

[Federal Register: March 4, 1994]

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DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Administration
50 CFR Part 671 [Docket No. 940253-4053; I.D. 021494C] RIN 0648-AG20
King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands
AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA), Commerce.
ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 2 to the Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands (BSAI). This FMP amendment would establish the Norton Sound Section of the Northern District of the king crab fishery as a superexclusive registration area. If this amendment is approved, existing regulations, which supersede State of Alaska (State) regulations that establish Norton Sound as a superexclusive registration area in the exclusive economic zone (EEZ) of the BSAI, will be removed and reserved. This action is necessary for the effective management of the fishery having the smallest biomass and guideline harvest level (GHL) in the BSAI crab fisheries. This action is intended to promote management and conservation of crab and other fishery resources and to further the goals and objectives contained in the FMP for the Commercial King and Tanner Crab Fisheries of the BSAI. DATES: Comments must be received on or before April 14, 1994.

ADDRESSES: Send comments to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802 (Attn. Lori Gravel). Individual copies of Amendment 2 and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) of this amendment may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907-271-2809). FOR FURTHER INFORMATION CONTACT: Kim J. Spitler, Fisheries Management Division, Alaska Region, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: Section 304(a)(1)(D)(ii) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time, the Secretary of Commerce (Secretary) has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

Background

The commercial king and Tanner crab fisheries in the EEZ of the BSAI are managed under the FMP. This FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). It is a framework FMP that, with oversight by the Council and Secretary, defers management of the crab resources in the BSAI to the State. The FMP was approved by the Secretary and implemented on June 2, 1989. At times, regulations implementing the FMP must be amended to resolve problems pertaining to management of the BSAI crab fisheries.

The State's Board of Fisheries (Board) formulates regulations to manage the crab fisheries under procedures specified in the State's Administrative Procedure Act. On February 8, 1993, the Board established Norton Sound in the BSAI as a superexclusive registration area for purposes of managing the Norton

Sound red king crab fishery. The operator of any vessel registered in a superexclusive area would not be able to register the vessel in any other area during that registration year. This management measure was proposed to address the unique collection of problems that make fishery management difficult in Norton Sound. The problems are associated with conservation and management of a fishery with a small biomass, small guideline harvest level (GHL), and a stock on the edge of its geographic range, which makes it biologically sensitive. The problems include overcapitalization, short seasons, high management costs, and both over-harvest and under-harvest of GHLs. Historically, the fishery has been characterized by years with low levels of participation and fairly high catch rates followed by years with high levels of participation and low catch rates. A combination of factors has led to high participation, which is expected to continue into the future. These factors are primarily the overcapitalized crab fleet and participants' efforts to establish catch histories in the event individual fishing quotas (IFQs) are instituted. Superexclusive registration would be expected to create a management environment discouraging participation by large crab vessels and catcher/processors. Probable results are a slower-paced fishery, fuller attainment of GHLs, a longer season, and reduced administrative and enforcement costs.

The Alaska crab Coalition (ACC) appealed the State's designation of Norton Sound as a superexclusive registration area. Following Secretarial review of the State's action, the Secretary issued an interim final rule that superseded State regulations establishing Norton Sound as a superexclusive registration area in the EEZ of the BSAI (58 FR 38727, July 20, 1993). This action was necessary because the Secretary had determined that designation of superexclusive registration areas was inconsistent with provisions of the FMP. The FMP contains three categories of management measures: (1) Specific Federal management measures that require an FMP amendment to change; (2) framework type management measures, with criteria set out in the FMP that the State must follow when implementing changes in State regulations; and (3) measures that are neither rigidly specified nor frameworked in the FMP, and which may be freely adopted or modified by the State, subject to an appeals process or other Federal laws. Registration areas are listed as a Category 2 measure. Section 8.2.8 of the FMP specifies that king crab registration areas may be designated as either exclusive or nonexclusive. Designation of a registration area as superexclusive would require an FMP amendment and incorporation into the FMP as a Category 1 management measure.

In July 1993, the Council requested proposals for possible amendments to the FMP. On August 13, 1993, the Board submitted a proposal to designate Norton Sound as a superexclusive registration area. This proposal was reviewed by the crab FMP plan team, which ranked it as a high priority and recommended it to the Council for consideration. At its September 1993 meetings, the Council recommended analysis of the Board's proposal. The Alaska Department of Fish and Game (ADF&G) and NMFS prepared a draft analysis for the proposed FMP amendment to designate Norton Sound as a superexclusive registration area. The draft analysis was reviewed by the Council and its Advisory Panel (AP) and Scientific and Statistical Committee (SSC) during the Council's December 1993 meetings and adopted for public review. At its January 1994 meetings, the Council considered the testimony and recommendations of the AP, SSC, fishing industry representatives and the general public on the proposed action to designate Norton Sound as a superexclusive registration area. The Council adopted the proposed action under Amendment 2 to the FMP and requested NMFS to remove existing regulations at 50 CFR 671.20, which supersede existing State

regulations designating Norton Sound as a superexclusive registration area.

Classification

NMFS prepared an IRFA as part of the RIR, which concludes that this proposed rule, if adopted, could have significant effects on small entities. Overall, superexclusive registration area designation likely will result in a transfer of participation and income from a predominantly large-vessel fleet to a predominantly small-vessel fleet. Twenty-six vessels registered and fished in Norton Sound in 1992, and Norton Sound crab contributed no more than 0.7 percent to any of these vessels' crab landings for the year. Norton Sound crab contributed no more than 1.6 percent of the total for any of the catcher/processors in 1990. Neither operators of individual vessels nor participants in the pre-1993 fleet were dependent on this fishery in terms of year-to-year participation or landings within any one year.

Not knowing the outcome of the ACC's appeal and Secretarial review, many vessel owners chose not to register for the Norton Sound fishery in 1993. Twenty-eight percent of the vessels that were registered were from the local region. A new fresh market for summer king crab was developed and resulted in higher ex-vessel prices than that received for crab that are processed and frozen. Local residents are maintaining plans to develop this market further. Most of the fishermen on the small vessels are expected to be unemployed if they do not participate in this fishery. The infusion of employment and income from the 1993 small vessel fishery was significant in the Nome area. The 1993 king crab fishery represented the largest fishery in the region in terms of income.

Superexclusive registration is predicted to result in an increase in retained revenues and possibly to improve market conditions for increasing overall revenues. It is expected to reduce industry compliance costs. The economic impact on small entities under the proposed action would not result in a reduction in annual gross revenues of more than 5 percent, annual compliance costs that increased total costs of production by more than 5 percent, or compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities. A copy of this analysis is available from the Council (see ADDRESSES).

This rule is not subject to review under E.O. 12866. List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Dated: February 28, 1994. Nancy Foster, Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 671 is proposed to be amended as follows:

PART 671--KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

1. The authority citation for 50 CFR part 671 continues to read as follows: Authority: 16 U.S.C. 1801 et seq.

Sec. 671.20 [Removed and reserved]

2. Section 671.20 is removed and reserved.