

the RFDs in September. If catch rates continue to be low, some or all of the remaining previously scheduled RFDs may be waived as well.

Classification

This action is taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

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

Dated: September 6, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970703166-8209-04; I.D. 060997A]

RIN 0648-AH65

Fisheries of the Exclusive Zone Economic Zone Off Alaska; License Limitation Program; Correction

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

ACTION: Correcting amendments.

SUMMARY: NMFS is correcting a final rule implementing the License Limitation Program (LLP) established for the groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI), the groundfish fisheries in the Gulf of Alaska (GOA), and the crab fisheries in the BSAI, that was published in the Federal Register of Thursday, October 1, 1998.

DATES: Effective January 1, 1999.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228.

SUPPLEMENTARY INFORMATION: The LLP is a limited access system authorized under section 303(d) of the Magnuson-Stevens Fishery Conservation and Management Act. The LLP is designed to limit the number, size, and operation of vessels that may be used in the affected groundfish and crab fisheries. The North Pacific Fishery Management Council (Council) adopted the LLP in June 1995, and officially submitted it to NMFS in June 1997. A proposed rule to implement the LLP was published on August 15, 1997 (62 FR 43865). The LLP was approved by NMFS on September

12, 1997. A final rule to implement the LLP was published on October 1, 1998 (63 FR 52642). Additional rules to implement an application process and a transfer process for LLP licenses were proposed on April 19, 1999 (64 FR 19113), and published as final on August 6, 1999 (64 FR 42826).

The current regulatory text regarding an eligible applicant for a Norton Sound red or blue king crab license under the LLP does not accurately represent the Council's intent or the FMP amendment text and is inconsistent with regulations governing the LLP application requirements. The word "and" between "1993" and "1994", in the "eligible applicant" definition at 50 CFR 679.2, is a drafting error that instead should be "or". Currently, the regulation defining an eligible applicant for an LLP license based on participation in the Norton Sound red and blue king crab fisheries at 50 CFR 679.2 reads as follows:

"Eligible applicant means a qualified person who submitted an application during the application period announced by NMFS and . . . who was an individual who held a State of Alaska permit for the Norton Sound king crab summer fishery in 1993 and 1994, and who made at least one harvest of red or blue king crab in the relevant area during the period specified in §679.4(k)(5)(ii)(G), or a corporation that owned or leased a vessel on June 17, 1995, that made at least one harvest of red or blue king crab in the relevant area during the period in §679.4(k)(5)(ii)(G), and that was operated by an individual who was an employee or a temporary contractor; or."

The reference to § 679.4(k)(5)(ii)(G) specifies the criteria for an area/species endorsement for Norton Sound red and blue king crab on an LLP license. Basically, these criteria include one documented harvest of any amount of red or blue king crab from Norton Sound between January 1, 1993, and December 31, 1994.

This regulatory text appears clear that unless otherwise exempted, to qualify for an LLP license to fish for red or blue king crab in Norton Sound, an individual would have to:

(a) Submit an LLP application during the application period (which ended December 17, 1999);

(b) Have held a State of Alaska permit for the Norton Sound king crab summer fishery in 1993 and 1994; and

(c) Have made one documented harvest of any amount of red or blue king crab from Norton Sound during the same 2-year period, 1993 through 1994.

This regulation is essentially the same as that published in the proposed rule for public comment on August 15, 1997 (62 FR 43866). No comments were received on this eligibility issue in Norton Sound. However, a more fundamental issue is whether the intent

of the Council and the LLP implementing regulations on this point are consistent. With respect to crab fisheries, the LLP is authorized by Amendment 5 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands. Amendment 5 was approved by the National Marine Fisheries Service on September 12, 1997, and added section 8.1.4.1.1 to the FMP, which reads in part as follows:

License Recipients. Licenses will be issued to current owners (as of June 17, 1995) of qualified vessels, except in the Norton Sound summer red and blue king crab fisheries. License for these fisheries would be issued to:

a. Individuals who held a State of Alaska Permit for the Norton Sound summer king crab fisheries and made at least one landing; or

b. Vessel owners as of June 17, 1995, in instances where a vessel was corporate owned, but operated by a skipper who was a temporary contract employee.

The FMP text, for individuals, shows a strong connection between holding a State permit for, and making at least one landing from, the Norton Sound summer king crab fisheries. The reason that the Council made an exception to the normal vessel ownership requirement for these fisheries is that many of the participants are not vessel owners and fished on the vessels of others, and the Council did not want to exclude any past participant from future participation in these fisheries under the LLP. In addition, the Council was aware that this approach could result in more vessels fishing for king crab in Norton Sound under the LLP, but the entry of new vessels from outside the area was unlikely due to the management of those fisheries by the State of Alaska (State) under a super-exclusive registration system.

The FMP amendment text does not specify a particular time period within which an individual would have to hold a State permit for, and make at least one landing from, the Norton Sound summer king crab fisheries. The Council newsletter dated June 28, 1995, and the preamble to the proposed rule indicate that the Council intended the Norton Sound king crab fisheries to be exempted from the standard general qualification period (GQP) of January 1, 1988, through June 27, 1992, that applies to most other crab fisheries. Instead of the GQP, the Council stipulated a landing requirement during the 2-year period 1993 through 1994. The reason for this is that the State started its super-exclusive registration system in 1993. Hence, when the Council adopted the LLP in June 1995, the period 1993 through 1994

represented the most recent participation history under the super-exclusive system for Norton Sound, and the best snapshot of local or resident involvement in the king crab fisheries in that area.

In summary, the resulting “eligible applicant” regulatory text quoted earlier substitutes an individual State permit requirement for the vessel ownership otherwise required for LLP eligibility, and exempts the Norton Sound king crab fishery from the GQP requirements. Instead, an “eligible applicant” could receive an LLP license with a Norton Sound red and blue king crab area/species endorsement if the applicant has a minimum of one documented harvest of red or blue king crab in Norton Sound during the 2-year period 1993 through 1994.

Apparently the Council intended to design the LLP to include all of the 1993 and 1994 participants in the Norton Sound summer king crab fisheries. No indication of the same concern for excess fishing capacity exists in these fisheries that the Council had for the other LLP groundfish and crab fisheries. Requiring a minimum of only one documented harvest in the Norton Sound king crab fisheries in either 1993 and 1994, but requiring a State permit in both years would be restrictive (i.e., would qualify fewer LLP participants

for the Norton Sound king crab fisheries). Requiring a State permit only for the year in which the minimum landing requirement was satisfied would be less restrictive. In addition, regulations implementing the LLP application process (published August 6, 1999, 64 FR 42826) added § 679.4(k)(6) in which an applicant for a Norton Sound crab species endorsement must contain:

“... valid evidence that the applicant was a State of Alaska permit holder for the Norton Sound king crab summer fishery in 1993 or 1994.” (Emphasis added)

For this reason, the definition for “eligible applicant,” subparagraph (3) at § 679.2, is corrected.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: September 7, 2000.

William T. Hogarth,
*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For reasons explained in the preamble, 50 CFR part 679 is corrected by making the following correcting amendment:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C 773 *et seq.*, 1801 *et seq.*, and 3631*et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.2, paragraph (3) under the definition for “Eligible applicant,” is corrected to read as follows:

§ 679.2 Definitions.

* * * * *
Eligible applicant * * *
* * * * *

(3) Who was an individual who held a State of Alaska permit for the Norton Sound king crab summer fishery at the time he or she made at least one harvest of red or blue king crab in the relevant area during the period specified in § 679.4(k)(5)(ii)(G), or a corporation that owned or leased a vessel on June 17, 1995, that made at least one harvest of red or blue king crab in the relevant area during the period in § 679.4(k)(5)(ii)(G), and that was operated by an individual who was an employee or a temporary contractor; or