

§ 218.1(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.6 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 218.5(b); and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.4 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.7, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under § 216.106 of this chapter and § 218.8 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization. (c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

#### **§ 218.9 Modifications to Letters of Authorization.**

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to § 216.106 of this chapter and § 218.7 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.8, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.2(c), a Letter of Authorization issued pursuant

to § 216.106 of this chapter and § 218.7 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

**RIN 0648-AX14**

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area and Gulf of Alaska License Limitation Program**

**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:** Amendment 92 to the Fishery Management Plans for Groundfish of the Bering Sea/Aleutian Islands Management Area and Amendment 82 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs) would remove trawl gear endorsements on licenses issued under the license limitation program in specific management areas if those licenses have not been used on vessels that meet minimum recent landing requirements using trawl gear. This action would provide exemptions to this requirement for licenses that are used in trawl fisheries subject to quota-based management. This action would issue new area endorsements for trawl catcher vessels in the Aleutian Islands if minimum recent landing requirements in the Aleutian Islands were met. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Comments on the amendments must be submitted on or before February 10, 2009.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-AX14," by any one of the following methods:

• **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal website 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 9<sup>th</sup> 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 Amendments 92 and 82, the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) prepared for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://www.fakr.noaa.gov/sustainablefisheries.htm>.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management 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 license limitation program (LLP) for groundfish fisheries was recommended by the North Pacific Fishery Management Council (Council) in June 1995 as Amendments 39 and 41 to the Bering Sea/Aleutian Islands Management Area (BSAI) and the Gulf of Alaska (GOA) FMPs, respectively. NMFS published a final rule to implement the LLP on October 1, 1998 (63 FR 52642), and the LLP was implemented on January 1, 2000.

The LLP for groundfish established specific criteria that must be met to allow a person to use a vessel to continue to be eligible to fish in federally managed groundfish fisheries. Under the LLP, NMFS issued LLP licenses. These LLP licenses were issued to a vessel owner based on the catch history of their vessels in Federal groundfish fisheries during the mid 1990's. LLP licenses: (1) endorse fishing activities in specific regulatory areas in the BSAI and GOA; (2) restrict the length of the vessel on which the LLP license may be used; (3) designate the fishing gear that may be used on the vessel, trawl or non-trawl gear designations; (4) designate the type of vessel operation permitted, LLP licenses designate whether the vessel to which the LLP is assigned may operate as a catcher vessel or as a catcher/processor; and (5) are issued so that the endorsements for specific regulatory areas, gear designations, or vessel operational types are non-severable from the LLP license, once issued, the components of the LLP license cannot be transferred independently. By creating LLP licenses with these characteristics, the Council and NMFS limited the ability of a person to assign an LLP license that was derived from the historic fishing activity of a vessel to be transferred and used on another vessel in a manner that could expand fishing capacity.

In 2000, NMFS issued over 300 LLP licenses endorsed for trawl gear. A vessel owner received an LLP license endorsed for a specific regulatory area in the BSAI, either the Bering Sea subarea (BS) or Aleutian Islands subarea (AI); or a specific regulatory area in the GOA, Southeast Outside District (SEO), Central Gulf of Alaska (CG), or Western Gulf of Alaska (WG) if that vessel met specific landing requirements in that specific regulatory area. The minimum landing requirements differed depending on the regulatory area, size of the vessel, and the operational type of the vessel. Soon after LLP licenses were issued it became apparent that a substantial number of trawl-endorsed LLP licenses were not being used. Changes in the economic viability of some fishing operations, changes in fishery management regulations, and consolidation of fishery operations are likely factors affecting the number of LLP licenses that were actively assigned to vessels. LLP licenses that are valid but have not been used recently on a vessel are commonly known as latent LLP licenses.

Beginning in early 2007, the Council began reviewing the potential removal of latent trawl-endorsed LLP licenses.

This review was initiated primarily at the request of active trawl fishery participants who were concerned that latent trawl-endorsed LLP licenses could become active in the future and adversely affect their fishing operations. During the process of this review, the Council also received input from the public requesting modification to the LLP to meet unique conditions in the AI area that limit the ability of catcher vessels and specific AI area communities to harvest and process federally managed groundfish. In April 2008, after more than a year of review, development of an analysis, and extensive public comment, the Council recommended modifications to the LLP to revise eligibility criteria for trawl endorsements on LLP licenses. Amendments 92 and 82 would implement two different actions.

First, Amendments 92 and 82 would remove latent trawl endorsements on LLP licenses. A trawl endorsement in a specific regulatory area would be removed from an LLP license if that LLP license has not been assigned to a vessel that has made a minimum of two landings using trawl gear in a specific regulatory area from 2000 through 2006. Two exemptions to the landing requirements would apply. One would allow a person to maintain their trawl endorsement in the CG and the WG even if that person did not meet the landing requirement in one of the regulatory areas, provided that LLP license had been used on a vessel that made at least 20 landings using trawl gear in one regulatory area in either the CG or WG from 2005 through 2007. The Council determined that an exemption to the landing requirement is warranted for these two areas in the GOA in order to qualify license holders that have established records of recent participation in GOA trawl fisheries. This provision would only apply to LLP licenses that are designated for catcher vessels. The second exemption would allow retention of a trawl endorsement in a specific regulatory area if that regulatory area endorsement is required to continue participation in one of three Limited Access Privilege Programs (LAPPs) currently in place: the American Fisheries Act (AFA); the Amendment 80 Program; and the CG Rockfish Program. Under this exemption, NMFS would not remove trawl endorsements with a BS or AI endorsement if that LLP license is assigned for use in the AFA or Amendment 80 LAPP, and NMFS would not remove trawl endorsements in with a CG endorsement if that LLP license is assigned for use in the CG

Rockfish Program LAPP. The Council determined that exemptions for LAPPs are appropriate because the participants in these three LAPPs have already met participation requirements for these specific management areas to participate in these programs.

Second, Amendments 92 and 82 would issue new trawl AI LLP endorsements for catcher vessel operations for use in the AI. Under this proposed action, NMFS would issue AI trawl endorsements to (1) non-AFA catcher vessels less than 60 feet length overall (LOA) if those vessels have made at least 500 metric tons (mt) of landings of Pacific cod in State of Alaska waters adjacent to the AI during the Federal Pacific cod season during 2000 through 2006; or (2) non-AFA catcher vessels greater than 60 feet LOA if those vessels have made at least one landing in State of Alaska waters during the Federal groundfish season in the AI and have made at least 1,000 mt of landings in the BSAI Pacific cod fishery during 2000 through 2006. The Council determined that these provisions would provide additional harvest opportunities to owners of non-AFA trawl catcher vessels that have been used in State of Alaska waters in the Aleutian Islands in recent years, but who do not hold an LLP license with an AI area endorsement. These endorsements are also likely to facilitate shore-based processing operations in the Aleutian Islands, primarily in the community of Adak, Alaska by providing greater harvesting opportunities to the catcher vessel fleet currently delivering to Adak. In addition, the Council recommended that the new AI area endorsements that would be issued based on the landings of vessels less than 60 feet LOA should be severable and transferable from the overall license. No other area endorsement in the existing LLP is allowed to be transferred separately from the LLP license to which it is attached. The proposed action would create a new type of independently transferrable area endorsement. However, the Council clarified that these AI area endorsements must be reassigned, or reattached, to an LLP license in order to be used. The Council recommended a transferrable AI area endorsement for vessels less than 60 feet LOA to ensure that these endorsements would be used on vessels in the Aleutian Islands.

Public comments are being solicited on proposed Amendments 92 and 82 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 Amendments 92 and 82,

following NMFS (evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the close of the comment period on Amendments 92 and 82 to be considered in the approval/disapproval decision on Amendments 92 and 82. All comments received by the end of the comment period on Amendments 92/82, whether specifically directed to the FMP amendments or the proposed rule, will be considered in the approval/disapproval decision on Amendments 92 and 82. Comments received after the end of the public comment period for Amendments 92 and 82, 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: December 8, 2008.

**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

[Docket No. 080630808-8814-01]

RIN 0648-AW97

#### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations implementing Amendment 28 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). This proposed regulation would amend the Bering Sea/Aleutian Islands Crab Rationalization Program to allow post-delivery transfers of all types of individual fishing quota and individual processing quota to cover overages. This action is necessary to improve flexibility of the fleet, reduce

the number of violations for overages, reduce enforcement costs, and allow more complete harvest of allocations. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

**DATES:** Comments must be received no later than January 26, 2009.

**ADDRESSES:** Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-AW97," by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website 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 9<sup>th</sup> 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.

This proposed action was categorically excluded from the need to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act. Copies of Amendment 28, the categorical exclusion memorandum, and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action, as well as the Environmental Impact Statement (EIS) prepared for the Crab Rationalization Program may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907-586-7228, or Julie Scheurer, 907-586-7356.

**SUPPLEMENTARY INFORMATION:** The king and Tanner crab fisheries in the

exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed 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 (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendments 18 and 19 to the FMP implemented the BSAI Crab Rationalization Program (CR Program). Regulations implementing Amendments 18 and 19 were published on March 2, 2005 (70 FR 10174), and are located at 50 CFR part 680.

#### Background

Under the CR Program, NMFS issued quota share (QS) to persons based on their qualifying harvest histories in the BSAI crab fisheries during a specific time period. Each year, the QS issued to a person yields an amount of individual fishing quota (IFQ), which is a permit that provides an exclusive harvesting privilege for a specific amount of raw crab pounds, in a specific crab fishery, in a given season. The size of each annual IFQ allocation is based on the amount of QS held by a person in relation to the total QS pool in a crab fishery. For example, a person holding QS equaling 1 percent of the QS pool in a crab fishery would receive IFQ to harvest one percent of the annual total allowable catch (TAC) in that crab fishery. Catcher processor license holders were allocated catcher processor vessel owner (CPO) QS for their history as catcher processors; and catcher vessel license holders were issued catcher vessel owner (CVO) QS based on their catcher vessel history.

Under the CR Program, 97 percent of the initial allocation of QS was issued to vessel owners as CPO or CVO QS. The remaining 3 percent was issued to vessel captains and crew as "C shares" based on their harvest histories as crew members onboard crab fishing vessels. Of the CVO IFQ, 90 percent is issued as "A shares," or "Class A IFQ," which, in most fisheries, are subject to regional landing requirements and must be delivered to a processor holding unused individual processor quota (IPQ). This regional landing requirement is commonly referred to as "regionalization." The remaining 10 percent of the annual vessel owner IFQ is issued as "B shares," or "Class B IFQ," which may be delivered to any processor and are not subject to regionalization. C shares also are not subject to regionalization.

Processor quota shares (PQS) are long term shares issued to processors. These