



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

*National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668*

March 18, 2003

MEMORANDUM FOR: THE RECORD

FROM:

For

James W. Balsiger
Administrator, Alaska Region

Arnold J. Berg

SUBJECT: Proposed Rule to Amend Eligibility Criteria for the Bering Sea and the Aleutian Islands (BSAI) King and Tanner Crab Fisheries - CATEGORICAL EXCLUSION

This proposed action is an amendment to eligibility criteria for participation in the BSAI crab fisheries. With this proposed rule, NMFS intends to correct the inconsistency in the use of fishing history in eligibility criteria to ensure that the implementing regulations reflect Amendment 10. This proposed action amends the regulatory language at § 679.4(k)(5)(iii) and (iv) to specify that a person who owned a vessel that made qualifying harvests of crab species in the recent participation period (RPP) and who also owned an license limitation program (LLP) qualifying fishing history at the time the recent participation crab species harvests were made, is eligible for an LLP crab species license. The LLP qualifying history may be based on harvests made with the person's vessel or from LLP eligible fishing history transferred from another person to the person receiving the LLP crab species license.

After reviewing the proposed action in relation to NOAA Administrative Order (NAO) 216-6, including the criteria used to determine significance, we have concluded that the proposed action would not have a significant effect, individually or cumulatively, on the human environment. In addition, an environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) (dated July 23, 1999) was prepared for the final rule implementing Amendment 10 (66 FR 48813, September 24, 2001). The scope of the EA/RIR/IRFA includes the potential impacts of this proposed action because the EA/RIR/IRFA analyzed Amendment 10 as the Council intended, which is what this action accomplishes. Based on the nature of the proposed action and the previous environmental analysis, we have concluded that the proposed action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement, in accordance with Section 5.05b of NAO 216-6.

BACKGROUND

Amendment 10 to the Fishery Management Plan (FMP) for BSAI King and Tanner Crabs was recommended by the Council in October, 1998, to establish the RPP qualification to further the



objectives of the LLP by eliminating latent capacity in the crab fisheries. The LLP license eligibility is based on documented harvests during the general qualifying period and the endorsement qualifying period. Amendment 10, by establishing the additional RPP qualifying period, prevents vessels that did not participate in the crab fisheries between January 1, 1996, and February 7, 1998, from receiving an LLP crab species license. Amendment 10 allows vessel owners to combine fishing histories to accommodate the recency requirements if these histories were acquired by October 10, 1998.

NMFS published a final rule implementing Amendment 10 provisions on September 24, 2001 (66 FR 48813). Under 50 CFR § 679.4(k)(5)(iii) and (iv), crab harvests used for meeting the RPP eligibility criteria are limited to those harvests made by the vessel that was used as the basis of eligibility for the license holder's LLP crab species license. These regulations require that the vessel that fished in the RPP be the same vessel used to fish in the original LLP qualification periods, with one limited exception. This effectively prevents vessel owners that combined catch histories from qualifying for an LLP licence under Amendment 10. Under these regulations, only vessel owners who participated in the crab fisheries prior to 1995 would receive a license, except for recent participants who qualify for the exception.

This proposed action amends the regulatory language at § 679.4(k)(5)(iii) and (iv) to specify that a person who owned a vessel that made RPP qualifying harvests of crab and who also owned an LLP qualifying fishing history at the time the RPP qualifying harvests were made, is eligible for a LLP crab species license, with one exception. The exception allows vessels that fished from January 1, 1998 to February 7, 1998, without an LLP qualifying history to purchase or contract for an LLP qualifying history by October 10, 1998. The LLP qualifying history may be based on harvests made with the person's vessel or from LLP eligible harvest history transferred from another person to the person receiving the LLP crab species license.

PREVIOUS NEPA ANALYSIS

In the EA/RIR/IRFA for Amendment 10, the analysis discussed impacts of combining fishing histories in the manner described in Amendment 10. Therefore this propose rule, which brings the regulations into compliance with Amendment 10, was fully analyzed in this EA/RIR/IRFA. Allowing the combining of fishing histories to qualify for a license would potentially allow three additional vessels to continue to fish the BSAI crab fisheries. A finding of no significant impact was signed April 18, 2001.

CONCLUSIONS

The salient factors contributing to the conclusion that a categorical exclusion is appropriate for this proposed action are:

1. The principal effect of the action is to allow three additional vessel to be eligible to continue to participate in the BSAI crab fisheries. The potential nominal increase in the number of vessels in

the BSAI crab fisheries is not anticipated to have significant impacts on the human environment due to the limited context of the action and to the lack of severity of potential impacts (NAO 216-6, Sections 6.01 and 6.02).

2. The impacts of this proposed action was previously analyzed in a NEPA analysis with a finding of no significant impacts on the human environment.

cc: Tamra Faris, NEPA Coordinator, Alaska Region

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