



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

March 13, 2007

Denby Lloyd, Commissioner
Alaska Department of Fish and Game
P.O. Box 115526
Juneau, Alaska 99811-5526

Dear Commissioner Lloyd:

This letter provides information about recent changes to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that affect the State of Alaska's (State's) management of the crab Community Development Quota (CDQ) allocations and fisheries. Section 305(i)(1) of the Magnuson-Stevens Act contains requirements related to the CDQ Program. This section was amended on July 11, 2006, by the Coast Guard and Maritime Transportation Act and again on January 12, 2007, by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act. Attached is the text of section 305(i)(1) of the Magnuson-Stevens Act as amended by these two pieces of legislation.

Section 305(i)(1)(C) of the Magnuson-Stevens Act now requires that "Voluntary transfers by and among eligible entities shall be allowed, whether before or after harvesting." NMFS interprets this requirement to mean that a CDQ group must be allowed to transfer allocations of groundfish, crab, or halibut after a CDQ group has exceeded its allocation of these species, if another CDQ group has available quota and is willing to transfer this quota to the CDQ group that has exceeded its allocation. NMFS regulations governing the transfer of groundfish and halibut CDQ are in conflict with this new requirement. We are preparing a proposed rule that would allow transfers of groundfish and halibut CDQ after an overage. However, the Magnuson-Stevens Act does not prohibit NMFS or the State from requiring that a CDQ group not exceed its allocation of groundfish, halibut, or crab. Therefore, we intend to maintain regulations prohibiting a CDQ group from exceeding its allocation of groundfish and halibut CDQ, but provide a short period of time at the end of each fishing year for the CDQ groups to transfer groundfish or halibut CDQ before we assess if any overages have occurred.

The crab CDQ allocations and fisheries are managed by the State under authority deferred to it by the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). Federal regulations at 50 CFR part 679 and part 680 include information about the amount of crab allocated to the CDQ Program, but do not direct the State about how to manage the crab CDQ fisheries. Specifically, federal regulations governing the transfer of CDQ allocations do not apply to the transfer of crab CDQ allocations among the CDQ groups. The FMP requires the State to manage the crab fisheries consistent with the Magnuson-Stevens Act. In light of the recent amendments to the Magnuson-Stevens Act, we request that the State review its regulations for the crab CDQ allocations and fisheries to ensure that they are consistent with the new requirements related to transfers.



The State also manages the Adak community allocation of Western Aleutian Islands golden king crab with regulations similar to those that apply to the crab CDQ fisheries. In discussing this issue with Alaska Department of Fish and Game (ADF&G) staff, they requested that we address whether these changes in the Magnuson-Stevens Act would affect management of the Adak community allocation. Section 305(i)(1) applies only to allocations made under the Western Alaska CDQ Program. The Adak community allocation is made under the crab rationalization program, and is not addressed by section 305(i)(1) of the Magnuson-Stevens Act. In addition, we agree with ADF&G's assessment that these new requirements are not relevant to the Adak community allocation because, unlike the CDQ crab allocations, the Adak community entity cannot transfer its crab allocation to any other entity.

Please contact Sally Bibb at 907-586-7389 or sally.bibb@noaa.gov if you have any questions about the Magnuson-Stevens Act amendments or any other issue related to this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Mecum', with a long horizontal flourish extending to the right.

Robert D. Mecum *for D/M*
Acting Administrator, Alaska Region

cc: NPFMC
CDQ groups

Attachment

Attachment

SEC. 305(i)(1) of the Magnuson-Stevens Act, as amended by the Coast Guard Act and the Magnuson-Stevens Act reauthorization

(1) WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM.—

(A) IN GENERAL.—There is established the western Alaska community development quota program in order—

- (i) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the Bering Sea and Aleutian Islands Management Area;
- (ii) to support economic development in western Alaska;
- (iii) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and
- (iv) to achieve sustainable and diversified local economies in western Alaska.

(B) PROGRAM ALLOCATION.—

(i) IN GENERAL.—Except as provided in clause (ii), the annual percentage of the total allowable catch, guideline harvest level, or other annual catch limit allocated to the program in each directed fishery of the Bering Sea and Aleutian Islands shall be the percentage approved by the Secretary, or established by Federal law, as of March 1, 2006, for the program. The percentage for each fishery shall be either a directed fishing allowance or include both directed fishing and nontarget needs based on existing practice with respect to the program as of March 1, 2006, for each fishery.

(ii) EXCEPTIONS.—Notwithstanding clause (i)—

(I) the allocation under the program for each directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) shall be a total allocation (directed and nontarget combined) of 10.7 percent effective January 1, 2008; and;

(II) the allocation under the program in any directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) established after the date of enactment of this subclause shall be a total allocation (directed and nontarget combined) of 10.7 percent.

The total allocation (directed and nontarget combined) for a fishery to which subclause (I) or (II) applies may not be exceeded.

The following paragraph also was included in the MSA reauthorization (HR 5946), but this language is not an amendment to the MSA.

EFFECTIVE DATE.--*The allocation percentage in subclause (I) of section 305(i)(1)(B)(ii) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(i)(1)(B)(ii)), as amended by paragraph (1) of this subsection, shall be in effect in 2007 with respect to any sector of a fishery to which such subclause applies and in which a fishing cooperative is established in 2007, and such sector's 2007 allocation shall be reduced by a pro rata amount to accomplish such increased allocation to the program. For purposes of section 305(i)(1) of that Act and of this subsection, the term "fishing cooperative" means a fishing cooperative whether or not authorized by a fishery management council or Federal agency, if a majority of the participants in the sector are participants in the fishing cooperative.*

(iii) **PROCESSING AND OTHER RIGHTS.**—Allocations to the program include all processing rights and any other rights and privileges associated with such allocations as of March 1, 2006.

(iv) **REGULATION OF HARVEST.**—The harvest of allocations under the program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of nontarget species.

(C) **ALLOCATIONS TO ENTITIES.**—Each entity eligible to participate in the program shall be authorized under the program to harvest annually the same percentage of each species allocated to the program under subparagraph (B) that it was authorized by the Secretary to harvest of such species annually as of March 1, 2006, except to the extent that its allocation is adjusted under subparagraph (H). Such allocation shall include all processing rights and any other rights and privileges associated with such allocations as of March 1, 2006. Voluntary transfers by and among eligible entities shall be allowed, whether before or after harvesting. Notwithstanding the first sentence of this subparagraph, seven-tenths of one percent of the total allowable catch, guideline harvest level, or other annual catch limit, within the amount allocated to the program by subclause (I) or subclause (II) of subparagraph (B)(ii), shall be allocated among the eligible entities by the panel established in subparagraph (G), or allocated by the Secretary based on the nontarget needs of eligible entities in the absence of a panel decision.

(D) **ELIGIBLE VILLAGES.**—The following villages shall be eligible to participate in the program through the following entities:

(i) The villages of Akutan, Atka, False Pass, Nelson Lagoon, Nikolski, and Saint George through the Aleutian Pribilof Island Community Development Association.

(ii) The villages of Aleknagik, Clark's Point, Dillingham, Egegik, Ekuk, Ekwok, King Salmon/Savonoski, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, and Ugashik through the Bristol Bay Economic Development Corporation.

(iii) The village of Saint Paul through the Central Bering Sea Fishermen's Association.

(iv) The villages of Chefornak, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Napakiak, Napaskiak, Newtok, Nightmute, Oscarville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tuntutuliak, and Tununak through the Coastal Villages Region Fund.

(v) The villages of Brevig Mission, Diomedes, Elim, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet, Wales, and White Mountain through the Norton Sound Economic Development Corporation.

(vi) The villages of Alakanuk, Emmonak, Grayling, Kotlik, Mountain Village, and Nunam Iqua through the Yukon Delta Fisheries Development Association.

(E) ELIGIBILITY REQUIREMENTS FOR PARTICIPATING ENTITIES.—To be eligible to participate in the program, an entity referred to in subparagraph (D) shall meet the following requirements:

(i) BOARD OF DIRECTORS.—The entity shall be governed by a board of directors. At least 75 percent of the members of the board shall be resident fishermen from the entity's member villages. The board shall include at least one director selected by each such member-village.

(ii) PANEL REPRESENTATIVE.—The entity shall elect a representative to serve on the panel established by subparagraph (G).

(iii) OTHER INVESTMENTS.—The entity may make up to 20 percent of its annual investments in any combination of the following:

(I) For projects that are not fishery-related and that are located in its region.

(II) On a pooled or joint investment basis with one or more other entities participating in the program for projects that are not fishery-related and that are located in one or more of their regions.

(III) For matching Federal or State grants for projects or programs in its member villages without regard to any limitation on the Federal or State share, or restriction on the source of any non-Federal or non-State matching funds, of any grant program under any other provision of law.

(iv) FISHERY-RELATED INVESTMENTS.—The entity shall make the remainder percent of its annual investments in fisheries-related projects or for other purposes consistent with the practices of the entity prior to March 1, 2006.

(v) ANNUAL STATEMENT OF COMPLIANCE.—Each year the entity, following approval by its board of directors and signed by its chief executive officer, shall submit a written statement to the Secretary and the State of Alaska that summarizes the purposes for which it made investments under clauses (iii) and (iv) during the preceding year.

(vi) OTHER PANEL REQUIREMENTS.—The entity shall comply with any other requirements established by the panel under subparagraph (G).

(F) ENTITY STATUS, LIMITATIONS, AND REGULATION.—

The entity—

(i) shall be subject to any excessive share ownership, harvesting, or processing limitations in the fisheries of the Bering Sea and Aleutian Islands Management Area only to the extent of the entity's proportional ownership, excluding any program allocations, and notwithstanding any other provision of law;

(ii) shall comply with State of Alaska law requiring annual reports to the entity's member villages summarizing financial operations for the previous calendar year, including general and administrative costs and compensation levels of the top 5 highest paid personnel;

(iii) shall comply with State of Alaska laws to prevent fraud that are administered by the Alaska Division of Banking and Securities, except that the entity and the State shall keep confidential from public disclosure any information if the disclosure would be harmful to the entity or its investments; and

(iv) is exempt from compliance with any State law requiring approval of financial transactions, community development plans, or amendments thereto, except as required by subparagraph (H).

(G) ADMINISTRATIVE PANEL.—

(i) ESTABLISHMENT.—There is established a community development quota program panel.

(ii) MEMBERSHIP.—The panel shall consist of 6 members. Each entity participating in the program shall select one member of the panel.

(iii) FUNCTIONS.—The panel shall—

(I) administer those aspects of the program not otherwise addressed in this paragraph, either through private contractual arrangement or through recommendations to the North Pacific Council, the Secretary, or the State of Alaska, as the case may be; and

(II) coordinate and facilitate activities of the entities under the program.

(iv) UNANIMITY REQUIRED.—The panel may act only by unanimous vote of all 6 members of the panel and may not act if there is a vacancy in the membership of the panel.

(H) DECENNIAL REVIEW AND ADJUSTMENT OF ENTITY ALLOCATIONS.—

(i) IN GENERAL.—During calendar year 2012 and every 10 years thereafter, the State of Alaska shall evaluate the performance of each entity participating in the program based on the criteria described in clause (ii).

(ii) CRITERIA.—The panel shall establish a system to be applied under this subparagraph that allows each entity participating in the program to assign relative values to the following criteria to reflect the particular needs of its villages:

(I) Changes during the preceding 10-year period in population, poverty level, and economic development in the entity's member villages.

(II) The overall financial performance of the entity, including fishery and nonfishery investments by the entity.

(III) Employment, scholarships, and training supported by the entity.

(IV) Achieving of the goals of the entity's community development plan.

(iii) ADJUSTMENT OF ALLOCATIONS.—After the evaluation required by clause (i), the State of Alaska shall make a determination, on the record and after an opportunity for a hearing, with respect to the performance of each entity participating in the program for the criteria described in clause (ii). If the State determines that the entity has maintained or improved its overall performance with respect to the criteria, the allocation to such entity under the program shall be extended by the State for the next 10-year period. If the State determines that the entity has not maintained or improved its overall performance with respect to the criteria—

(I) at least 90 percent of the entity's allocation for each species under subparagraph (C) shall be extended by the State for the next 10-year period; and

(II) the State may determine, or the Secretary may determine (if State law prevents the State from making the determination), and implement an appropriate reduction of up to 10 percent of the entity's allocation for each species under subparagraph (C) for all or part of such 10-year period.

(iv) REALLOCATION OF REDUCED AMOUNT.—If the State or the Secretary reduces an entity's allocation under clause (iii), the reduction shall be reallocated among other entities participating in the program whose allocations are not reduced during the same period in proportion to each such entity's allocation of the applicable species under subparagraph (C).

(I) SECRETARIAL APPROVAL NOT REQUIRED.—Notwithstanding any other provision of law or regulation thereunder, the approval by the Secretary of a community development plan, or an amendment thereof, under the program is not required.

(J) COMMUNITY DEVELOPMENT PLAN DEFINED.—In this paragraph, the term 'community development plan' means a plan, prepared by an entity referred to in subparagraph (D), for the program that describes how the entity intends—

(i) to harvest its share of fishery resources allocated to the program, or

(ii) to use its share of fishery resources allocated to the program, and any revenue derived from such use, to assist its member villages with projects to advance economic development, but does not include a plan that allocates fishery resources to the program.