

ABC NMFS implemented in the emergency action is consistent with the best scientific information available. The analysis presented in the supplemental EA concludes that increasing the butterfish ABC to 1,811 mt is not expected to have any adverse impact on the butterfish stock when compared to the original 1,500-mt butterfish ABC.

#### Classification

NMFS has determined that this rule is consistent with the Magnuson-Stevens Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds good cause under section 553(b)(B) of the Administrative Procedure Act (APA) that it is impracticable and contrary to the public interest to provide for prior notice and opportunity for the public to comment. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment contrary to the public interest. This action provides the benefit of allowing the *Loligo* fleet to optimize its harvest, with less concern that the fishery could be closed due to the butterfish mortality cap. The initial emergency action did not allow for prior public comment because the scientific review process and determination could not have been completed any earlier, due to the inherent time constraints associated with the process and the fact that the information on which this action is based became available after 2011 specifications were finalized.

For the reason above, the Assistant Administrator for Fisheries finds good cause under section 553(d) of the APA to waive the 30-day delay in effectiveness.

This emergency rule has been determined to be not significant for purposes of E.O. 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

The EA prepared for the initial emergency rule analyzed the impacts of the emergency specifications for the duration of a year (Supplemental Environmental Assessment for 2011 Atlantic Mackerel, Squid, and Butterfish Specifications; February 2011). Therefore, the impacts of this emergency action extension have been analyzed, and are within the scope of the Finding of No Significant Impact.

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

Dated: August 2, 2011.

**Eric C. Schwaab,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

**RIN 0648-XA209**

#### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands King and Tanner Crabs

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

**ACTION:** Notice of agency decision.

**SUMMARY:** NMFS announces approval of Amendments 38 and 39 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). Amendment 38 establishes a mechanism in the FMP to specify annual catch limits and accountability measures for each crab stock. This action is necessary to account for uncertainty in the overfishing limit and prevent overfishing. Amendment 39 modifies the snow crab rebuilding plan to define the stock as rebuilt the first year the stock biomass is above the level necessary to produce maximum sustainable yield. Amendments 38 and 39 are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** The amendment was approved on August 2, 2011.

**ADDRESSES:** Electronic copies of Amendments 38 and 39 and the Environmental Assessment prepared for this action may be obtained from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

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

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan or fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of

Commerce. 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.

NMFS published the notice of availability for Amendments 38 and 39 to the FMP on May 4, 2011 (76 FR 25295), with a comment period that ended on July 5, 2011. NMFS received one comment letter. NMFS summarized this letter into two separate comments, and responds to them under Response to Comments, below.

NMFS determined that Amendments 38 and 39 to the FMP are consistent with the Magnuson-Stevens Act and other applicable laws and approved Amendments 38 and 39 on August 2, 2011. The May 4, 2011, notice of availability (76 FR 25295) contains additional information on this action. No changes to Federal regulations are necessary to implement these FMP amendments.

The crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The FMP establishes a cooperative management regime that defers many aspects of crab fisheries management to the State of Alaska (State) with Federal oversight. State crab fishery management action must be consistent with the FMP, Magnuson-Stevens Act, and other applicable Federal laws.

#### Annual Catch Limits and Acceptable Biological Catch

In October 2010, the Council unanimously recommended Amendments 38 and 39 to the FMP. Amendment 38 establishes a mechanism in the FMP for the Council to specify annual catch limits (ACLs) and accountability measures. Amendment 39 modifies the snow crab rebuilding plan to establish that the stock will be rebuilt when the snow crab biomass is estimated to reach the level necessary to produce maximum sustainable yield.

Amendment 38 satisfies requirements of the Magnuson-Stevens Act, as amended in 2007, while maintaining the FMP's cooperative management regime that relies on State expertise in collecting and analyzing scientific data on crab and in establishing the total allowable catches (TACs). Amendment 38 establishes acceptable biological catch (ABC) control rules in the FMP

and sets an ACL for each stock equal to the stock's ABC. Annually, the ABC control rule will be used to set the maximum ABC for each crab stock below the overfishing level (OFL) set for that stock. This mechanism ensures that, at the maximum ABC, the probability of overfishing is less than 50 percent.

Amendment 38 establishes accountability measures to comply with the Magnuson-Stevens Act requirement that FMPs include accountability measures to prevent catch from exceeding ACLs and to correct overages of the ACL if they do occur.

Amendment 38 also amends the FMP to establish an optimum yield (OY) range of 0 to less than the OFL catch. This OY range enables the State to determine the appropriate TAC levels below the OFL to prevent overfishing or address other biological concerns that may affect the reproductive potential of a stock but that are not reflected in the OFL itself. The State establishes TACs at levels that maximize harvests, and associated economic and social benefits, when biological and ecological conditions warrant doing so.

Amendment 39 modifies the existing snow crab rebuilding plan to redefine when the snow crab stock will be considered "rebuilt." Under Amendment 39, snow crab will be considered rebuilt when the estimated biomass reaches the level necessary to produce maximum sustainable yield, rather than when estimated biomass reaches such a level for 2 consecutive years, as previously defined. The Scientific and Statistical Committee recommended that a 1-year threshold is appropriate for snow crab based on its confidence in the biomass estimates provided by the approved stock assessment model.

An Environmental Assessment was prepared for Amendments 38 and 39 that describes the management background, the purpose and need for action, the management alternatives, and the environmental, social, and economic impacts of the alternatives (see ADDRESSES).

### Response to Comments

*Comment 1:* The commenter supports approval of Amendment 38 but expresses concern over the fact that the burden of implementing accountability measures falls primarily on the State. NMFS should accept some of the responsibility for assisting the State in implementing accountability measures.

*Response:* NMFS agrees that it has the responsibility to implement accountability measures. The accountability measures under Amendment 38 conform to the cooperative management structure of the FMP. Appropriate accountability measures are implemented by the Council, NMFS, and the State according to the respective roles and responsibilities under the FMP. Existing State and Federal accountability measures prevent TACs from being exceeded in crab fisheries and will continue to be used to prevent catch from exceeding ACLs. Federal accountability measures will be implemented during the ABC-setting process as the Council's Crab Plan Team and the Scientific and Statistical Committee determine the appropriate downward adjustments to the ACL in the fishing year after an ACL has been exceeded. Additionally, given that the State sets the TAC under the FMP, Amendment 38 also includes accountability measures for the State to exercise in the annual TAC-setting process. Under the FMP, the State has some discretion to determine the most appropriate method to account for any catch above the ACL in setting the TAC for the subsequent fishing season.

*Comment 2:* The commenter does not support Amendment 39. The commenter states that it would be premature to declare the snow crab stock as rebuilt the first year the stock biomass is above the level necessary to produce maximum sustainable yield. The commenter suggests postponing the reclassification of the snow crab stock as rebuilt until the stock has proven a 2-year trend above the estimated biomass. The commenter states that maintaining

the 2-year rebuilding requirement would ensure that the biomass has reached the appropriate level before opening it up to the new challenges it will face under the new classification system.

*Response:* NMFS and the Council adopted the 2-year threshold previously used to define the snow crab stock as rebuilt as a precautionary measure to address the high degree of uncertainty in snow crab biomass estimates at the time the rebuilding plan was approved in 2000. Since then, a stock assessment model has been approved for use in estimating the snow crab biomass and setting the biological reference points.

The decision to modify the definition of rebuilt from 2 consecutive annual biomass estimates at or above the level necessary to support maximum sustainable yield to 1 such biomass estimate was based on the confidence of the Crab Plan Team and Scientific and Statistical Committee in the stock assessment model's ability to accurately estimate snow crab biomass. With the improved accuracy of biomass estimates provided by the approved stock assessment model, the 2-year threshold is no longer necessary.

The comment does not identify the new challenges that snow crab will face under the new classification system. Under Amendment 38, once the snow crab stock is rebuilt, the Scientific and Statistical Committee will set the OFL and ABC according to the best available scientific information and the methods established in the FMP. In addition, the State will set the TAC according to the harvest strategy. These measures will prevent overfishing and help to ensure that the snow crab stock biomass remains at or near the level necessary to produce maximum sustainable yield.

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

Dated: August 2, 2011.

**Eric C. Schwaab,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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