

## B. IBCs

### 1. Potential Management Options and Issues

**Applicability.** IBCs refer to a part of a total allowable amount of interaction with bycatch species (which may include both non-target and protected species) that may be encountered during fishing activity. The total allowable amount of interaction with bycatch species may be established through mechanisms such as stock assessments that establish a TAC for overfished species, incidental take statements issued under the ESA, or other mechanisms. Examples of bycatch species may be an overfished species for which overfishing is occurring or a listed species. By distributing the allowable amount of interaction with bycatch species to vessels, either individually or grouped, or on a regional basis, the ability to individually or regionally manage interactions may be achieved. The advantages of this management approach may include: increased individual responsibility for interactions in a fishery; increased ability for individuals that avoid interactions to continue to fish; and more regionally applicable consequences of interactions if bycatch caps are applied on a regional basis. IBCs represent a significant change from the way that bycatch issues in most HMS fisheries are managed because allowable limits of bycatch would be assigned to individual participants, groups of participants, or regions. The biological, social or economic impacts associated with such a change in the management of bycatch in HMS fisheries could vary greatly, depending on the specifics of the provisions implemented. All such impacts would be analyzed in a separate rulemaking with appropriate supporting documentation should such provisions be further considered.

### 2. Request for Comments Regarding IBCs

The preceding section provided information on the options and issues regarding IBCs in HMS fisheries. The public is encouraged to submit comments related to any aspect of this topic. NMFS is also specifically seeking comments to the following questions.

How might an IBC system in HMS fisheries affect the status of bycatch species? What aspects of an IBC system in HMS fisheries might be advantageous to fishery participants? What aspects of an IBC system would not be advantageous to fishery participants? What efficient and effective ways of monitoring IBCs are there? What social,

biological, or economic impacts might be associated with implementation of IBCs in HMS fisheries? What should NMFS consider when evaluating IBCs for HMS fisheries?

## V. Submission of Public Comments

NMFS reminds the public that there are two deadlines for the submission of written comments. The comment period for items discussed in Section II of this ANPR closes on June 30, 2009. The comment period for items discussed in Sections III and IV of this ANPR closes on August 31, 2009. Please see the ADDRESSES section of this ANPR for additional information regarding the submission of written comments.

All written comments received by the due dates will be considered in drafting proposed changes to the HMS regulations. In developing any proposed regulations, NMFS must consider and analyze ecological, social, and economic impacts. Therefore, NMFS encourages comments that would contribute to the required analyses, and respond to the questions presented in this ANPR.

## Public Meetings

NMFS will hold five public meetings to receive comments from fishery participants and other members of the public regarding this ANPR. These meetings will be physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Sarah McLaughlin at 978-281-9260 or Randy Blankinship at 727-824-5399, at least 7 days prior to the meeting. For individuals unable to attend a meeting, NMFS also solicits written comments on the ANPR (see **DATES** and **ADDRESSES**).

The meeting dates, times, and locations follow. All meetings will be held from 5:00 p.m. to 9:00 p.m. All meetings will begin with an opportunity for individuals to view information on the issues raised in this ANPR and ask questions at 5:00 p.m. followed by a presentation and opportunity for public comment beginning at 6:00 p.m.

1. June 23, 2009, Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050

2. June 25, 2009, Roanoke Island Festival Park, 1 Festival Park, Manteo, NC 27954

3. June 29, Radisson Hotel Plymouth Harbor, 180 Water Street, Plymouth MA 02360

4. July 21, Belle Chasse Auditorium, 8398 Hwy. 23, Belle Chasse, LA 70037

5. July 28, Broward County Main Library, 100 S. Andrews Ave., Fort Lauderdale, FL 33301

## Classification

This action is not significant pursuant to Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 26, 2009.

**Samuel D. Rauch, III,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

RIN 0648-XL60

#### Fisheries of the Exclusive Economic Zone Off Alaska; Loan Program for Crab Quota Share; Amendment 33

**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 (Council) has submitted Amendment 33 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). If approved, Amendment 33 would allow NMFS to reduce the amount of fees collected under the Crab Rationalization Program to the amount needed to finance the Federal loan program for quota share purchase. The amendment would allow NMFS to reserve only the amount of fees necessary to support the loan program, including no fees if none are needed. This action is necessary to ensure that fishery participants do not pay fees for loan program financing in excess of the fees needed to support the loan program. This FMP amendment would not result in modifications to Federal regulations.

**DATES:** Comments on Amendment 33 must be received on or before July 31, 2009.

**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-XL60", by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking 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 9th Street, Room 420A, Juneau, AK.

Instructions: 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.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hartman, 907-586-7442.

**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 or fishery management plan amendment that it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce.

In 2005, NMFS implemented the Crab Rationalization Program (Program) for Bering Sea/Aleutian Islands (BSAI) crab fisheries by allocating exclusive fishing and processing privileges (March 25, 2005, 70 FR 10174). Programs that allocate exclusive fishing privileges are commonly known as limited access privilege programs (LAPPs). At its most basic, the Program recommended by the Council: (1) allocated long term harvest privileges known as quota share (QS) that were based on the catch history of vessel owners and captains during a specific period, and can yield exclusive annual harvest privileges for QS holders, (2) allocated long term processing privileges known as processor quota share (PQS) to processors that were based on their processing history during a specific time period, and can yield exclusive annual processing privileges from PQS holders, and (3) included provisions to limit the delivery of much of the catch to specific geographic regions and required

linkages with communities that have been historically dependent on the crab fisheries. The Program also includes a suite of other measures limiting the amount of QS and PQS a person can hold, specific catch accounting and monitoring requirements, mechanisms for transferring QS and PQS, price and delivery negotiation standards, economic data collection provisions, and other measures.

The Program recommended by the Council included provisions for a fee collection program consistent with the Magnuson-Stevens Act. The Magnuson-Stevens Act requires that NMFS collect fees on all LAPPs of not greater than 3 percent of the exvessel value of a fishery to recover the actual direct management, enforcement, and data collection costs in the fishery. NMFS may reimburse itself and other agencies for the actual direct costs of Program administration. The Magnuson-Stevens Act also allows NMFS to set aside a portion of LAPP cost recovery fees to aid in loan financing if such a set aside is recommended by the Council. The Council adopted a provision under the Program for a loan program to aid QS purchases by entry-level and small boat captains and crew who are active in the fishery. The Council recommended that 25 percent of the fees collected should be set aside to provide for financing a loan program. The Council also provided that NMFS should collect 133 percent of its actual direct costs to ensure that NMFS could fully recover actual management costs and set aside 25 percent of the fees collected, provided the sum of all fees collected does not exceed 3 percent of the exvessel value of the fishery. The funds collected for the crew and captains loan program were intended to compensate the government for the costs such as delinquencies, defaults, servicing fees, and penalties not covered by payments to comply with the Federal Credit Reform Act (FCRA) of 1990 (2 U.S.C. 661). This amount of funds that may be required is referred to as the FCRA loan subsidy cost.

The fee collection provisions required by the Magnuson-Stevens Act and included in the Program were implemented in the March 2, 2005 final rule (70 FR 10174). However, NMFS did not include a loan program for QS purchase as part of the March 2005 final rule because Congress had not provided NMFS with the necessary appropriation authority to grant a specific amount of Federal loans, or provided for an appropriation to subsidize any anticipated defaults or costs for administering a loan program that may not be recovered by the interest

payments on the loans. The Magnuson-Stevens Act requires NMFS to administer loan programs under the credit authority of Title XI of the Merchant Marine Act, 1936.

The FCRA requires that NMFS not issue loans unless specific authority is granted by Congress. In addition, the FCRA requires any new loan obligation with estimated net loan losses (FCRA subsidy costs) be appropriated at the time Congress authorizes the amount of the loans that can be provided (i.e., the annual loan ceiling). Under the Magnuson-Stevens Act, a portion of the LAPP cost recovery fees, up to 25 percent of the amount collected and set aside for a loan program, could be used to provide the FCRA subsidy costs for the loan program. Alternatively, it may not be necessary to set aside any appropriation for the FCRA costs could be met through a direct appropriation, or may not be necessary if the net loan losses (i.e., the FCRA subsidy costs) are zero or negative. NMFS withheld the development of a loan program until Congress granted NMFS the necessary authority to provide for loans through the Consolidated Appropriations Act of 2008 (Pub. L. 110-161), and the appropriate FCRA loan subsidy cost could be determined.

Beginning in June 2006, NMFS began collecting fees in accordance with the Magnuson-Stevens Act and set aside 25 percent of the fees collected for purposes of a loan program as required by the Program. NMFS had presumed that a portion of the fees that had been set aside for the loan program would be used to provide for any required loan subsidy as required by FCRA once NMFS received the necessary authority to grant the loans.

During the process of developing the definitions of the loan program terms, it became clear to NMFS Financial Services Division (FSD) that because of the anticipated low default rate of loans, it is highly likely that the amount need to be set aside to provide for the FCRA loan subsidy coverage will not be the full 25 percent required by the program. NMFS FSD bases this assessment on the fact that under the existing halibut and sablefish IFQ program, the default rate on loans has been less than the revenue received from interest on the loans, and fees collected have not been required for loan program financing. NMFS FSD has indicated that it does not anticipate using fees collected under the Program to provide for loan financing because it anticipates a repayment history under the Program similar to that of the halibut and sablefish IFQ fishery with a zero or negative FCRA subsidy cost. If the loan program does not have a

subsidy cost, fees would not need to be set aside for that purpose.

However, the FMP requires that 133 percent of the actual direct costs must be collected with 25 percent of the fees collected set aside for loan subsidization. Given recent trends of increasing crab total allowable catches (TACs) and exvessel values, it is possible that direct management costs could represent less than 3 percent of the exvessel value of the rationalized crab fisheries. In that case, NMFS would collect more than 100 percent of the management costs to fund the mandatory 25 percent set-aside for the loan program subsidization, up to 133 percent of the actual management costs, as long as the total fee is under 3 percent of the exvessel value in the rationalized crab fisheries. In April 2008, NMFS recommended that the Council amend its FMP to avoid collecting LAPP cost recovery fees beyond the amount required to reimburse agency costs and provide for a loan program.

To resolve this issue, in June 2008, the Council recommended that Amendment 33 be prepared and submitted to the Secretary for approval. The proposed FMP amendment authorizes NMFS to collect fees up to the amount needed to support the projected FCRA loan subsidy cost. If NMFS determines that no additional funds would be required to offset the

FCRA loan subsidy, it would be authorized not to collect fees for the subsidy. The FMP text would be amended to authorize NMFS to collect a variable amount of “up to” 133 percent of the actual direct cost of management for loan subsidies and “up to” 25 percent of the loan funds collected for loans, to offset the cost of subsidies for these loans. This variable amount authority in the FMP will replace the fixed amount requirement. This change would ensure that NMFS has the necessary flexibility to collect fees commensurate with the subsidy costs of the loan program. Amendment 33 would not effect the funds appropriated by Congress to initiate and support crew and captains loans under the Program, only the amount of fees collected to pay for the estimated subsidy on those loans.

Approval of Amendment 33 would not require amendment of regulations at 50 CFR 680.2 that implement the general fee collection provisions of the program.

The Council also considered and rejected two additional alternatives for addressing the assignment of fees to low-interest loans for crew and captains in the Program. One alternative was to make no amendment to the low-interest loan program in the FMP. That alternative was rejected by the Council because excess fees would be collected

from the participants in the Program and that would not assist in meeting the goals of the low-interest loan program. The second alternative was to remove all references in the FMP that require a portion of the fees collected to be dedicated to a loan program set-aside. If no fees are set aside to offset potential FCRA subsidy costs, NMFS FSD would have to meet any FCRA subsidy cost requirements by receiving a direct appropriation from Congress. This alternative was rejected because it would effectively preclude NMFS from collecting fees to provide any necessary FCRA subsidy cost, if they were required.

Public comments are being solicited on Amendment 33. Comments received by the closing date will be considered in the approval/disapproval decision on the amendment. To be considered, written comments must be received by NMFS, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; Pub. L. 108–447.

Dated: May 26, 2009.

**Kristen C. Koch,**

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

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