

propagation or reintroduction programs for *A. franciscana* must account for the threat of cross pollination from hybrids or other species, and subsequent genetic contamination and swamping of the *A. franciscana* gene pool (Allendorf *et al.* 2001, pp. 613, 618-621). The conservation plan does take this into account by recommending that future outplantings of nursery-raised plants avoid areas that could facilitate cross pollination (Chasse *et al.* 2009, p. 31), but additional plans will be needed to work out the details.

We agree that climate change may cause presently suitable habitat to become unsuitable for endemic California plants in general, due to projected changes in temperature and rainfall (Loarie *et al.* 2008, pp. 1-2). The ability of *Arctostaphylos franciscana* to track future climate changes by establishing new plants in new habitat may be limited because of its historic association with serpentine and greenstone bedrock outcrops (USFWS 2003, pp. 95, 96). However, the current ability of modeling to predict specific changes in climate at a scale that is meaningful to the species is extremely limited. The petition did not provide substantial information, nor did we have information in our files, to indicate climate change is a threat to the species.

We agree that trampling by dogs or people could impact the species if the wild specimen, or any herbarium-raised future specimens, were to be placed in areas subject to regular foot or dog traffic, but neither the petition nor any information in our files provides substantial information to indicate that this has occurred or is likely to occur. The petition asserts that special events can draw tens of thousands of people to the Presidio, but does not provide substantial information to indicate that any such events are likely to occur near the translocated wild plant or near any herbarium-grown plants that may be translocated to the Presidio in the future.

Despite the fact that the translocation has already been accomplished (Chronicle 2010, p. 1; Yam 2010b, pp. 1, 4), we still do not know whether the plant will persist over time and reproduce. Chasse *et al.* (2009) acknowledge that translocation of the mature plant is "very risky" (Chasse *et al.* 2009, p. 15), and that the translocated plant will require careful monitoring and management by an experienced manzanita horticulturist to increase its chance of survival (Chasse *et al.* 2009, p. 26). The translocated wild plant has been planted in an active native plant management area and is protected from public access by a cable

and post fence (Chasse *et al.* 2009, p. 20). It was also monitored every day for the first 10 days at its new location (Yam 2010b, pp. 4-13), and is scheduled to be monitored weekly until November 1, 2010, and monthly thereafter for the following 2 years (Chasse *et al.* 2009, pp. 27, 28).

We agree that stochastic events may constitute a threat to the species. Because the known population of *Arctostaphylos franciscana* in the wild is currently limited to a single plant, the population may be considerably vulnerable to stochastic events, normal but randomly occurring environmental perturbations and catastrophes such as droughts, floods, and fires, from which large, wide ranging populations can generally recover, but which extirpate small isolated populations (Gilpin and Soule 1986, pp. 25-31). Therefore, we have determined that the petition and information in our files do present substantial information regarding threats from translocation of the species, from cross pollination with other *Arctostaphylos* species, and from stochastic events to indicate that listing may be warranted.

Finding

On the basis of our evaluation of the information presented under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing *Arctostaphylos franciscana* throughout its entire range may be warranted. This finding is based on information provided under factors A, C, D, and E.

Because we have found that the petition presents substantial information indicating that *Arctostaphylos franciscana* may be at risk of extinction now or in the foreseeable future and, therefore, listing under the Act may be warranted, we are initiating a status review to determine whether listing *A. franciscana* under the Act is warranted.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not

mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this document are staff members of the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 27, 2010

Wendi Weber,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010-19429 Filed 8-9-10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 0910051335-0171-01]

RIN 0648-AY28

Groundfish Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea/Aleutian Islands Crab Rationalization Program; Recordkeeping and Reporting

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed action removes the Crab Rationalization Program requirements for catcher/processors to weigh all offloaded crab on a state-approved scale that produces a printed record and to report this information at the time of offload to NMFS on a catcher/processor offload report. NMFS has determined that these requirements are no longer necessary. This proposed action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

DATES: Comments must be received no later than August 25, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–AY28, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.

- Fax: 907–586–7557, Attn: Ellen Sebastian.

- Mail: P.O. Box 21668, Juneau, AK 99802.

- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may 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.

Electronic copies of this rule, the Regulatory Impact Review (RIR), and the categorical exclusion memorandum may be obtained from the Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS Alaska, Sustainable Fisheries Division, e-mailed to David_Rostker@omb.eop.gov, or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. crab fisheries under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). The FMP was prepared by the North Pacific Fishery Management Council under the Magnuson-Stevens Act. Regulations implementing the FMP appear at 50 CFR parts 679 and 680. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Background

The Crab Rationalization (CR) Program is a limited-access system that allocates crab managed under the FMP among harvesters, processors, and

coastal communities. Currently, NMFS requires that all crab individual fishing quota (IFQ) harvested and processed by catcher/processors be weighed at sea prior to processing and that crab weights be reported to NMFS on an IFQ crab landings report (see § 679.5(e)(8)). The weights reported on the IFQ crab landings report are used to debit crab IFQ from a quota holder's account. In addition, catcher/processors are required to weigh the crab again when it is offloaded from the vessel and report this weight to NMFS on a catcher/processor offload report (see § 680.5(e)).

The original purpose of the offload report was to provide information so that NMFS could audit the IFQ crab landing reports. Completing this report requires a crab catcher/processor to offload all crab-processed product shoreside at a designated port and weigh that product on a scale approved by the state in which the crab is removed from the vessel. The offload report must be completed when crab are offloaded from the vessel and a scale printout showing gross product offload weight must be attached to the offload report. The weight reported on the offload report includes not only the weight of crab but also the weight of packaging, pallets, and glaze. While deductions for these items can be made, the deductions create variance in the total weight of crab landed shoreside. For this reason, NMFS has found it difficult to use the weights from the offload report to audit the weight obtained from the at-sea hopper scales as originally intended.

Advancements in at-sea reporting of crab catch (eLandings) and the improved reliability of the at-sea motion-compensated hopper scales have changed the need for CR catcher/processors to report offloads. Catcher/processors use eLandings to report total harvest of crab to NMFS weekly while at sea, which provides NMFS with up-to-date accounting of total crab harvested. Motion-compensated hopper scales provide reliable, independent estimates of the total catch by quota sector for all crab harvested.

Removal of the regulatory requirements for CR catcher/processors to weigh offloaded crab product and submit offload reports does not diminish NMFS' ability to verify reported CR crab catch weight. NMFS still requires that all crab be weighed at sea and scale weights of crab be submitted to NMFS on eLandings weekly reports. Alaska Department of Fish and Game (ADF&G) observers are onboard crab vessels and have the opportunity to observe hopper scale activities for consistency with the

regulatory requirement that vessels weigh all landed CR crab. NOAA Fisheries Office for Law Enforcement (OLE) uses eLandings weekly reports, the printouts from the hopper scales showing the total weight of crab harvested, and additional auditing methods to verify CR quota accounting instead of using the catcher/processor offload reports. Further, even without the requirement to weigh and report the gross weight of offloaded product, the OLE will still have the authority and ability to conduct a full audit of offload weights to verify reported crab catch weight.

Specifically, this proposed rule would remove the requirement at § 680.5(e) for the owner or operator of a catcher/processor to complete and submit to NMFS—at the time of offload of CR crab—a catcher/processor offload report with its attached scale printout showing gross product offload weight. It also would remove § 680.5(a)(2)(i)(H) because it only serves as a cross-reference to § 680.5(e), which would be removed. This rule also would remove the requirement at § 680.23(b)(4) for catcher/processors to weigh all offloaded CR Program crab on a state-approved scale.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This rule would relieve restrictions by removing weighing and reporting requirements under the CR Program that NMFS has determined are no longer necessary for management and monitoring of the crab fisheries. Adequate information about the weight of crab harvested by catcher/processors under the CR Program is available under regulations that govern the weighing and reporting of crab catch on the IFQ landing report. The reports to be removed by this action were first implemented at the inception of the CR fisheries and were intended to be used primarily for purposes of auditing IFQ landing reports. However, with more experience managing those fisheries and advances in electronic reporting, NMFS has determined that these requirements are no longer necessary. Removing these requirements would relieve restrictions on the industry and would reduce costs to both the industry and NMFS.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the

Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Factual Basis for Certification

Estimate of Economic Impact on Small Entities by Entity Size and Industry

The impacts of this action have been evaluated in the accompanying Regulatory Impact Review (RIR). The proposed regulatory changes would remove reporting requirements for directly regulated entities. The estimated costs of the current requirement imposed on directly regulated entities are small (on the order of \$25 per report and the fleet of four to six vessels submits a total of about 18 such reports, annually). Thus, because the action would remove a regulatory requirement and decrease compliance costs for directly regulated entities, this proposed action is not expected to have a significant adverse economic impact on any directly regulated small entities.

Description and Estimate of the Number of Small Entities to Which the Rule Applies

The number of active crab catcher/processors changes annually. As noted above, from four to six vessels have submitted these reports in recent years. In 2009, there were five crab catcher/processors. An analysis of operation gross revenues from all Alaskan sources indicates that only one of these is a small entity under RFA criteria (total gross revenues from all sources less than \$4 million). While this vessel would be affected by this action, one vessel would not constitute a substantial number of small entities.

Criteria Used to Evaluate Whether the Rule Would Impose “Significant Economic Impacts”

The two criteria recommended to determine the significant economic impact of the action are disproportionality and profitability. The proposed action would not place a substantial number of small entities at a disadvantage, relative to large entities. The proposed action would not have disproportionate impacts on small entities.

The proposed action would not adversely affect the profitability of any small entity. Indeed, the proposed action would “remove” a reporting burden and, as such, would “reduce”

economic costs imposed upon directly regulated small entities.

Criteria Used to Evaluate Whether the Rule Would Impose Impacts on “a Substantial Number” of Small Entities

NMFS’ Guidelines for Economic Review of National Marine Fisheries Service Regulatory Actions (<https://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/procedures/0111105.pdf>) explain that the term “substantial number” has no specific statutory definition and the criterion does not lend itself to objective standards applicable across all regulatory actions. Rather, “substantial number” depends upon the context of the action, the problem to be addressed, and the structure of the regulated industry. The Small Business Administration casts “substantial” within the context of “more than just a few” or *de minimis* (“too few to care about” criteria).

Description of and Basis for Assumptions Used

The proposed rule would not impose adverse economic impacts on any of these entities. The economic analysis contained in the RIR further describes the potential size, distribution, and magnitude of the economic impacts that this action may have on small entities. Based upon that analysis and the foregoing, NMFS finds that the proposed action would not have a significant economic impact on the small entities participating in these fisheries. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

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

Collection-of-information Requirements

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office for Management and Budget (OMB) under OMB Control No. 0648–0570.

Public reporting burden per response is estimated to average 20 minutes for a catcher/processor crab offload report. This proposed rule would remove this offload report and the associated reporting burden.

These estimates of public reporting burden include the time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Send comments regarding this burden estimate or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES); e-mail to David_Rostker@omb.eop.gov or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 4, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 680 is proposed to be amended 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; Pub. L. 109–241; Pub. L. 109–479.

§ 680.5 [Amended]

2. In § 680.5, remove and reserve paragraph (a)(2)(i)(H) and paragraph (e).

3. In § 680.23, revise paragraph (b)(4) to read as follows:

§ 680.23 Equipment and operational requirements.

* * * * *

(b) * * *

(4) Offload all CR crab product processed onboard at a shoreside location in the United States accessible by road or regularly scheduled air service; and

* * * * *

§ 680.23 [Amended]

4. At each of the locations shown in the “Location” column, remove the phrase indicated in the “Remove” column and replace it with the phrase indicated in the “Add” column for the number of times indicated in the “Frequency” column.

| Location | Remove | Add | Frequency |
|--------------------|---|--------------|-----------|
| § 680.23(f)(3)(i) | delivery or offload are | delivery are | 1 |
| § 680.23(f)(3)(ii) | CR crab or an offload of CR crab product must | CR crab must | 1 |

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