

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 680**

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:** Notice of availability of fishery management plan amendment; request for comments.

**SUMMARY:** Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require the Secretary of Commerce to approve the Bering Sea/Aleutian Islands Crab Rationalization Program (CR Program). The CR Program allocates Bering Sea and Aleutian Islands crab resources among harvesters, processors, and coastal communities. Amendment 28 would modify the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) and the CR Program to allow unlimited post-delivery transfers of all classes of individual fishing quota and individual processing quota. This action is necessary to improve the flexibility to the fleet, reduce the number of violations for overages, reduce enforcement costs, and allow for more complete harvest of allocations. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

**DATES:** Comments on the amendment must be received by November 25, 2008.

**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-AW97," by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal Rulemaking 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.

The proposed rule to implement Amendment 28 to the FMP was categorically excluded from the need to prepare an environmental assessment under the National Environmental Policy Act. Copies of Amendment 28, the categorical exclusion memorandum, the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) for this action, as well as the Environmental Impact Statement 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, 907-586-7459, or Julie Scheurer, 907-586-7356.

**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. 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. This notice announces that proposed Amendment 28 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs is available for public review and comment.

The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act. Amendments 18 and 19 amended the FMP to include the 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.

The Council submitted Amendment 28 to the FMP for Secretarial review. Amendment 28 would make minor changes to the FMP to allow unlimited transfers of individual fishing quota (IFQ) and individual processing quota (IPQ) to cover overages.

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 IFQ in pounds of raw crab as a proportion of the total QS pool in a crab fishery. There are four types of IFQ: Class A, Class B, C shares, and catcher processor vessel owner IFQ. Similarly, crab processors were issued processor quota share that yields annual IPQ. Class A IFQ is subject to regional delivery requirements. Crab harvested with Class A IFQ must be delivered to processors with an equivalent amount of IPQ available. This proposed amendment would primarily affect holders of Class A IFQ.

Under existing regulations, harvesters are prohibited from exceeding the amount of IFQ that is issued to them, either individually, or to their cooperative (see § 680.7(e)(2)), and processors are prohibited from receiving more IFQ than the amount of unused IPQ that they hold (see regulations at § 680.7(a)(5)). If a harvester delivers more crab than the amount of IFQ that he holds, he has violated existing regulations, commonly known as an overage. Overages can occur either through deliberate actions, or more commonly through unintentional errors. Generally, overages of less than 3 percent are subject to forfeiture of the overage, with larger or repeat violations subject to additional penalties at the discretion of NOAA Office for Law Enforcement.

Amendment 28, if approved, would allow post-delivery transfers to cover overages of IPQ as well as all classes of IFQ. There would be no limit on the size of a post-delivery transfer or on the number of post-delivery transfers a person could undertake. However, a person could not begin a new fishing trip if any of the IFQ accounts of the IFQ permits used on a vessel were negative or zero, and no person could have a negative balance in an IFQ or IPQ account after June 30, the end of a crab fishing year. The Council recommended Amendment 28 to the FMP to improve flexibility to the fleet, reduce the number of violations for overages, reduce enforcement costs, and allow more complete harvest of allocations.

The RIR/IRFA prepared for this action describes in detail the costs and benefits of the proposed amendment (see **ADDRESSES** for availability). All of the directly regulated entities would be expected to benefit from this action relative to the status quo because the proposed amendment would allow greater flexibility and a longer time period over which to account for overages.

Public comments are being solicited on proposed Amendment 28 through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public

comment on a proposed rule that would implement Amendment 28, following NMFS' evaluation of the proposed rule under the Magnuson–Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 28 to be considered in the approval/disapproval decision on Amendment 28. All comments received by the end of the comment period on Amendment 28, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the decision to approve or disapprove the amendment. Comments received after that date will

not be considered in the 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: November 19, 2008.

**Emily H. Menashes**

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

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