

Monkfish FMP into compliance with the requirements of the reauthorized Magnuson-Stevens Act. The 2006 reauthorization of the Magnuson-Stevens Act contains several new requirements including the requirement that all fisheries adopt ACLs to prevent overfishing, and measures to ensure accountability.

Amendment 5 was also developed to bring the Monkfish FMP into compliance with recently revised National Standard 1 (NS1) Guidelines (74 FR 3178; January 16, 2009) which not only establish a process for setting ACLs and guidance for establishing AMs, but also provides updated guidelines for establishing reference points and control rules (*i.e.*, maximum sustainable yield (MSY), optimum yield (OY), overfishing limits (OFL), acceptable biological catch (ABC), ACLs, and annual catch targets (ACTs)) and clarifies the relationships among them. Amendment 5 would establish biological and management reference points to be consistent with NS1 guidelines utilizing recent scientific information from the 2007 Northeast Data Poor Stocks Working Group assessment.

In addition to establishing revised biological and management reference points, ACLs, and AMs for the monkfish fishery, Amendment 5 also proposes measures intended to promote efficiency and reduce waste in the monkfish fishery. First, a measure is being proposed that would minimize regulatory discards resulting from monkfish trip limit overages by allowing vessels to land an additional trip limit (one day's worth) and have their DAS usage for that trip adjusted to account for the overage. Second, a measure is being proposed that would allow the landing of monkfish heads separate from the body by adding a new conversion factor and authorized landing form to the FMP. Lastly, a measure is being proposed in Amendment 5 that would enable changes to be made to the Monkfish RSA Program through a framework adjustment versus an FMP amendment.

Public comments are being solicited on Amendment 5 and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 5 will be published in the **Federal Register** for public comment. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of Amendment 5 to be considered in the approval/disapproval decision on the amendment. All comments received by

April 4, 2011, whether specifically directed to Amendment 5 or the proposed rule for Amendment 5, will be considered in the approval/disapproval decision on Amendment 5. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 5. To be considered, comments must be received by close of business on the last day of the comment period.

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

Dated: January 26, 2011.

**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

**RIN 0648-BA11**

#### 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 Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (Program) allocates BSAI crab resources among harvesters, processors, and coastal communities. Amendment 37 would amend the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) and the Program by establishing a process for eligible fishery participants to request that NMFS exempt holders of West-designated individual fishing quota (IFQ) and individual processor quota (IPQ) in the Western Aleutian Islands golden king crab fishery from the West regional delivery requirements. Federal regulations require West-designated golden king crab IFQ to be delivered to a processor in the West region of the Aleutian Islands with an exact amount of unused West-designated IPQ. However, processing capacity may not be available each season. Amendment 37 is necessary to prevent disruption to the Western Aleutian Islands golden king crab fishery, while providing for the

sustained participation of municipalities in the region. 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 submitted on or before April 4, 2011.

**ADDRESSES:** Send comments to James W. Balsiger, Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-BA11", by any one of the following methods:

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

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

- **Fax:** (907) 586-7557.

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

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 (*e.g.*, name, address) 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 37, 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 Program may be obtained from the Alaska Region Web site at <http://www.alaskafisheries.noaa.gov/sustainablefisheries.htm>.

**FOR FURTHER INFORMATION CONTACT:** Seanbob Kelly, 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.

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 as amended by the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). Amendments 18 and 19 amended the FMP to include the Program. Regulations implementing these amendments were published on March 2, 2005 (70 FR 10174), and are located at 50 CFR part 680.

NMFS established the Program as a catch share program for nine crab fisheries in the BSAI. The Individual Fishing Quota (IFQ) portion of the Program assigned quota share (QS) to persons based on their historic participation in one or more of these nine BSAI crab fisheries during a specific time period. Under the Program, NMFS issued four types of QS: Catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch onshore or to stationary floating crab processors; catcher/processor vessel owner (CPO) QS was assigned to LLP holders that harvested and processed their catch at sea; captains and crew onboard catcher/processor vessels were issued catcher/processor crew (CPC) QS; and captains and crew onboard catcher vessels were issued catcher vessel crew (CVC) QS. Each year, a person who holds QS may receive IFQ, which represents an exclusive harvest privilege for a portion of the annual total allowable catch (TAC). Under the program, QS holders can form cooperatives to pool the harvest of the IFQ on fewer vessels to minimize operational costs.

NMFS also issued processor quota share (PQS) under the Program. Each year, PQS yields an exclusive privilege to receive for processing a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called IPQ. A portion of the QS issued yields IFQ that is required to be delivered to a processor with a like amount of unused IPQ. IFQ derived from CVO QS is subject to annual designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS for a fishery and region is designated as Class A IFQ, and the remaining 10 percent of the IFQ is designated as Class B IFQ. Class A

IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery and region.

In most crab fisheries, the Program established regional designations for QS and PQS to ensure that municipalities that were historically active as processing ports continue to receive socioeconomic benefits from crab deliveries or to encourage the development of processing capacity in specific isolated municipalities. To accomplish this, the Program imposes regional delivery requirements to specific geographic regions based on historic geographic delivery and processing patterns.

The Western Aleutian Islands golden king crab (*Lithodes aequispinus*) (WAG) fishery is managed under the Program. Existing regulations require that 50 percent of the golden king crab harvested with catcher vessel Class A IFQ issued for this fishery be delivered to a processor located in the West region (west of 170° W. Long.) with West-designated IPQ. The purpose of these delivery requirements is to support the development of processing facilities in Adak and Akta, two isolated municipalities in the West region. The only shore-based processing facility capable of processing WAG in this region has been located in the City of Adak. In April 2009, the Adak facility closed and, in September 2009, the facility's owners officially filed for Chapter 11 bankruptcy. At this time, no processing facility capable of processing WAG crab is open in the West region, and none is likely to open in the near future, yet Federal regulations require that crab harvested with Class A IFQ be processed in the West region.

On February 18, 2010, NMFS published an emergency action to exempt West-designated IFQ and West-designated IPQ for the WAG fishery from the West regional designation until August 17, 2010 (75 FR 7205). NMFS extended the emergency action on August 17, 2010 (75 FR 50716), and the extension is in effect through February 20, 2011. Removing the West regional designation from this IFQ and IPQ has temporarily relaxed the requirements that these shares be used in the West region.

At its April 2010 meeting, the Council adopted Amendment 37 to the FMP to address the lack of processing capacity in the West region. Amendment 37 would establish a process for QS holders, PQS holders, and the cities of Adak and Atka to request that NMFS

exempt the WAG fishery from the West regional delivery requirements. The Council and NMFS recognize that the regional delivery requirements would be untenable if processing capacity is not available in the region, potentially resulting in unutilized TAC. Amendment 37 would establish a means to enhance stability in the fishery, while continuing to promote the sustained participation of the municipalities intended to benefit from the West regional delivery requirements.

Amendment 37 would identify the QS holders, PQS holders, and municipalities who would be eligible to apply for an exemption from the West regional delivery requirements. The Council selected the following eligibility requirements for contract parties as necessary to request an exemption: (1) Any person or company that holds in excess of 20-percent of the West-designated WAG QS; (2) any person or company that holds in excess of 20-percent of the West-designated WAG PQS; and (3) the cities of Adak and Atka. If an exemption is granted by NMFS, the exemption would apply to all West-designated IFQ and IPQ holders for the remainder of the crab fishing year. Participants holding 20-percent or less of either share type would have no direct input into the contract negotiations or applications; however, the exemption would not obligate an IFQ or IPQ holder to deliver or process outside of the West region, but would provide that flexibility.

The Council considered several thresholds of QS and PQS ownership when considering eligibility criteria. The Council recommended a greater than 20-percent minimum participation threshold for eligibility because the inclusion of share holders with less economic incentive to harvest or process West-designated WAG could impede effective negotiations. Participants with less than or equal to 20-percent ownership could withhold participation in an exemption to extract more favorable terms from larger entities with greater economic incentive to fully harvest and process the IFQ and IPQ. IFQ and IPQ holders that are substantially invested in the fishery are more likely to act quickly to ensure that TAC is fully utilized. By establishing the greater than 20-percent threshold, this proposed action is intended to provide a balance between efficiency and the participation of QS and PQS holders. Additionally, these eligibility criteria are intended to balance the interests of WAG fishery QS and PQS holders with the municipalities intended to benefit from the West regional delivery requirements.

Based on the analysis and public testimony, the Council adopted Amendment 37 in April 2010, and submitted Amendment 37 to NMFS for review by the Secretary. Amendment 37 would modify the FMP to allow eligible participants to submit an application to NMFS requesting an exemption from the West regional delivery requirements. The application would require the eligible parties to agree to a master contract and the completion of an application. Upon approval of a completed application, NMFS would post notice of an annual exemption from the WAG West regional delivery requirements at the NMFS Web site at <http://alaskafisheries.noaa.gov>. Such an exemption would enable all West-designated Class A IFQ and IPQ holders to deliver and receive WAG crab at processing facilities outside of the West

region, thereby promoting the full utilization of the TAC when processing capacity is not available in the West region.

Public comments are being solicited on proposed Amendment 37 through the end of the comment period (*see DATES*). NMFS intends to publish a proposed rule in the **Federal Register** for public comment that would implement Amendment 37, following NMFS's evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the close of the comment period on Amendment 37 to be considered in the approval/disapproval decision on Amendment 37. All comments received by the end of the comment period on Amendment 37, whether specifically directed to the FMP amendment or the proposed rule,

will be considered in the approval/disapproval decision on Amendment 37. Comments received after the end of the public comment period for Amendment 37, even if received within the comment period for the proposed rule, will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received—not just postmarked or otherwise transmitted—by the close of business on the last day of the comment period.

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

Dated: January 26, 2011.

**Emily H. Menashes,**

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

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