

Register on January 21, 2010, at 75 FR 3416, is April 21, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jarad Makaiau, NMFS Pacific Islands Region, 808-944-2108.

**SUPPLEMENTARY INFORMATION:**

**Need for Correction**

In the document published January 21, 2010 (75 FR 3416), under the **DATES** section, the effective date of the final rule was miscalculated. This document corrects the effective date to read as follows:

**DATES:** This final rule is effective April 21, 2010.

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

Dated: February 12, 2010.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2010-3074 Filed 2-17-10; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 09100091344-9056-02]

RIN 0648-XU37

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by non-American Fisheries Act (AFA) crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2010 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 12, 2010, through 1200 hrs, A.l.t., September 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2010 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA is 1,011 metric tons (mt) for the GOA, as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009) and inseason adjustment (74 FR 68713, December 29, 2009).

In accordance with § 680.22(e)(2)(i), the Regional Administrator, has determined that A season allowance of the 2010 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance for Pacific cod as 1,001 mt for the inshore component in the Western Regulatory Area of the GOA. The remaining 10 mt for the inshore component in the Western Regulatory Area of the GOA will be set aside as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is

impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod apportioned to non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 9, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 680.22 and is exempt from review under Executive Order 12866.

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

Dated: February 12, 2010.

**Emily H. Menashes,**

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

[FR Doc. 2010-3082 Filed 2-12-10; 4:15 pm]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 680**

[Docket No. 100106010-0074-01]

RIN 0648-AY52

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

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

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

**SUMMARY:** NMFS is exempting, through this emergency rule, individual fishing quota (IFQ) issued for the Western Aleutian Islands golden king crab fishery from the West regional designation and individual processing quota (IPQ) issued for this fishery from the West regional designation. Under the Bering Sea/Aleutian Islands Crab Rationalization Program, golden king crab harvested with IFQ with a West regional designation must be delivered

to a processor with West designated IPQ in the West region of the Aleutian Islands. An emergency exists, because Federal regulations require that a portion of crab taken in this fishery be delivered and processed in the West region, but due to a recent unforeseen event, no processing facility is open in the West region. This emergency rule is necessary to relieve a restriction and allow fishermen to deliver crab harvested with West designated IFQ to processors outside the West region and allow processors with West designated IPQ to process that crab outside the West region. 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 law.

**DATES:** Effective February 18, 2010, through August 17, 2010. Comments must be received by March 22, 2010.

**ADDRESSES:** You may submit comments, identified by RIN 0648–AY52, by any one of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

Fax: (907) 586–7557, Attn: Ellen Sebastian

Mail: P.O. Box 21668, Juneau, AK 99802.

Instructions: No comments will be posted for public viewing until after the comment period has closed. 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 (for example, name, address, etc.) 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). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Regulatory Impact Review (RIR) prepared for this action may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov/regs/summary.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Gretchen Harrington, 907–586–7228.

**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 as amended by the Consolidated Appropriations Act of 2004 (Public Law 108–199, section 801). A final rule implementing the Crab Rationalization Program (Program) was published on March 2, 2005 (70 FR 10174). Regulations implementing the FMP, and all amendments to the Program, are at 50 CFR part 680. General regulations related to fishery management are at 50 CFR part 600.

**Crab Rationalization Program**

NMFS established the Program as a catch share program for nine crab fisheries in the BSAI, and assigned quota share (QS) to persons based on their historic participation in one or more of these nine BSAI crab fisheries during a specific time period. Under the Program, NMFS issued four types of QS: catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch onshore or to stationary floating crab processors; catcher/processor vessel owner (CPO) QS was assigned to LLP holders that harvested and processed their catch at sea; captains and crew onboard catcher/processor vessels were issued catcher/processor crew (CPC) QS; and captains and crew onboard catcher vessels were issued catcher vessel crew (CVC) QS. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch (TAC), called individual fishing quota (IFQ). Under the program, QS holders can form cooperatives to pool the harvest of the IFQ on a few vessels.

NMFS also issued processor quota share (PQS) under the Program. Each year, PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. QS derived from deliveries made by catcher vessel owners (i.e., CVO QS) is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent of the IFQ is designated as Class B IFQ. Class A IFQ must be matched

and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a specific processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

The Program seeks to ensure that communities that were historically active as processing ports continue to receive socioeconomic benefits from crab deliveries. To accomplish this, the Program imposes regional delivery requirements, and, for the Western Aleutian Islands golden king crab fishery, allocates 10 percent of the TAC to the Adak community. The specific geographic regions are based on historic geographic delivery and processing patterns.

**Western Aleutian Islands Golden King Crab Fishery**

The only fishery affected by this emergency action is the Western Aleutian Islands golden king crab fishery, a relatively small but lengthy fishery prosecuted in extremely remote waters. The 2009/2010 Western Aleutian Islands golden king crab TAC is 2.835 million pounds, with 283,500 pounds for the Adak Community Allocation. The fleet consists of two catcher vessels and a single catcher/processor. Two IPQ holders hold nearly 99 percent of all of the West designated IPQ. The season starts on August 15 and ends on May 15.

For the Western Aleutian Islands golden king crab fishery, 50 percent of the Class A IFQ and a corresponding amount of IPQ are designated for the West region, west of 174° W. long., and the other 50 percent of the Class A IFQ and IPQ are not subject to a regional designation. Class B, CVC, CPO, CPC IFQ, and the Adak Community Allocation are also not subject to regional delivery requirements. For the 2009/2010 fishery, NMFS issued West designated IFQ and corresponding IPQ for approximately 600,000 pounds of Western Aleutian Islands golden king crab (approximately 24 percent of the TAC).

Crab harvested with West designated Class A IFQ must be delivered to a processor located in the West region with West designated IPQ. The purpose of this delivery requirement was to support processing facilities in the remote West region. Since implementation of the Program, the only shore-based processing plant in this region has been located in the community of Adak.

In April 2009, the Adak shore-based processing plant closed and in September 2009, the plant's owners filed for Chapter 11 bankruptcy. Closure

of the Adak plant precludes the ability for catcher vessels to deliver crab harvested with their West designated IFQ. West designated IPQ holders lack a facility at which to process crab with their West designated IPQ. Subsequent difficulties with plant ownership and complicated bankruptcy proceedings effectively ensure that the Adak plant cannot open in the near-term.

In October 2009, fishery participants petitioned the Council for approval of an emergency rule to suspend the West region delivery requirement for the 2009/2010 fishing season due to the closure of the Adak plant. The Council delayed taking action until its December meeting and tasked staff to develop a discussion paper that analyzes the circumstances in this fishery for determining whether an emergency exists. Delaying action by one meeting also provided more time for circumstances with the Adak plant bankruptcy to change and for industry members to look at whether other solutions to resolve this situation, such as a floating processor, would be viable in the West region. Processor representatives provided testimony to the Council at the December 2009 Council meeting that operating a floating processor in the West region for this season would not be profitable, due to the length of the golden king crab fishery, the expected price per pound for golden king crab, and operating costs.

#### Emergency Action

This emergency rule exempts West designated IFQ and West designated IPQ for the Western Aleutian Islands golden king crab fishery from the West regional designation in regulations at 50 CFR 680.40(c)(4) and § 680.40(e)(2), respectively, for the period that this rule is effective (see **DATES**). Removing the West regional designation from this IFQ and IPQ would remove the requirement that these shares be used in the West region. With this exemption, Western Aleutian Islands golden king crab harvested with West designated IFQ could be delivered to a processor with IPQ in any location and processors could process crab using West designated IPQ in any location.

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act provides authority for rule making to address an emergency. Under that section, a Council may recommend emergency rule making, if it finds an emergency exists.

At its December 2009 meeting, the Council voted 10 to 1 to request that NMFS promulgate an emergency rule to relieve the existing regional delivery

and processing requirement in the Western Aleutian Islands golden king crab fishery. The Council considered this issue over two meetings to provide the public with notice and the opportunity to comment and to see if industry members could resolve this situation either through re-opening the Adak plant or providing an alternate processing facility, such as a floating processor, in the West region and thus ameliorate the need for an emergency rule. The Council received testimony in support of emergency action from West region IFQ and IPQ holders and representatives from the community of Adak; no testimony in opposition was presented to the Council.

The Council determined that an emergency exists because, due to a recent unforeseen event, no processing facility is currently, or likely to, open in the West region for the 2009/2010 fishing year, yet federal regulations require that a portion of crab be processed in the West region. Exempting the West designated IFQ and IPQ from the West regional designation would relieve these shares from delivery restrictions and thus would enable fishermen to deliver harvests made with West designated IFQ outside the West region. Without the ability to deliver and process the crab, a substantial portion of the fishery will likely remain unharvested, causing economic harm to fishery participants. The emergency rule would provide relief for the 2009/2010 crab fishing year and enable the fishery to occur while the Council develops an FMP amendment to permanently address this situation. The Council is scheduled to review a draft analysis at its February 2010 meeting that assesses alternatives to amend the FMP, should unforeseen events prevent deliveries in the West region in future years.

In making this recommendation, the Council considered the NMFS policy guidelines for the development and approval of regulations to address emergencies. Emergency rule making is intended for circumstances that are extremely urgent, where substantial harm to or disruption of the fishery would be caused in the time it would take to follow standard rulemaking procedures (62 FR 44421). An emergency is a situation that: results from recent, unforeseen events or recently discovered circumstances; presents serious conservation or management problems in the fishery; and can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same

extent as would be expected under the normal rule making process.

NMFS finds that an emergency exists because

- The bankruptcy and closure of the Adak plant is a recent and unforeseen event. Additionally, the absence of other processing alternatives entering the West region in light of the Adak plant closure is a recent and unforeseen event.

- Regulations that prevent a substantial portion of the Western Aleutian Islands golden king crab TAC from being harvested and processed present a serious management problem.

- This problem can be addressed through an emergency rule that would exempt shares from regulatory requirement, thus allowing crab to be delivered and processed outside the West region.

- Allowing the full harvest of the IFQ in the 2009/2010 crab fishing year provides immediate benefits that outweigh the value of the deliberative notice-and-comment rule making process.

The circumstances that justified the constraint on deliveries have changed, and, at least temporarily, the constraint no longer achieves the goals that led to its incorporation in the Program. Therefore, lifting the constraint should relieve an unnecessary and unanticipated burden on the region's economic activity, enhance resource management and conservation, and, thus, increase the value the Nation receives from the Western Aleutian Islands golden king crab resource.

#### Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this emergency rule is consistent with the national standards and other provisions of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. The rule may be extended for a period of not more than 186 days as described under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation Management Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest.

Waiver of the notice-and-comment rulemaking period will serve the public by allowing the restriction to be relieved in the current fishing season to enable full harvest of the total allowable catch. This fishery began on August 15, 2009, and the fleet is harvesting golden king crab with undesignated IFQ. This

emergency rule would allow the harvest of approximately 600,000 pounds of West designated IFQ prior to the closure of the fishery on May 15, 2010. Notice-and-comment rulemaking would preclude a solution for the 2009/2010 crab fishing year, resulting in approximately 600,000 pounds of forgone golden king crab harvest. The cost of this lost harvest outweighs the benefit of using the more protracted, normal process that would be ineffective for addressing the immediate issue.

Because this rule relieves a restriction by exempting IFQ and IPQ from the West region designation, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d) (1).

This emergency rule has been determined to be not significant for purposes of Executive Order 12866. The regulatory impact review prepared for this action is available from NMFS (see **ADDRESSES**).

This emergency rule is exempt from the procedures of the Regulatory

Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law.

**Authority:** 16 U.S.C. 1862; Pub. L. 109-241; Pub. L. 109-479.

Dated: February 12, 2010.

**Samuel D. Rauch III,**  
*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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