



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
P.O. Box 21109
Juneau, Alaska 99802-1109

The NOAA Office of General Counsel for Enforcement and Litigation, Alaska Region, issues the following statement:

On October 15, 2006, the opilio crab fishery season in the Bering Sea subarea opened and, as of the date of this statement, is still open.

On January 12, 2007, the Magnuson Stevens Fishery Conservation and Management Act was reauthorized by the U.S. Congress and signed by the President. (PL 109-479, HR 5946, January 12, 2007).

The following two provisions relating to the processing and use of individual processor quota (IPQ) for the *C. opilio* crab fishery in the Bering Sea subarea are contained in that Act:

SEC. 122. CONVERSION TO CATCHER/PROCESSOR SHARES.

(e) USE CAPS.—

(1) IN GENERAL.--Notwithstanding sections 680.42(b)(ii)(2) and 680.7(a)(ii)(7) of title 50, Code of Federal Regulations, custom processing arrangements shall not count against any use cap for the processing of opilio crab in the Northern Region so long as such crab is processed in the Northern Region by a shore-based crab processor.

(2) SHORE-BASED CRAB PROCESSOR DEFINED.--In this paragraph, the term "shore-based crab processor" means any person or vessel that receives, purchases, or arranges to purchase unprocessed crab, that is located on shore or moored within the harbor.

For purposes of assisting fishermen and processors in complying with the above provisions, the NOAA Office of General Counsel for Enforcement and Litigation, Alaska Region, provides the following guidance:

(1) The phrase "custom processing arrangements" as used in Section 122(e)(1) refers to:

(a) a binding and legal contractual arrangement for the processing of crab that is enter into prior to the occurrence of the processing of the crab and;



(b) in which the processed crab is debited from an IPQ account other than the IPQ account belonging to the owner of the processing plant at which the contract processing occurs.

- (2) The phrase "any use cap" as used in Section 122(e)(1) refers to the IPQ use cap as defined in 50 CFR 680.42(b)(1)(ii), or 50 CFR 680.42 b)(2), and calculated as defined in 50 CFR 680.7(a)(7).
- (3) The phrase "Northern Region" as used in Section 122(e)(1) refers to IPQ derived from processor quota share designated for the North Region as defined in 50 CFR 680.40(d)(2)(i).
- (4) The phrase "shore-based crab processor" as used in Section 122(e)(2) includes the terms "shoreside crab processor" or "stationary floating crab processor" as those terms are defined in § 680.2.
- (5) The phrase "moored within the harbor" as used in Section 122(e)(2) means moored within the harbor of St. George Island or St. Paul Island, located in the Pribilof Islands as those harbors are defined in NOAA marine charts 16381 and 16382 respectively.

This guidance is issued under the prosecutorial discretion authority inherent to this office. A formal rule making process is expected to be undertaken in the future to refine the above sections. Publication of a formal rule in the Federal Register constitutes constructive notice to all regulated parties of a rule promulgation. Upon publication of a rule addressing the above sections, this guidance is automatically rescinded and may no longer be relied upon.

Garland M. Walker Date 1/19/07

Garland M. Walker
NOAA Office of General Counsel for Enforcement and Litigation, Alaska Region