

2001, we must spend nearly all of our Listing Program funding to comply with court orders and judicially approved settlement agreements, which are now our highest priority actions. The western DPS of the yellow-billed cuckoo will be added to the list of candidate species upon publication of this notice of 12-month finding. We will continue to monitor the status of this species and other candidate species. Should an emergency situation develop with one or more of the species, we will act to provide immediate protection, if warranted.

We intend that any proposed listing action for the yellow-billed cuckoo western DPS will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. Before we proceed with listing the yellow-billed cuckoo we will solicit a scientific peer review of the DPS boundary.

#### References Cited

A complete list of references cited herein, as well as others, is available upon request from the Sacramento Fish and Wildlife office (see **ADDRESSES** section).

#### Author

This document was prepared by the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 18, 2001.

**Marshall P. Jones, Jr.,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 01-18560 Filed 7-24-01; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 010710172-1172-01; I.D. 061301A]

RIN 0648-AL92

### Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

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

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

**SUMMARY:** NMFS proposes a change in the Community Development Quota (CDQ) regulations for crab to allow the State of Alaska greater flexibility in establishing fishing seasons. This action is proposed to achieve the conservation and management goals for the crab CDQ program and is intended to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plan for the Bering Sea and Aleutian Islands King and Tanner Crabs (FMP).

**DATES:** Comments on the proposed rule must be submitted on or before August 24, 2001.

**ADDRESSES:** Comments on this proposed rule should be submitted to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel. Comments may also be sent via facsimile (fax) to 907-586-7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK. Copies of the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Draft EA/RIR/IRFA) prepared for this action are available from NMFS (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington, 907-586-7228, or gretchen.harrington@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act required the North Pacific Fishery Management Council (Council) and NMFS to establish a CDQ program under which a percentage of the guideline harvest level

(GHL) of Bering Sea and Aleutian Island (BSAI) crab fisheries is allocated to the program. In 1998, NMFS issued regulations implementing the crab CDQ program (50 CFR 679.31; 63 FR 8356, February 19, 1998) and crab CDQ fisheries began that year. Section 305(i)(1)(C)(iii) of the Magnuson-Stevens Act required that 7.5 percent of the total allowable catch of each crab fishery for 2000 and beyond shall be allocated to the crab CDQ program.

Under the FMP, the Council and NMFS defer management of the BSAI king and Tanner crab fisheries, including the CDQ fisheries, to the State of Alaska (State), with Federal oversight. The State/Federal cooperative management regime established in the FMP specifies three categories of management measures that provide the framework for the State management of the crab fisheries, including the determination of the GHLs and fishery seasons. The FMP also provides the State with the authority to manage CDQ crab harvesting activity, including when CDQ fishermen may harvest the CDQ reserve.

The State sets crab fishing seasons according to a shellfish management cycle based on stock assessment surveys conducted in the summer and establishes GHLs for the upcoming fall and winter fishing seasons according to those surveys. The CDQ reserve is a portion of the GHL. Currently, CDQ crab fisheries are conducted after the regular commercial fishery; however, State regulations provide the regulatory flexibility to conduct a CDQ fishery before the regular commercial fishery for snow crab (*Chionoecetes opilio*).

Although Federal regulations implementing the crab CDQ reserve specify that the crab CDQ reserves be allocated by calendar year, the Magnuson-Stevens Act does not dictate when the reserve is available for harvest, only that the reserve be a portion of the annual harvest amount. By allocating to the crab CDQ reserve on a calendar year basis, the State is prevented from conducting a CDQ crab season before the regular commercial fishery for snow crab because of the timing of the snow crab fishing season. The regular commercial fishery for snow crab starts on January 15 and ends when the GHL is harvested. Additionally, State stand-down provisions prohibit vessels that intend to participate in the snow crab fishery from being on the fishing grounds 14 days prior to the opening of the fishery. Thus, a CDQ season before the regular snow crab fishery could only start in December of the previous calendar year.

Existing Federal regulations do not prevent a CDQ fishery before the regular commercial fishery for crab species other than snow crab because these crab fisheries are prosecuted at times of the year such that a CDQ fishery could occur before the regular fishery in the same calendar year.

In October 1998, NMFS proposed to the North Pacific Fishery Management Council (Council) that the Federal regulatory language that specified crab CDQ reserves by "calendar year" be changed to allow the State more flexibility in managing the crab CDQ harvests. The Council agreed that NMFS should change the Federal regulations.

This proposed regulatory amendment would change the Federal regulation at 50 CFR 679.31 (d) by removing the phrase "calendar year". The CDQ reserve would still be apportioned annually based on the GHs derived from the annual stock assessments. However, the CDQ reserve would be available for harvest before January 1 to follow the annual cycle for crab fisheries used by the State rather than the calendar year cycle used by NMFS for groundfish fisheries. This proposed change is consistent with the intent of the FMP by providing the State with greater flexibility to establish CDQ fishing seasons. This proposed action also would remove the expired CDQ reserve phase-in language.

#### Classification

NMFS prepared a draft EA/RIR/IRFA for this regulatory amendment that describes the management background, the purpose and need for action, the management alternatives, and the socio-economic impacts of the alternatives (see ADDRESSES). It estimates the total number of small entities that would be affected by this action, and analyzes the economic impact on those small entities as required by the Regulatory Flexibility

Act (RFA). The IRFA describes the potential economic impacts this proposed rule, if adopted, would have on small entities. A summary of the IRFA follows:

The regulatory change proposed by this action would have no direct effects, in and of itself, although it is intended to provide added management flexibility. With this Federal regulatory change, the State may choose to conduct a CDQ fishing season before a regular commercial fishery for snow crab.

NMFS considers most of the fishing operations that would be affected by this proposed rule to be small entities. The universe of small entities is composed of the 339 regular commercial fishermen who hold licenses to operate catcher vessels with snow crab endorsements, the 65 villages that participate in the CDQ program, and the 6 CDQ groups, for a total of 410 small entities. For the purposes of the IRFA, NMFS assumes that all of the catcher vessels belong to small entities, while the 34 operators of licensed catcher processors with snow crab endorsements are not small entities. At present, however, information on ownership, affiliation, and contractual relationships between and among the catcher vessels is insufficient to allow definitive enumerations of which of these operations are, or are not "small entities" for RFA purposes.

The IRFA shows that the status quo alternative adversely impacts the 65 villages and 6 CDQ groups by preventing them from realizing the full value of their snow crab CDQ allocation. On the other hand, the 339 regular commercial fishermen may experience adverse impacts from the proposed alternative due to the disadvantage of fishing for snow crab after approximately 2.25 percent of the GH has been harvested.

This proposed rule does not contain a collection-of-information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act (PRA). This proposed rule does not duplicate, overlap, or conflict with other Federal regulations.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 20, 2001.

**John Oliver**

*Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

#### **PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.31, paragraph (d) is revised to read as follows:

#### **§ 679.31 CDQ reserves.**

\* \* \* \* \*

(d) *Crab CDQ reserves.* For those king and Tanner crab species in the Bering Sea and Aleutian Islands Area that have a guideline harvest level specified by the State of Alaska, 7.5 percent of the annual guideline harvest level for each fishery is apportioned to a crab CDQ reserve.

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[FR Doc. 01-18575 Filed 7-24-01; 8:45 am]

**BILLING CODE 3510-22-S**