrimp resources of the Gulf EEZ are fully exploited, especially the penaeid (brown, pink and white) shrimp resources. Recent stock assessments indicate that a reduction in effort would not result in a reduction in yield for these species. Consequently, the GMFMC is concerned that the current level of participation in the Gulf shrimp fishery may not be realizing the maximum economic benefits that could be derived from the resource, and that future increases in participation could further reduce economic benefits. Should the GMFMC take future action to restrict participation in the fishery, they may use December 6, 2003, as a possible control date. This date would give all vessel owners or operators who harvest shrimp from the Gulf EEZ one year to obtain a commercial vessel permit before the control date. Implementation of any program to restrict access in the shrimp fishery would require preparation of an amendment to the FMP and publication of a notice of availability of the amendment with a comment period, publication of a proposed rule with a public comment period, approval of the amendment, and issuance of a final implementing rule.

Consideration of a control date does not commit the GMFMC or NMFS to any particular management regime or criteria for entry into the commercial shrimp fishery. Fishermen are not guaranteed future participation in a fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. Use of the control date in future management actions would mean that anyone entering the fishery after the control date would not be assured of

future access. Even fishermen who are permitted prior to the control date are not guaranteed future participation in a fishery. The GMFMC may choose to give variably weighted consideration to fishermen active in the fisheries before and after the control date. Other qualifying criteria, such as documentation of landings and sales, may be applied for entry. The GMFMC subsequently may choose a different control date or they may choose a management regime that does not make use of a control date. The GMFMC also may choose to take no further action to control entry or access to the fisheries, in which case the control date may be rescinded.

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

Dated: April 23, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030417090-3090-01; I.D. 032403C]

RIN 0648-AQ73

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program

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

ACTION: Proposed rule.

SUMMARY: NMFS issues a proposed rule to amend eligibility criteria for Bering Sea and Aleutian Islands (BSAI) crab species licenses issued under the License Limitation Program (LLP) and required for participation in the BSAI crab fisheries. This action is necessary to allow participation in the BSAI crab fisheries in a manner intended by the North Pacific Fishery Management Council (Council). The intended effect of this action is to allow vessels with recent participation in the BSAI crab fisheries to qualify for an LLP crab species license as the Council intended and to conserve and manage the crab resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by May 14, 2003.

ADDRESSES: Comments may be mailed to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the NMFS, 709 West 9th Street, Room 420, Juneau, AK 99801. Comments also may be sent via facsimile to 907-586-7557. Comments will not be accepted if submitted by email or the Internet. Copies of the Environmental Assessment prepared for Amendment 10 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs and the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) prepared for this proposed rule are available from this same address.

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

SUPPLEMENTARY INFORMATION:

Background

The Council recommended and NMFS approved Amendment 10 to the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs on April 18, 2001. NMFS published a final rule to implement Amendment 10 on September 24, 2001 (66 FR 48813). Amendment 10 established recent participation requirements for vessel owners to receive LLP crab species licenses. Since publication of the final rule, NMFS has determined that portions of these regulations are inconsistent with Amendment 10. This action proposes to correct this inconsistency.

The LLP was designed to address concerns of excess capital and fishing capacity in the crab fisheries off Alaska. More information on the LLP can be found in the preamble to the final rule implementing the LLP (63 FR 52642, October 1, 1998). Fishing under the LLP began on January 1, 2000.

The LLP established specific criteria for eligibility to participate in the BSAI crab fisheries. Under the LLP eligibility requirements to receive a crab species license, a person must demonstrate that documented harvests were made from a qualifying vessel during two periods, the general qualification period (GQP) and the endorsement qualification period (EQP), specified at 50 CFR 679.4(k)(5).

The Council designed the LLP to allow the fishing history of a vessel to be transferred prior to issuance of a license. A fishing history would not

qualify the holder for a license unless it was an LLP qualifying fishing history, meaning the fishing history meets the GQP and EQP requirements for LLP eligibility. Although the LLP provides for these transfers, eligibility for a license under the LLP cannot occur by piecing together the fishing histories from two or more vessels to qualify for the GQP and EQP (50 CFR 679.4(k)(5)).

In October 1998, the Council recommended Amendment 10 to add a recent participation period (RPP) from January 1, 1996, through February 7, 1998, to the eligibility requirements for a crab species license. Under Amendment 10, and in addition to the GQP and EQP requirements, a person must demonstrate that at least one documented harvest of crab was made from a vessel during the RPP to qualify for a crab species license.

The additional RPP eligibility requirement is a means of reducing the number of crab species licenses that might otherwise be issued to persons who have been inactive in the crab fishery since 1995. Licenses given to such inactive fishermen could be transferred to persons who would become active in the fishery. This result would be contrary to the purpose of the LLP because it would likely increase fishing effort above the current levels in the crab fisheries.

The Council recommended specific exceptions to the RPP requirements based on public testimony and in consideration of the impacts the RPP would have on small fishing operations. The Council recommended excepting from the RPP requirements: (1) a person who qualifies only for a Norton Sound red king crab endorsement, (2) a person whose qualifying vessel is less than 60 ft length overall, or, (3) a person whose qualifying vessel was lost or destroyed during the RPP period, but who made a documented harvest of crab species on another vessel after the first vessel was lost or destroyed through January 1, 2000. NMFS added a hardship exemption (unavoidable circumstances) to the RPP in the final rule to be consistent with the original provisions of the LLP.

The Council recommended one additional exception to allow persons that participated in a BSAI crab fishery in the RPP during the period of January 1, 1998, through February 7, 1998, without a LLP qualifying fishing history, to acquire an LLP qualifying fishing history by 8:36 a.m. on October 10, 1998. This exception provided the opportunity for recent participants in the crab fisheries, that did not hold the LLP qualifying fishing history during their documented harvests in the RPP,

to obtain historical participation in order to qualify for an LLP license.

Amendment 10 allows a vessel owner who, having acquired LLP qualifying fishing history, used a vessel to fish during the RPP to combine his acquired fishing history with his RPP fishing history in meeting the RPP requirement for an LLP crab species license. Combining an LLP qualifying fishing history with an RPP fishing history is allowed to provide recent participants the opportunity to purchase historical participation, with some restrictions. Without this ability to combine histories, only vessel owners who participated in the crab fisheries prior to 1995 would receive a license and vessel owners with recent dependence on the fishery would be denied licenses, except for recent participants who qualify for the exception.

Proposed Rule Corrections

The regulations implementing the RPP requirement (50 CFR 679.4(k)(5)(iii)) differ in one important aspect from Amendment 10. The regulations, as explained in the preamble to the proposed rule (66 FR 17397, March 30, 2001) and final rule (66 FR 48813, September 24, 2001), require that a person use one vessel to earn the GQP, EQP, and RPP fishing histories to qualify for an LLP license, with exceptions. Specifically, the regulations require that a person must have made a documented harvest during the RPP from a qualifying vessel, which is the same vessel that was used to fish in the GQP and EQP. The exception applies to a person who has made a documented harvest of crab from a vessel during the period of January 1, 1998, through February 7, 1998, and who acquired an LLP qualifying fishing history of another vessel or entered into a contract to obtain the LLP qualifying fishing history of another vessel, by October 10, 1998.

The existing regulations result in persons being denied crab LLP licenses if they did not use a qualifying vessel to fish in the RPP and did not fish in the period from January 1, 1998, through February 7, 1998. Requiring that documented harvests be made from a qualifying vessel prevents a person who fished in the RPP with a vessel that was not used to qualify for the GQP and EQP to qualify for an LLP license, unless that person met the exception. Amendment 10, however, provides that a person who had purchased the LLP qualifying fishing history and then fished with his or her vessel in the RPP would qualify for a crab license.

This action proposes to correct this inconsistency so that the implementing

regulations accurately reflect Amendment 10. NMFS recognizes transfers that occurred prior to issuing licenses and will grant licenses to those vessel owners who obtained a LLP qualifying fishing history and who fished during the RPP.

License Issuance

NMFS's Restricted Access Management Program (RAM) has issued interim licenses to those vessel owners who qualify under Amendment 10, but not under the existing implementing regulations, and who made a timely claim. Once the regulations are corrected, RAM will review the applications and issue licenses to persons whose vessels meet the corrected qualification requirements.

Classification

This proposed rule is subject to a categorical exclusion from the requirement to prepare an environmental assessment because it falls under the purview of the environmental assessment for Amendment 10, which was prepared on July 23, 1999. The environmental assessment discusses the impact on the environment as a result of this rule. The analysis indicates that the individual impacts of this proposed action, and the cumulative impacts of all the changes under Amendment 10, would have a negligible effect on the quality of the human environment. A copy of the environmental assessment is available from NMFS (see **ADDRESSES**).

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this rule, pursuant to the provisions of the Regulatory Flexibility Act (RFA) at 5 USC 603(b). The reasons for this action, the objectives, and its legal basis were discussed earlier in the preamble. This rule was found to directly regulate three entities that may have acquired LLP qualifying fishing history from another vessel before making a documented harvest during the RPP. All of these entities were assumed to be small on the basis of studies suggesting that crab fishing operations in the BSAI were predominately small entities as defined under the RFA. The analysis did not identify any new projected reporting, record keeping, or other compliance requirements associated with this proposed rule. The analysis did not identify any relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

This action would have no adverse economic impacts on the directly regulated entities; these entities would qualify for an LLP license for which they cannot now qualify. Alternative 1

is the status quo alternative. Under this alternative there would be no regulatory amendment. A vessel would have to have been used during the (a) general qualification period (GQP), the (b) endorsement qualification period (EQP) and the (c) recent participation period (RPP) in order to qualify for an LLP, unless the person qualified for the exception by fishing from January 1, 1998 through February 7, 1998. Transfers of fishing history would not be recognized in the LLP allocation process. This alternative would prevent the entities from qualifying and thus imposes costs on them in comparison with the preferred alternative.

Under Alternative 2, NMFS would adopt a regulatory amendment allowing persons that purchased GQP and EQP fishing history and then fished during the RPP to qualify for a license.

The fishing history of a vessel that can be used as the basis for eligibility for a license under the LLP remains with the vessel until either (1) June 17, 1995, when it vests with the vessel owner, or (2) it is separated by the express terms of a written contract that clearly and unambiguously indicates that the fishing history is transferred or retained. The Council chose June 17, 1995, as the determining date because it coincides with the date the Council recommended the LLP.

Until June 17, 1995, the fishing history remains with the vessel unless separated by a contract. This contract could transfer the fishing history to a person other than the vessel owner. Alternatively, this contract could retain the fishing history in the person who is selling his or her vessel before June 17, 1995. In either case, the contract has separated the fishing history from the vessel. This fishing history would not qualify the holder for a license unless the fishing history meets all the requirements for eligibility.

On June 17, 1995, the fishing history of the vessel, unless already separated by contract, vests in the vessel owner. After June 17, 1995, the vessel owner can transfer that fishing history by contract. A vessel sold after June 17, 1995, does not have a fishing history to use as the basis for license eligibility because its fishing history has vested in the owner and would have to be obtained through the express terms of a written contract.

The Council provided that a person who can demonstrate that a documented harvest of any crab species was made from his or her vessel during the RPP, can join that fishing history with another LLP qualifying fishing history from a different vessel, as long as the LLP qualifying fishing history was

acquired, or a contract to acquire that fishing history was entered into, by 8:36 a.m. PST on October 10, 1998.

Combining of fishing histories is not allowed under the following circumstances: piecing together GQP and EQP catch histories from different vessels; purchasing the RPP fishing history to combine with GQP and EQP; and, purchasing GQP and EQP after the RPP to combine with an RPP qualification earned before January 1, 1998.

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

List of Subjects in 50 CFR part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 23, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.4, paragraphs (k)(5)(iii)(A) and (k)(5)(iv) are revised to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(5) * * *

(iii) *Recent participation period (RPP)*. (A) The RPP is the period from January 1, 1996, through February 7, 1998. To qualify for a crab species license, defined at § 679.2, a person must have made at least one documented harvest of any amount of crab species from a vessel during the RPP and must have held an LLP qualifying fishing history at the time of that documented harvest. An LLP qualifying fishing history meets the documented harvest requirements at paragraphs (k)(5)(i) and (k)(5)(ii) of this section.

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(iv) *Exception to allow purchase of LLP qualifying fishing history after the documented harvest in the RPP*. To qualify for an LLP crab species license, a person who made a documented harvest of crab species during the period from January 1, 1998, through February 7, 1998, must have obtained, or entered

into a contract to obtain, the LLP

qualifying fishing history by 8:36 a.m.
PST on October 10, 1998,

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