Title: [Old]: Driver's Record of Duty Status (RODS). [New]: Hours-of-Service of Drivers Regulations.

As indicated earlier in the ''Legal Basis'' section, both the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984 allow the Secretary of Transportation (Secretary) to promulgate regulations that establish maximum hours of service of drivers employed by motor carriers. The Secretary has adopted regulations that require information to be recorded in a specified manner. FMCSA regulations allow motor carriers to make electronic records produced through the use of automatic on-board recording devices, in lieu of keeping paper records. *FMCSA estimates that these automatic on-board recording devices reduce substantially, by as much as 90 percent, the time involved in preparing, filing and storing paper.* FMCSA believes that the use of automatic on-board recorders continues to be uncommon and is unlikely to grow significantly under the current regulations.

The RODS must be maintained with all supporting documents for a period of 6 months from the date of the record. FMCSA believes the recordkeeping requirements are necessary for motor carriers and drivers to properly monitor compliance with the hours-of-service regulations. They also are necessary for Federal, State and local officials who are charged with monitoring and enforcing hours-of-service regulations. The hours-of-service regulations were promulgated to promote the safe operation of CMVs, and we believe this recordkeeping requirement is not duplicative of information that would otherwise be reasonably accessible to FMCSA.

FMCSA estimates there are 6,410,430 commercial motor vehicle drivers who are subject to the hours-of-service regulations. However, not all of these drivers are necessarily subject to the RODS paperwork requirement. For instance, FMCSA estimates that 25 percent of Local Delivery drivers are eligible to use the 100-air-mile-radius exception in § 395.1(e) in lieu of preparing paper RODS as required under § 395.8. This group of drivers is unlikely to use EOBRs since their recordkeeping requirements can be met with time cards. Therefore, we assume here that the remaining 75 percent of Local Delivery drivers who are subject to the hours-of-service regulations would be potential users of automated on-board recorders. Below is a breakdown of the total number of CMV drivers subject to the hours-of-service regulations and, for the purposes of this ANPRM, the estimated percentage of drivers within each category who would be potential users of automated on-board recorders:

Long-Haul Drivers: 366,304 (100 percent are assumed to be potential EOBR users).

Regional Drivers: 834,363 (100 percent are assumed to be potential EOBR users).

Local Delivery Drivers: 3,997,023 (75 percent, or 2,997,767, are assumed to be potential EOBR users).

Local, Services Drivers: 1,190,740 (zero percent are assumed to be potential EOBR users).

Long-Haul Commercial Van Drivers: 22,000 (100 percent are assumed to be potential EOBR users).

Multiplying the above estimates of drivers in each group by the estimated percentages constituting potential EOBR users yields a total of 4,220,434 CMV drivers. This is FMCSA's estimate of the number of CMV drivers subject to the RODS paperwork requirement and, for the purposes of this ANPRM, the number we assume would be potential EOBR users. (More information on the above driver estimates is available at 67 FR 1396 (Jan. 10, 2002) under Docket number FMCSA–2001–9688.) FMCSA welcomes comments and alternative estimates regarding the number of applicable CMV drivers discussed above.

Recordkeepers/Respondents: Approximately 4,220,434 CMV drivers.

Average Burden per Response: 6.5 minutes for drivers to prepare the daily record of duty status; 3 minutes for motor carriers to review and file records of duty status and all supporting documents.

Estimated Total Annual Burden: The estimated total annual burden is 160,376,492 hours.

Collection of Information Frequency: RODS: Every day of the year. Two or more days off duty may be kept on one record. Supporting documents: Collection must occur during every workday.

Estimated Annual Hour Burden for the Information Collection: Interested parties are invited to send comments regarding any aspect of these information collection requirements, including but not limited to (1) Whether the collection of information is necessary for the performance of FMCSA functions, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

If you submit comments to the Office of Management and Budget concerning the information collection requirements of this document, your comments will be most useful if received at OMB by November 30, 2004. You must mail, hand deliver, or fax your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503; fax: (202) 395–6566.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA), (42 U.S.C. 4321 *et seq.*, as amended) requires Federal agencies to consider the consequences of, and prepare a detailed statement on, all major Federal actions significantly affecting the quality of the human environment. Accordingly, FMCSA has prepared a Preliminary Environmental Assessment (PEA) for this advance notice of proposed rulemaking. The PEA is available in the docket. We invite all interested parties to submit public comments on this PEA.

List of Subjects in 49 CFR Part 395

Global positioning systems, Highway safety, Highways and roads, Intelligent Transportation Systems, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: August 27, 2004.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 04–19907 Filed 8–27–04; 1:30 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[I.D. 082504A]

RIN 0648–AS47

Fisheries of the Exclusive Economic Zone Off Alaska; Voluntary Three-pie Cooperative Program; Allocation of Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

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

ACTION: Notice of availability of amendments to a fishery management plan; request for comments.

SUMMARY: The U.S. Congress amended the Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act) to require the Secretary of Commerce (Secretary) to approve the Voluntary Three-Pie Cooperative Program (Program). The Program is necessary to allocate specified Bering Sea/Aleutian Islands (BSAI) crab resources among harvesters, processors, and coastal communities. This Program will be implemented by Amendment 18 to the Fishery Management Plan for BSAI King and Tanner Crabs (FMP). Additionally, the North Pacific Fishery Management Council (Council) has submitted Amendment 19 to the FMP for Secretarial review, which represents minor changes necessary to implement the Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

DATES: Comments on the amendments must be submitted on or before November 1, 2004.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- FAX to 907–586–7557;
- E-mail to *KTC18–NOA–0648–AS47@noaa.gov*. Include in the subject line of the e-mail the following document identifier: 18 19 NOA. E-mail comments, with or without attachments, are limited to 5 megabytes; or
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of Amendments 18 and 19 and the Environmental Impact Statement (EIS) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://www.fakr.noaa.gov/sustainablefisheries/crab/eis/default.htm*.

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

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

In January 2004, the U.S. Congress amended section 313 of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. No. 108–199, section 801), by adding paragraph (j). As amended, section 313(j)(1) requires the Secretary to approve, by January 1, 2005, the Voluntary Three-Pie Cooperative Program (Program), as it was approved by the Council between June 2002 and April 2003, and all trailing amendments, including those reported to Congress on May 6, 2003. The Program allocates BSAI crab resources among harvesters, processors, and coastal community interests. The Program, as it will be implemented by Amendments 18 and 19 to the FMP, is described below.

Voluntary Three-Pie Cooperative Program - Amendment 18

The Council developed the Program over a 6–year period to fit the specific dynamics and needs of the BSAI crab fisheries. The Program is a limited access system that balances the interests of several groups that depend on these fisheries. The Program will address conservation and management issues associated with the current derby fishery and will reduce bycatch and associated discard mortality. The Program is also designed to improve the safety of crab fishermen by ending the race for fish. Share allocations to harvesters and processors, together with incentives to participate in fishery cooperatives, are intended to increase efficiencies, provide economic stability, and facilitate compensated reduction of excess capacities in the harvesting and processing sectors. Community interests are protected by Community Development Quota (CDQ) allocations and regional landing and processing requirements, as well as by several community protection measures.

The Program encompasses the following BSAI crab fisheries: Bristol Bay red king crab (*Paralithodes camtschaticus*), Western Aleutian Islands (Adak) golden king crab (*Lithodes aequispinus*) - West of 174° W., Eastern Aleutian Islands (Dutch Harbor) golden king crab - East of 174° W., Western Aleutian Islands (Adak) red king crab - West of 179° W., Pribilof Islands blue king crab (*P. platypus*) and red king crab, St. Matthew Island blue king crab, Bering Sea snow crab (*Chionoecetes opilio*), and Bering Sea Tanner crab (*C. bairdi*). In this document, the phrase ''crab fisheries'' refers to these fisheries, unless otherwise specified.

Harvest Sector

Qualified harvesters would be allocated quota share (QS) in each crab fishery. To receive a QS allocation, a harvester must hold a valid, permanent, fully transferable license limitation program (LLP) license endorsed for that crab fishery. Quota share represents an exclusive but revokable privilege that provides the QS holder with an annual allocation to harvest a specific percentage of the total allowable catch (TAC) from a fishery. The annual allocations of TACs, in pounds, are referred to as individual fishing quotas (IFQs). Using LLP licenses for defining eligibility in the Program would maintain current fishery participation. A harvester's allocation of QS for a fishery would be based on the landings made by his or her vessel in that fishery. Specifically, each allocation is the harvester's average annual portion of the total qualified catch during a specific qualifying period. Qualifying periods were selected to balance historical and recent participation. Different periods were selected for different fisheries to accommodate closures and other circumstances in the fisheries in recent years.

Quota share would be designated as either catcher vessel (CV) shares or catcher/processor (C/P) shares, depending on whether the vessel processed the qualifying harvests on board. In addition, catcher vessel QS would be designated by landing region. Catcher vessel IFQ would be issued in two classes. Crabs harvested with class A IFQ would require delivery to a processor holding unused processing quota. Class A IFQ harvests also would be subject to a regional delivery requirement. Under this regional requirement, harvests would be delivered either in a North or in a South region (in most fisheries). Crabs harvested with class B IFQ could be delivered to any processor (except C/Ps operating as C/Ps) and would not be regionally designated. Harvests in excess of IFQ would be forfeited in all cases. Class B IFQs are intended to provide ex-vessel price negotiating leverage to harvesters. For each region of each fishery, the allocation of Class B IFQ would be 10 percent of the total allocation of IFQ to the CV sector.

Transfer of quota share and IFQ , either by sale or lease, would be allowed, subject to limits including caps on the amount of shares a person may hold or use. Leasing would mean the use of IFQs on a vessel in which the holder of the underlying QS holds less

than a 10 percent ownership interest or on which the underlying QS holder is not present. To be eligible to receive transferred QS or IFQ, a person would be required to be a U.S. citizen with at least 150 days of sea time in any U.S. commercial fishery. A corporate entity would be eligible to receive transferred QS or IFQ only if it were at least 20 percent owned by a U.S. citizen with at least 150 days of sea time in any U.S. commercial fishery. Initial recipients of QS, CDQ groups, and community entities would be exempt from these transfer eligibility criteria.

Separate caps would be imposed to limit the amount of QS and IFQs a person could hold and to limit the use of IFQs onboard a vessel. These caps are intended to prevent negative impacts from what can be described as excessive consolidation of shares. Excessive share holdings are prohibited by the Magnuson-Stevens Act. Different caps are chosen for the different fisheries because fleet characteristics and dependence differ across fisheries. Separate caps on QS holdings are established for CDQ groups, which represent rural western Alaska communities. Processor holdings of harvest shares would also be limited by caps on vertical integration. Quota share holders could retain and use initial allocations of QS above the caps.

Captains Shares (C Shares)

To protect their interests in the fisheries, qualifying captains would be allocated 3 percent of the qualifying catch history as C shares. These shares are intended to provide long term benefits to captains and crew. The allocation to captains would be based on the same qualifying years and computational method used for quota share allocations to LLP holders. To ensure that C shares benefit at-sea participants in the fisheries, the IFQ derived from C shares could be used only when the C share holder is on board the vessel.

To be eligible to receive an allocation, an individual would be required to have historic and recent participation. Historic participation would be demonstrated by at least one landing in each of three of the qualifying years. Recent participation would be demonstrated by at least one landing in two of the three most recent seasons before June 10, 2002, except for the fisheries that were closed in this period. For these fisheries (Adak red king crab, the Pribilof Islands red and blue king crab, the St. Matthew Island blue king crab, and the Tanner crab fisheries), recent participation would be demonstrated by at least one landing in two of the three most recent seasons preceding June 10, 2002, in the snow crab, Bristol Bay red king crab, or one of the Aleutian Islands golden king crab fisheries. The recent participation requirement would be waived for captains who died in fishing-related incidents if the captain's estate applies for QS.

C shares would be required to be delivered to shore-based or floating processors for processing. During the first 3 years a fishery is open after implementation, C shares would not be subject to specific delivery requirements. After 3 years, C shares would be subject to the Class A IFQ/Class B IFQ distinction with commensurate regional delivery requirements unless the Council determines, after review, not to apply those designations.

To be eligible to receive transferred C shares, a person would be required to be a U.S. citizen with at least 150 days sea time in a U.S. commercial fishery in a harvest capacity. In addition, the person would be required to be an ''active participant'' in the BSAI crab fisheries, demonstrated by a landing in a crab fishery during the 365 days before the transfer application. Evidence of participation could be either a State of Alaska fish ticket, an affidavit from the vessel owner, or other verifiable evidence.

Leasing of C shares in each fishery would be permitted in the first three seasons a fishery is prosecuted after implementation of the Program. After the first three seasons the fishery is prosecuted, leasing would be permitted only in the case of a documented hardship (such as a medical hardship or loss of vessel) for the term of the hardship, subject to a maximum of 2 years over a 10–year period.

Individual C share use and holdings would be capped at the same level as the vessel use caps applicable to QS. Initial allocations of C shares in excess of the cap could be retained. C shares would not be considered in determining a vessel's compliance with the vessel use caps on QS. Landings with C shares would be subject to the IFQ fee program.

C/P captains would be allocated C/P C shares that include a harvesting and on-board processing privilege. Harvests with C/P C shares also could be delivered to shore-based or floating processors.

Processing Sector

A processing privilege, analogous to the harvesting privilege allocated to harvesters, would be allocated to processors. Qualified processors would be allocated processor quota share (PQS) in each crab fishery. PQS represent an exclusive but revocable privilege to receive deliveries of a specific portion of the annual TAC from a fishery. An annual allocation of PQS is referred to as IPQ and expressed in pounds of crab. IPQs would be issued for 90 percent of the allocated harvests, corresponding to the 90–percent allocation of Class A IFQ. Processor privileges would not apply to the remaining 10 percent of the TAC allocated as Class B IFQ. IPQs would be regionally designated for processing in a North or a South region (corresponding to the regional designation of the Class A IFQ).

PQS allocations would be based on processing history during a specified qualifying period for each fishery. A processor's allocation in a fishery would equal its share of all qualified pounds of crab processed in the qualifying period (i.e., pounds processed by the processor divided by pounds processed by all qualified processors). Processor shares would be transferable, including the leasing of IPQs and the sale of PQS, subject to caps and to community protection measures. IPQs could be used without transfer at any facility or plant operated by a processor. New processors could enter the fishery by purchasing PQS or IPQ or by purchasing crab harvested with Class B IFQ or crab harvested by CDQ groups.

Processors would be limited to holding 30 percent of the PQS issued for a fishery, except that initial allocations of shares above this limit could be retained and used. In addition, in the snow crab fishery, no processor would be permitted to use or hold in excess of 60 percent of the IPQs issued for the Northern region.

Catcher/Processors

C/Ps have a unique position in the Program because they participate in both the harvest and processing sectors. Persons who caught and processed crab on the same vessel would be allocated C/P QS. These shares would represent a harvest privilege and an on-board processing privilege. To be eligible for C/P shares, a person would be required to hold a permanent fully transferable C/P LLP license. In addition, a person must have processed crab on board the C/P in either 1998 or 1999. Persons meeting these qualification requirements would be allocated C/P QS in accordance with the allocation rules for harvest shares for all qualified catch that was processed on board. Catcher/Processor QS would not have regional designations.

Regionalization

The regional designation of QS is intended to preserve the historic geographic distribution of landings in the fisheries. Communities in the Pribilof Islands are the prime beneficiaries of this regionalization provision. Two regional designations would be created in most fisheries. The North region would be all areas in the Bering Sea north of 56°20′ N latitude. The South region would be all other areas. Catcher vessel QS, Class A IFQ, PQS, and IPQ would be regionally designated. Crab harvested with regionally designated IFQ would be required to be delivered to a processor in the designated region. Likewise, a processor with regionally designated shares would be required to accept delivery of and process crab in the designated region. Catcher vessel QS and PQS would be designated based on the location of the activity that gave rise to the allocation. For example, qualified catch delivered in a region would result in CV QS designated for that region.

The Program has two exceptions to the North/South regional designations. In the western Aleutian Islands (Adak) golden king crab fishery, 50 percent of the CV QS and PQS would be designated as western shares to be delivered west of 174° W. longitude. The remaining 50 percent of the Class A IFQ allocation would have no regional designation and would not be subject to a regional delivery requirement. This designation would be applied to all allocations regardless of the historic location of landings in the fishery. A second exception is the Bering Sea Tanner crab fishery, which would have no regional designation. This fishery is anticipated to be conducted primarily as a concurrent fishery with the regionalized Bristol Bay red king crab and Bering Sea snow crab fisheries, making the regional designation of Tanner crab landings unnecessary.

Cooperatives

Harvesters may form voluntary cooperatives associated with one or more processors holding PQS. A minimum membership of four unique CV QS holders would be required for cooperative formation. The cooperative would receive the sum of the annual IFQ allocations of its members in the applicable crab fisheries. A cooperative would be required to submit annually a cooperative agreement to NMFS before NMFS would set aside the cooperative's IFQ allocation for its exclusive use. Cooperative members would be allowed to leave a cooperative at any time after one season. Departing members would retain their QS, but a departing member's IFQ would remain with the cooperative for the duration of the cooperative's IFQ permit. Vessels on which cooperative shares were fished would not be subject to use caps. IFQ could also be transferred between cooperatives, subject to NMFS' approval.

Only processors that hold IPQ could associate with a cooperative. Processors that associate with cooperatives would not be members of the cooperatives but would remain independent. A cooperative would not be bound to deliver its harvests to an associated processor, provided that the cooperative complies with the delivery requirements associated with the harvest and processing shares. Processors that do not hold IPQ would not be able to associate with a cooperative.

Binding Arbitration

BSAI crab fisheries have a history of contentious price negotiations. Harvesters have often acted collectively to negotiate an ex-vessel price with processors, at times delaying fishing to pressure price concessions from processors. Participants in both sectors are interested in ending that practice, but are concerned that market power could be altered by the rationalization of the fisheries. The Program would create a system with a one-to-one relationship of harvest and processing shares that would limit the pool of persons with whom a QS holder may transact. The concern is most acute for the last QS holders from each sector to commit their shares because of the one-to-one relationship of IPQ to Class A IFQ. The last Class A IFQ holder to contract deliveries will have a single IPQ holder to contract with, effectively limiting any ability to use other processor markets for negotiating leverage. To ensure fair price negotiations, the Program includes a provision for binding arbitration to resolve price disputes between harvesters and processors.

The system of binding arbitration would apply to IPQ, Class A IFQ, and C shares when those shares are subject to IPQ landing requirements. Under the system, the arbitrator would establish a finding that preserves the historic division of revenues while considering other relevant factors, including current ex-vessel prices, location and timing of deliveries, and vessel safety.

The arbitration process would begin pre-season with a market report for each fishery prepared by an independent market analyst and the establishment of a non-binding fleet wide benchmark price by an arbitrator who has consulted with both fleet representatives and processors. Information provided by the sectors would be historical in nature. In determining this benchmark price, the arbitrator would consider the highest arbitrated price that applied to at least 7 percent of the IPQ in the fishery in the preceding year. This non-binding price is intended to help guide price negotiations and inform later arbitration proceedings. After a negotiating period, a Class A IFQ holder could initiate a single arbitration proceeding with one or more IPQ holders before the fishing season. Proceedings may be initiated by one or more IFQ holders prior to the season after committing to deliver crab to the IPQ holder. For a brief period of time prior to the commencement of hearings, an IFQ holder could join the proceeding by unilaterally committing deliveries to the IPQ holder.

The arbitration would be in a last best (or final) offer format. The IPQ holder would submit a single offer. Each IFQ holder could submit an offer, or a cooperative could submit a collective offer. For each IFQ holder or cooperative, the arbitrator would select between the IFQ holder's (or cooperative's) offer and the IPQ holder's offer. An IFQ holder with uncommited IFQ may opt-in to any contract that results from a competitive arbitration by accepting all terms of the arbitration decision (assuming that the IPQ holder held adequate shares to accept the deliveries).

Community Protection Measures

The Program includes several provisions intended to protect communities from adverse impacts that could result from the Program. Communities would be defined as boroughs, if an organized borough exists, or as first or second class cities, if no organized borough exists. Communities eligible for the community protection measures would be those with 3 percent or more of the qualified landings in any crab fishery included in the Program. Based on these criteria, NMFS has preliminarily determined that the eligible crab communities are as follows: Adak, Akutan, Dutch Harbor, Kodiak, King Cove, False Pass, St. George, St. Paul, and Port Moeller.

''Cooling off'' provision. During the first two years of fishing under the Program, any PQS based on processing history from an eligible community could not be transferred from that community.

''Cooling off'' provision exemptions. Three exemptions exist to the cooling off provision. Tanner crab PQS would be exempt from the ''cooling off'' provision because that fishery is

expected to be a concurrent fishery with the Bristol Bay red king crab and snow crab fisheries. Western Aleutian Islands red king crab PQS would also be exempt from the ''cooling off'' provision because that fishery was closed for several years leading up to development of the Program. Western Aleutian Islands golden king crab PQS would also be exempt from the ''cooling off'' provision because the West regionalization landing requirements are inconsistent with the historic distribution of landings that would be established by the ''cooling off'' provision.

Individual processing quota caps. IPQ caps would be established to limit the annual issuance of IPQs in seasons when the TAC exceeds a threshold amount. When the Bristol Bay red king crab TAC is greater than 20 million pounds, IPQs would not be issued for the amount of the TAC in excess of 20 million pounds. When the snow crab TAC is greater than 175 million pounds, IPQs would not be issued for the amount of the TAC in excess of 175 million pounds. Under these circumstances, Class A IFQ issued in excess of these thresholds would not be subject to the IPQ landing requirements but would be subject to the regional landing requirements.

Sea time waiver. Sea time eligibility requirements for the purchase of QS would be waived for CDQ groups and community entities in eligible communities, allowing those communities to build and maintain local interests in harvesting. CDQ groups and community entities would be eligible to purchase PQS. CDQ groups and community entities would not be permitted to purchase C shares.

Right of first refusal for processor quota share. Eligible communities would have a right of first refusal on the transfer of PQS and IPQ originating from processing history in the community if the transfer would result in relocation of the shares outside the community. Adak would not be eligible for the right of first refusal provision because Adak would receive a direct allocation of western Aleutian Islands golden king crab. The right of first refusal would be granted to CDQ groups in CDQ communities. In addition, eligible communities in the Gulf of Alaska (GOA) north of 56°20′ would have a right of first refusal on the transfer of PQS and IPQ from communities in the GOA with less than 3 percent of the qualified landings in any crab fishery included in the Program.

Community Development Quota Program and Community Allocations

Community development quota program. The CDQ program would be broadened to include the eastern Aleutian Islands golden king crab fishery and the western Aleutian Islands red king crab fishery. In addition, the CDQ allocations in all crab fisheries covered by the Program would be increased from 7.5 to 10 percent of the TAC. The increase would not apply in the Norton Sound crab fisheries, which are excluded from the Program. CDQ groups would be required to deliver at least 25 percent of their allocation to shore based processors. The CDQ allocations would be managed independently from the Program and would not be subject to the Program's share designations and landing requirements.

Community purchase. Any non-CDQ community in which 3 percent or more of any crab fishery was processed could form a non-profit entity to receive QS, IFQ, PQ and IPQ transfers on behalf of the community.

Adak allocation. An allocation of 10 percent of the TAC of western Aleutian Islands golden king crab fishery would be made to the community of Adak. The allocation to Adak would be made to a nonprofit entity representing the community, with a board of directors elected by the community. Oversight of the use of the allocation for ''fisheries related purposes'' would be deferred to the State of Alaska under the FMP. NMFS would have no direct role in oversight of the use of this allocation. The State of Alaska would provide an implementation review to the Council to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan. This allocation would not be part of the crab IFQ fisheries, but would be managed as a separate commercial fishery by the State of Alaska in a manner similar to management of the crab CDQ fisheries.

Crew Loan Program

To aid captains and crew in purchasing QS, a low interest loan program (similar to the loan program under the halibut and sablefish IFQ program) would be created. This program would be funded by 25 percent of the cost recovery fees required by section 304 of the Magnuson-Stevens Act. Loan money would be accessible only to active participants and could be used to purchase either C shares or QS. Quota share purchased with loan money would be subject to all use and leasing restrictions applicable to C shares for the term of the loan.

Protections for Participants in Other Fisheries

The Program would affect the fishing patterns of current participants and could allow BSAI crab fishermen to increase participation in other fisheries. To protect participants in GOA groundfish fisheries, restrictions would apply to vessels that participate in the snow crab fishery. The restrictions, also called sideboards, would restrict a vessel's harvests to its historic harvests in all GOA groundfish fisheries (except the sablefish fishery). Vessels with less than 100,000 pounds of total snow crab harvests and more than 500 metric tons (mt) of total Pacific cod harvests in the GOA during the qualifying years would be exempt from the restrictions. In addition, vessels with less than 50 mt of total groundfish landings in the GOA during the qualifying period would be prohibited from harvesting Pacific cod from the GOA. Restrictions would be applied to vessels but also would restrict harvests made using a groundfish LLP license derived from the history of a vessel so restricted, even if that LLP license is used on another vessel.

Additional Program Elements

Annual reports and Program review. NMFS, in conjunction with the State of Alaska, would produce annual reports on the Program. Eighteen months after implementation of the Program, the Council would review the processor quota share and binding arbitration components. After 3 years, the Council would conduct a preliminary review of the Program. A full review of the Program would be undertaken at the first Council meeting in the fifth year after implementation. These reviews are intended to objectively measure the success of the Program in achieving the goals and objectives specified in the Council's problem statement and the Magnuson-Stevens Act standards. These reviews would examine the impacts of the Program on vessel owners, captains, crew, processors, and communities, and include an assessment of options to mitigate negative impacts. Additional reviews would be conducted every 5 years.

Data collection. The Program includes a comprehensive socio-economic data collection program to aid the Council and NMFS in assessing the success of the Program and developing amendments necessary to mitigate any unintended consequences. Cost, revenue, ownership, and employment data would be collected regularly from

the harvesting and processing sectors. The data would be used to study the economic and social impacts of the Program on harvesters, processors, and communities. Participation in the data collection program would be mandatory for all participants in the fisheries.

Monitoring and enforcement. NMFS and the State of Alaska would coordinate monitoring and enforcement of this Program. Harvesting and processing activity would need to be monitored for compliance with the implementing regulations. Methods for catch accounting and catch monitoring plans for cooperatives would generate data to provide accurate and reliable estimates of the total catch and landings to manage quota share accounts, prevent overages of IFQ and IPQ, and determine regionalization requirements. Monitoring would include landed catch weight and species composition, bycatch, and deadloss to estimate total fishery removals.

Cost Recovery. NMFS would establish a cost recovery fee system, required by section 304(d)(2) of the Magnuson-Stevens Act, to recover actual costs directly related to the management and enforcement of the Program. The crab cost recovery fee would be paid in equal shares by the harvesting and processing sectors and would be based on the ex-vessel value of all crab harvested under the Program, including CDQ crab and Adak crab. NMFS also would enter into a cooperative agreement with the State of Alaska to use IFQ cost recovery funds in State management and observer programs for BSAI crab fisheries. The crab cost recovery fee is prohibited from exceeding 3 percent of the annual ex-vessel value. However, the collection of up to 133 percent of the actual costs of management and enforcement under the Program would be authorized, which would provide for up to 100 percent of management costs after allocation of 25 percent of the cost recovery fees to the loan program.

Amendment 19

The amended Magnuson-Stevens Act provides the Council the authority to recommend to the Secretary subsequent amendments to the Program and provides the Secretary with the discretion to approve these amendments by January 1, 2005. In June 2004, the Council reviewed the public comments received on the Draft EIS and determined that changes to the Program were warranted. The Council recommended changes to three components of the Program: binding arbitration, cooperative sideboard management, and program review. These changes are contained in Amendment 19 to the FMP.

The first change would limit information sharing among participants involved in binding arbitration to minimize the exposure of these participants to antitrust liability. The second change would remove a provision that directs cooperatives to limit their aggregate Pacific cod catch in both federal and state waters because this provision is not practical or enforceable. Thus, groundfish sideboards in the GOA would be managed by NMFS through fleet-wide sideboard directed fishing closures for federal waters and the parallel fishery in state waters.

The Council also directed its staff to prepare an analysis of captain share (C share) landings for consideration by the Council 18 months after fishing begins under the Program. The purpose of the analysis is to examine landings patterns of C shares to determine whether the distribution of landings among processors and communities of C shares differs from the distribution of landings of the general harvest share pool. After receiving the analysis, the Council will consider whether to remove the 90/10 Class A/Class B split from C shares, which is scheduled to take effect 3 years after fishing under the Program begins.

An EIS was prepared for Amendments 18 and 19 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and socio-economic impacts of the alternatives (see ADDRESSES). The EIS contains as appendices the Regulatory Impact Review/Initial Regulatory Flexibility Analysis and the Social Impact Assessment prepared for this action.

Public comments are being solicited on proposed Amendments 18 and 19 through the end of the comment period stated (see DATES). All comments received by the end of the comment period on the amendments will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendments. 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. NMFS will publish the proposed regulations to implement Amendments 18 and 19 in October 2004.

Dated: August 26, 2004.

Allen D. Risenhoover,

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

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