

harvest upon any part of which NMFS based issuance of the bidder's crab reduction permit and non-crab reduction permit.

The rule proposed the following basic requirements (which are here paraphrased) for the four bid elements:

(1) Proposed rule § 600.1018(h)(2) requires the reduction vessel in each bid to be the same vessel whose crab fishing history during the general qualification period (GQP), endorsement qualification period (EQP), and recent participation period (RPP) gave rise to the crab license which the bidder includes in its bid as its crab reduction permit.

(2) Proposed rule § 600.1018(h)(3) defines the reduction vessel fishing privilege in each bid as the reduction vessel's fisheries trade endorsement, its qualification for ever being placed under foreign registry or operational authority, and its worldwide fishing privileges of every kind,

(3) Proposed rule § 600.1018(h)(4) requires the crab reduction permit in each bid to be the crab license which NMFS issued on the basis of the GQP, EQP, and RPP crab fishing history of the bidder's reduction vessel. The crab reduction permit must be non-interim and include at least one area/species endorsement for any one or more reduction endorsement fisheries, and

(4) Proposed rule § 600.1018(h)(6) requires the reduction vessel fishing history in each bid to be the whole of the fishing history of the reduction vessel upon any part of which NMFS based issuance of the crab reduction permit and the non-crab reduction permit which the bidder includes in its bid.

For vessels which were lost or destroyed before the RPP, there are proposed rule exceptions to the requirements in (1), (3), and (4) immediately above. Nevertheless, bids involving these lost or destroyed vessels still require extant reduction vessels.

The proposed rule used these definitions and requirements as a means of matching, for program reduction purposes, each crab license with the crab vessel whose fishing history gave rise to the crab license. NMFS believed it was necessary for the proposed rule to do this because:

(1) Crab licences, crab vessels, and the vessels' crab fishing histories are all independently transferable,

(2) Crab harvests are identified by crab vessels rather than by crab licenses,

(3) Crab license and crab vessel transfers are a matter of public record, but crab fishing history transfers are not,

(4) Crab vessels were not designated on crab licenses until 2002, and

(5) There was an inference in the regulations implementing Amendment 10 to the crab fishery management plan (Amendment 10) that crab fishing histories must have been completely earned on one vessel.

Although the proposed rule's approach would apparently have worked well for almost all potential program bidders, the public comments suggest that it would be problem for a few.

#### *Fishing History Years for Bid Scoring and Reduction Loan Allocation Purposes*

The program's statutory authority requires scoring bids in a reverse auction by dividing each bid price by the total value of crab landed from 1990 through 1999, under each crab reduction permit, in "the most recent five-year period" in each of seven area/species endorsement fisheries.

The statute also requires using these data, in a different calculation, to allocate the reduction loan among the six reduction endorsement fisheries whose post-reduction fees will repay the loan.

The proposed rule's § 600.1018(a) definition of the term "bid crab" defines "the most recent five-year period" as "the most recent 5 calendar years in which each reduction endorsement fishery was for any length of time open for directed crab fishing during a 10-calendar-year period beginning on January 1, 1990, and ending on December 31, 1999."

Although the proposed rule's approach would apparently have worked well for most potential program bidders, the public comments suggest it would be a problem for some.

### **II. Public Comments About The Proposed Rule**

#### *Reduction Vessel and Crab Fishing History for Reduction Purposes*

The pertinent public comments assert (1) that the fishing history of a particular vessel functionally transfers from the vessel at the time that its fishing history gives rise to issuance of a crab license and (2) that the fishing history thereafter becomes the history of the license rather than the history of the vessel. This assertion includes not only that vessel's crab fishing history during the vessel moratorium period (VMP), GQP, EQP, and RPP, but also all the vessel's predecessor fishing history.

Accordingly, the program would no longer need to require a bid's reduction vessel to be the same vessel whose crab fishing history during the GQP, EQP, and RPP gave rise to the bid's crab

reduction permit. Pre-license fishing history would no longer be a reduction-vessel determinant because that history would have transferred from the vessel which earned that history to the crab license to whose issuance that history gave rise. A program bidder's reduction vessel could be, for example, the crab vessel designated, at the time of bidding, on the bid's crab reduction permit. In most bids, this would probably be the vessel whose fishing history did, in fact, give rise to the bid's crab reduction permit; but a reduction vessel other than the vessel which did so would also be acceptable.

Additionally, each bid's pre-license crab fishing history for reduction purposes would be the fishing history of the vessel or vessels which gave rise to issuance of, and was consequently transferred (as the comments assert) to, the crab license corresponding to the bid's crab reduction permit.

Public comments also assert that, under appropriate circumstances involving lost or destroyed vessels, a reduction vessel would not need to be extant at the time of program bidding.

#### *Fishing History Years for Bid Scoring and Reduction Loan Allocation Purposes*

Instead of the years involved in these calculations being (as the rule proposed) the most recent 5 years in which each area/species endorsement fishery was open for directed fishing, the pertinent public comments assert that these years should be the most recent 5-year period in which each program bidder landed, under a crab reduction permit, crab in each area/species endorsement fishery.

### **III. Discussion and Questions**

#### *Reduction Vessel and Crab Fishing History for Reduction Purposes*

Crab fishing history is an important program factor. Crab fishing history is the basis upon which the program must score bids and allocate repayment of the reduction loan between the six reduction endorsement fisheries. For this purpose, however, only crab fishing history during the period from January 1, 1990, through December 31, 1999, is relevant. The program's authorizing statute does not allow considering crab fishing history during any other period. Moreover, crab fishing history has been the past qualification basis for crab licenses and may potentially be the future qualification basis for other forms of crab harvesting privileges, including harvesting allocations.

If an identifiable vessel's pre-license crab fishing history does, as the pertinent public comments assert,