

In November 2009 the Council reviewed the Highly Migratory Species Management Team's (Management Team) recommendations on the range of issues related to amending the HMS FMP and provided further guidance on developing alternatives based on the following topics:

(1) Classification of stocks in the HMS FMP as management unit species or ecosystem component species;

(2) Potential application of the MSRA international exception for ACL requirements to management unit species in the HMS FMP;

(3) Determining the primary fishery management plan for managed species covered by both the HMS FMP and the Western Pacific Fishery Management Council's Pelagics Fishery Ecosystem Plan; and

(4) Establishing biological reference points and accountability measures.

At their April 2010 meeting, the Council adopted a set of alternatives for public review that were made available in the form of a preliminary draft environmental assessment. At the June 2010 meeting the Council took final action to adopt the preferred alternative, addressing the four issue areas listed above in the following manner: Bigeye thresher, *Alopias superciliosus*, and pelagic thresher, *A. pelagicus*, would be reclassified as ecosystem component species resulting in a total of 11 management unit species versus the current 13 management unit species under status quo. Based on these considerations there would be eight ecosystem component species included in the HMS FMP, including the two thresher shark species that are currently management unit species.

The international exception to setting ACLs described at § 660.310(h)(2)(ii) would be applied to all management unit species because they are subject to management by the Inter-American Tropical Tuna Commission, of which the U.S. is a member. The HMS FMP would be amended to discuss the process by which NMFS would make a determination of the primary FMP in consultation with the Western Pacific Fishery Management Council. The determination will be based on the stock, or portion of the stock (if stock structure is poorly understood and catch data is limited), for which reference points will be identified. The existing numerical estimates of MSY (or proxies), OY, and SDC, including the overfishing limit, would be retained. Upon the receipt of any new information based on the best available science, the Council may periodically adjust the numerical estimates of MSY, OY, and SDC. The adjustment would

follow an established protocol whereby the HMSMT proposes MSY and OY estimates based on the best available science, which are included in the draft HMS Stock Assessment and Fishery Evaluation (SAFE) document submitted to the Council in June. The Council's Science and Statistical Committee would review the estimates and make a recommendation on their suitability for management. The Council would then decide whether to adopt updated numerical estimates of MSY and OY, which would be submitted as recommendations for NMFS to review as part of the management cycle process. This provides the opportunity for Secretarial review of revised MSY and OY estimates. In this process the Council would take final action in November and then NMFS would engage in rulemaking to implement the specifications and any management measures proposed by the Council.

The Council has submitted a proposed rule to implement Amendment 2 for Secretarial review. NMFS expects to publish and request public comment on the proposed rule in the near future.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 9, 2011.

**Emily H. Menashes,**

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[FR Doc. 2011-5868 Filed 3-11-11; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 680

**RIN 0648-AY33**

#### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program; Amendment 34

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

**ACTION:** Notice of availability of a proposed amendment to a fishery management plan; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council submitted Amendment 34 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs to NMFS for review. If approved, Amendment 34 would amend the

Bering Sea and Aleutian Islands Crab Rationalization Program to exempt additional recipients of crab quota share from Gulf of Alaska Pacific cod and pollock harvest limits, called sideboards, which apply to some vessels and license limitation program licenses that are used to participate in these fisheries. The North Pacific Fishery Management Council determined that these additional recipients demonstrated a sufficient level of historical participation in Gulf of Alaska Pacific cod or pollock fisheries, and that they should be exempt from the current sideboards. This action is necessary to give these recipients an opportunity to participate in the Gulf of Alaska Pacific cod and pollock fisheries at historical levels. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, and other applicable laws.

**DATES:** Comments on the amendment must be submitted on or before May 13, 2011.

**ADDRESSES:** Send comments to Dr. James Balsiger, Regional Administrator, Alaska Region, NMFS, *Attn:* Ellen Sebastian. You may submit comments, identified by "RIN 0648-AY33," by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal Web site 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 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to <http://www.regulations.gov> for public viewing until after the comment period has closed. Comments will generally be posted 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.

Electronic copies of Amendment 34 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner

Crabs, the Environmental Assessment, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The Environmental Impact Statement, Regulatory Impact Review, Final Regulatory Flexibility Analysis, and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rachel Baker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (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 34 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) 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 Crab FMP. The groundfish fisheries in the exclusive economic zone of the Gulf of Alaska (GOA) are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska. The North Pacific Fishery Management Council (Council) prepared the Crab FMP and the Fishery Management Plan for Groundfish of the Gulf of Alaska under the Magnuson-Stevens Act. Amendments 18 and 19 amended the Crab FMP to include the Bering Sea and Aleutian Islands 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. Regulations governing GOA groundfish fisheries are located at 50 CFR part 679.

The CR Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The CR Program is a limited access privilege program for nine BSAI crab fisheries, in which participants receive exclusive harvesting and processing privileges for

a portion of the total allowable catch (TAC) assigned to each crab fishery in the CR Program.

Under the CR Program, persons received quota share (QS) based on their historical participation in one or more of the CR Program crab fisheries during a specific time period. Quota share represents an exclusive but revocable privilege to receive an annual allocation to harvest a specific percentage of the TAC from a CR Program fishery. NMFS allocated QS to eligible harvesters in 2005, prior to the first year of crab fishing under the CR Program. Each year, a person who holds crab QS and submits a timely and complete crab permit application to NMFS receives an exclusive harvest privilege for a portion of the annual TAC for that crab fishery. This harvest privilege, called individual fishing quota (IFQ), is the annual allocation of pounds of crab for harvest that represent a QS holder's percentage of the TAC. Crab QS holders may form voluntary crab harvesting cooperatives to combine and cooperatively manage their aggregate QS holdings. Each cooperative that is approved by NMFS receives the amount of cooperative IFQ yielded by the aggregate QS holdings of all of the members of the cooperative.

The Council anticipated that crab harvesting cooperatives would significantly increase operating flexibility for crab fishermen because they could choose when and where to fish for IFQ. Crab fishermen in cooperatives also could potentially reduce costs by harvesting crab IFQs on fewer vessels during an extended season. The Council was concerned that increased flexibility for BSAI crab fishermen could give them an incentive to increase effort in other fisheries, which could economically disadvantage other participants in these fisheries.

The Council developed sideboards to prevent Bering Sea snow crab (*Chionoecetes opilio*) quota share recipients from increasing their participation in GOA groundfish fisheries, particularly in the GOA Pacific cod fishery. However, in order to enable those Bering Sea snow crab quota share recipients who also had significant participation in, or dependence on, the GOA Pacific cod fishery to maintain historical participation levels, the Council exempted certain qualified vessels and license limitation program (LLP) licenses from the GOA Pacific cod sideboard.

The CR Program's GOA groundfish sideboards were implemented in 2006. Under current regulations, CR Program sideboard limits apply to vessels that:

- (1) Harvest any species of GOA

groundfish with the exception of sablefish harvested with fixed gear; (2) are not authorized to conduct directed fishing for pollock under the American Fisheries Act (AFA) of 1998 (Public Law 105-277, Title II of Division C); and (3) meet one or both of the following criteria: (a) Made a legal landing of Bering Sea snow crab between January 1, 1996, and December 31, 2000, that generated any amount of Bering Sea snow crab QS; or (b) are named on a GOA groundfish LLP license that was generated by the fishing history of a vessel that also generated Bering Sea snow crab QS. Vessels that meet these criteria subsequently will be referred to as "non-AFA crab vessels." The CR Program did not establish sideboard limits for AFA vessels with historical participation in the Bering Sea snow crab fishery because these vessels are subject to GOA harvesting and processing restrictions under the AFA and in implementing regulations for the AFA (50 CFR 679.64(b)).

The Council primarily intended GOA groundfish sideboards to restrict vessels with Bering Sea snow crab catch history. However, the Council determined that, because LLP licenses are transferable, GOA groundfish sideboard limits should also apply to GOA groundfish LLP licenses derived from vessels with catch history that also generated Bering Sea snow crab QS. The LLP was implemented in 2000 to limit the number, size, and operation type (gear designation) of vessels that may be deployed in the groundfish fisheries in the exclusive economic zone of the BSAI and GOA, and in crab fisheries in the BSAI. Regulations require, with limited exceptions, that a vessel must be named on a legible copy of a valid LLP license that is on board the vessel in order to participate in a directed fishery for LLP species. NMFS issued LLP licenses based on the catch history of a vessel in specific fisheries (i.e., a vessel's qualifying catch history generated an LLP license). The Council extended the CR Program GOA groundfish sideboards to GOA groundfish LLP licenses derived from vessels with catch history that also generated Bering Sea snow crab quota to prevent crab QS recipients from circumventing the GOA groundfish sideboards by transferring an LLP license for use on a vessel that is not subject to the sideboards. Thus, any vessel named on a GOA groundfish LLP license that was generated by the GOA groundfish catch history of a non-AFA vessel that also generated Bering Sea snow crab QS is subject to the CR Program GOA non-AFA groundfish sideboards,

even if the vessel named on the LLP license did not have historical landings that generated Bering Sea snow crab QS.

While most vessels and LLP licenses with catch history that generated Bering Sea snow crab QS are subject to the CR Program sideboard limits in GOA groundfish fisheries, some are exempt from the GOA Pacific cod sideboard. The Council established an exemption from the GOA Pacific cod sideboard limits for non-AFA crab vessels that demonstrated minimal participation in, or dependence on, the Bering Sea snow crab fishery and sufficient participation in, or dependence on, the GOA Pacific cod fishery from 1996 through 2000. Non-AFA crab vessels that are exempt from the GOA Pacific cod sideboard limits do not have to stop fishing for GOA Pacific cod when the sideboard limit is reached and may continue to fish as long as directed fishing for Pacific cod is open. The catch history of exempt participants is not included in the GOA Pacific cod non-AFA crab vessel sideboard limit calculations, and NMFS does not count the GOA Pacific cod catch of exempt vessels toward the non-AFA crab vessel sideboard limit.

Each year, NMFS calculates the non-AFA crab vessel sideboard limits for GOA groundfish species. The sideboard limit is calculated as a ratio of the amount of each groundfish species retained by non-AFA crab vessels from 1996 to 2000, relative to the total retained catch of each species by all vessels during the same period. This calculation yields a fixed ratio, or percentage, that is multiplied by the annual TAC for each GOA groundfish sideboard species to determine the non-AFA crab vessel sideboard limit (in metric tons) for GOA groundfish species.

NMFS opens directed fishing for a sideboard species for non-AFA crab vessels only when it determines that any directed fishery harvest for that species—and the incidental catch needs for that species by non-AFA crab vessels in other fisheries—would not exceed the sideboard limit. The CR Program GOA groundfish sideboard limits restrict the catch of non-AFA crab vessels in the aggregate. All targeted or incidental catch of a GOA groundfish sideboard species made by non-AFA crab vessels subject to the sideboard is deducted from the sideboard limit. NMFS closes directed fishing for vessels subject to a sideboard limit when NMFS determines that the remainder of a GOA groundfish sideboard limit is needed for incidental catch by non-AFA crab vessels in other fisheries.

Since 2006, NMFS has determined that only Pacific cod non-AFA crab

vessel sideboard limits in two GOA management areas were large enough to open a directed sideboard fishery. Although NMFS opened directed fishing for Pacific cod for non-AFA crab vessels subject to the sideboard limit, the relatively small sideboard limit amounts prompted NMFS to close directed fishing for these vessels earlier than it closed directed fishing for vessels that were not subject to sideboard limits. All other GOA sideboard species, including pollock, have been closed to directed fishing by non-AFA crab vessels subject to the CR Program groundfish sideboard limits because the sideboard limits were determined by NMFS to be insufficient to support both directed and incidental catch needs for these vessels.

The Council was prompted to reexamine the CR Program GOA groundfish sideboard limits by non-AFA crab vessel operators who testified that some sideboard limits were too restrictive. These operators indicated that they had historically participated in GOA Pacific cod and pollock fisheries at levels that demonstrated sufficient dependence on these fisheries and had received Bering Sea crab quota share at levels that demonstrated minimal dependence on the Bering Sea snow crab fishery. Some Bering Sea snow crab QS recipients testified to the Council that the earlier closure of directed fishing for Pacific cod for non-AFA crab vessels subject to sideboard limits, as well as the complete closure of directed fishing for pollock for vessels subject to sideboard limits, represented a lost fishing opportunity for their vessels and thus, potential lost revenue from Pacific cod and pollock catch. Based on this public testimony and a review of the effects of the sideboard limits in the 2005/2006 and 2006/2007 crab fishing years, the first 2 years of the CR Program, the Council determined that the sideboard restrictions for the GOA Pacific cod and pollock fisheries should be re-examined. The Council initiated an analysis in December 2007 to examine alternatives that would expand the criteria for non-AFA crab vessels to qualify for an exemption from the Pacific cod sideboard limits and would extend a similar exemption to the pollock sideboard limits. In October 2008, the Council recommended Amendment 34 to the Crab FMP to exempt additional vessels and groundfish LLP licenses from the GOA Pacific cod and pollock sideboard limits.

Amendment 34 would implement two actions. Action 1 would revise the GOA Pacific cod sideboard limit exemption criteria for non-AFA crab vessels.

Action 2 would establish new GOA pollock sideboard limit exemption criteria for non-AFA crab vessels. NMFS estimates that, in addition to the five vessels and five groundfish LLP licenses that are currently exempt, the Council's preferred alternative for Action 1 would exempt three non-AFA crab vessels and three groundfish LLP licenses from GOA Pacific cod sideboard limits, for an estimated total of eight vessels and eight LLP licenses that would be exempt from the GOA Pacific cod sideboard. For Action 2, NMFS estimates that the Council's preferred alternative would exempt one non-AFA crab vessel and one groundfish LLP license from the GOA pollock sideboard limits. Exemptions from the sideboard harvest limits would provide an opportunity for these crab QS recipients to participate in the GOA Pacific cod and pollock fisheries at historical levels. The Council determined that the potential increased participation by these participants in GOA Pacific cod and pollock fisheries was unlikely to significantly impact other participants in these fisheries.

The Regulatory Impact Review and Initial Regulatory Flexibility Analysis prepared for this action describes the costs and benefits of the proposed amendment (*see ADDRESSES*). 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 crab QS recipients with demonstrated dependence on GOA Pacific cod and pollock fisheries to participate in these fisheries at historical levels.

Public comments are being solicited on proposed Amendment 34 to the Crab FMP 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 34, following NMFS's 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 34 (*see DATES*) to be considered in the approval/disapproval decision on Amendment 34. All comments received by the end of the comment period, whether specifically directed to Amendment 34 or the proposed rule, will be considered in the FMP approval/disapproval decision. 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. Comments received after that date will not be considered in the

approval/disapproval decision on the amendment.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 9, 2011.

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[FR Doc. 2011-5854 Filed 3-11-11; 8:45 am]

**BILLING CODE 3510-22-P**