

DATES: Comments must be received by May 14, 2003.

ADDRESSES: Comments may be mailed to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the NMFS, 709 West 9th Street, Room 420, Juneau, AK 99801. Comments also may be sent via facsimile to 907-586-7557. Comments will not be accepted if submitted by email or the Internet. Copies of the Environmental Assessment prepared for Amendment 10 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs and the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) prepared for this proposed rule are available from this same address.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907-586-7228

SUPPLEMENTARY INFORMATION:

Background

The Council recommended and NMFS approved Amendment 10 to the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs on April 18, 2001. NMFS published a final rule to implement Amendment 10 on September 24, 2001 (66 FR 48813). Amendment 10 established recent participation requirements for vessel owners to receive LLP crab species licenses. Since publication of the final rule, NMFS has determined that portions of these regulations are inconsistent with Amendment 10. This action proposes to correct this inconsistency.

The LLP was designed to address concerns of excess capital and fishing capacity in the crab fisheries off Alaska. More information on the LLP can be found in the preamble to the final rule implementing the LLP (63 FR 52642, October 1, 1998). Fishing under the LLP began on January 1, 2000.

The LLP established specific criteria for eligibility to participate in the BSAI crab fisheries. Under the LLP eligibility requirements to receive a crab species license, a person must demonstrate that documented harvests were made from a qualifying vessel during two periods, the general qualification period (GQP) and the endorsement qualification period (EQP), specified at 50 CFR 679.4(k)(5).

The Council designed the LLP to allow the fishing history of a vessel to be transferred prior to issuance of a license. A fishing history would not

qualify the holder for a license unless it was an LLP qualifying fishing history, meaning the fishing history meets the GQP and EQP requirements for LLP eligibility. Although the LLP provides for these transfers, eligibility for a license under the LLP cannot occur by piecing together the fishing histories from two or more vessels to qualify for the GQP and EQP (50 CFR 679.4(k)(5)).

In October 1998, the Council recommended Amendment 10 to add a recent participation period (RPP) from January 1, 1996, through February 7, 1998, to the eligibility requirements for a crab species license. Under Amendment 10, and in addition to the GQP and EQP requirements, a person must demonstrate that at least one documented harvest of crab was made from a vessel during the RPP to qualify for a crab species license.

The additional RPP eligibility requirement is a means of reducing the number of crab species licenses that might otherwise be issued to persons who have been inactive in the crab fishery since 1995. Licenses given to such inactive fishermen could be transferred to persons who would become active in the fishery. This result would be contrary to the purpose of the LLP because it would likely increase fishing effort above the current levels in the crab fisheries.

The Council recommended specific exceptions to the RPP requirements based on public testimony and in consideration of the impacts the RPP would have on small fishing operations. The Council recommended excepting from the RPP requirements: (1) a person who qualifies only for a Norton Sound red king crab endorsement, (2) a person whose qualifying vessel is less than 60 ft length overall, or, (3) a person whose qualifying vessel was lost or destroyed during the RPP period, but who made a documented harvest of crab species on another vessel after the first vessel was lost or destroyed through January 1, 2000. NMFS added a hardship exemption (unavoidable circumstances) to the RPP in the final rule to be consistent with the original provisions of the LLP.

The Council recommended one additional exception to allow persons that participated in a BSAI crab fishery in the RPP during the period of January 1, 1998, through February 7, 1998, without a LLP qualifying fishing history, to acquire an LLP qualifying fishing history by 8:36 a.m. on October 10, 1998. This exception provided the opportunity for recent participants in the crab fisheries, that did not hold the LLP qualifying fishing history during their documented harvests in the RPP,

to obtain historical participation in order to qualify for an LLP license.

Amendment 10 allows a vessel owner who, having acquired LLP qualifying fishing history, used a vessel to fish during the RPP to combine his acquired fishing history with his RPP fishing history in meeting the RPP requirement for an LLP crab species license. Combining an LLP qualifying fishing history with an RPP fishing history is allowed to provide recent participants the opportunity to purchase historical participation, with some restrictions. Without this ability to combine histories, only vessel owners who participated in the crab fisheries prior to 1995 would receive a license and vessel owners with recent dependence on the fishery would be denied licenses, except for recent participants who qualify for the exception.

Proposed Rule Corrections

The regulations implementing the RPP requirement (50 CFR 679.4(k)(5)(iii)) differ in one important aspect from Amendment 10. The regulations, as explained in the preamble to the proposed rule (66 FR 17397, March 30, 2001) and final rule (66 FR 48813, September 24, 2001), require that a person use one vessel to earn the GQP, EQP, and RPP fishing histories to qualify for an LLP license, with exceptions. Specifically, the regulations require that a person must have made a documented harvest during the RPP from a qualifying vessel, which is the same vessel that was used to fish in the GQP and EQP. The exception applies to a person who has made a documented harvest of crab from a vessel during the period of January 1, 1998, through February 7, 1998, and who acquired an LLP qualifying fishing history of another vessel or entered into a contract to obtain the LLP qualifying fishing history of another vessel, by October 10, 1998.

The existing regulations result in persons being denied crab LLP licenses if they did not use a qualifying vessel to fish in the RPP and did not fish in the period from January 1, 1998, through February 7, 1998. Requiring that documented harvests be made from a qualifying vessel prevents a person who fished in the RPP with a vessel that was not used to qualify for the GQP and EQP to qualify for an LLP license, unless that person met the exception. Amendment 10, however, provides that a person who had purchased the LLP qualifying fishing history and then fished with his or her vessel in the RPP would qualify for a crab license.

This action proposes to correct this inconsistency so that the implementing