

transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 13, 2006.

**Donald S. Welsh,**

*Regional Administrator, EPA Region III.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[Docket No. 050520139-6102-04; I.D. 030305A]

RIN 0648-AS46

#### Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Bering Sea/Aleutian Islands King and Tanner Crabs; Industry Fee System for Fishing Capacity Reduction Loan

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

**ACTION:** Final rule.

**SUMMARY:** NMFS publishes this final rule to exempt any crab landed under the Community Development Quota (CDQ) Program from the fee regulations for the Bering Sea/Aleutian Islands King and Tanner Crab Fishing Capacity Reduction Program, to provide that crab buyers disburse fee collections to NMFS not later than the 7th calendar day of each month, and to provide that the annual report from each crab buyer shall be submitted to NMFS by July 1 of each calendar year. The fee regulations otherwise remain unchanged. The intent of this final rule is to modify the fee rules so that they do not apply to any crab allocated pursuant to the CDQ Program, and to ease the fee collection burden for crab buyers.

**DATES:** This final rule is effective June 9, 2006.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Sturtevant, Financial Services Division, NMFS headquarters, at 301-713-2390.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This **Federal Register** document is also accessible via the Internet at the

Office of the **Federal Register's** website at <http://www.access.gpo.gov/su-docs/aces/aces140.html>.

#### Background

Sections 312(b)-(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b) through (e)) generally authorized fishing capacity reduction programs. In particular, section 312(d) authorized industry fee systems for repaying the reduction loans which finance reduction program costs.

Subpart L of 50 CFR part 600 is the framework rule generally implementing sections 312(b)-(e).

Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) generally authorized reduction loans.

The Consolidated Appropriations Act of 2001 (Public Law 106-554) directed the Secretary of Commerce to establish a \$100 million fishing capacity reduction program in the Bering Sea/Aleutian Islands king and Tanner crab fishery. Congress amended the authorizing act twice (Public Law 107-20 and Public Law 107-117), once to change the crab reduction program's funding from a \$50 million appropriation and a \$50 million loan to a \$100 million loan and once to clarify provisions about crab fishery vessels.

NMFS published the crab reduction program's proposed implementation rule on December 12, 2002 (67 FR 76329) and its final rule on December 12, 2003 (68 FR 69331). Anyone interested in the program's full implementation details should refer to these two documents. NMFS initially proposed and adopted the program's implementation rule as section 600.1018 of Subpart L of 50 CFR part 600, but NMFS has since, without other change, re-designated the rule as section 600.1103 in a new subpart M of part 600.

NMFS allocated the prospective \$97,399,357.11 million reduction loan to the six reduction endorsement fisheries involved, as the following sub-amounts:

1. Bristol Bay red king, \$17,129,957.23,
2. BSAI *C. opilio* and *C. bairdi*, \$66,410,767.20,
3. Aleutian Islands brown king, \$6,380,837.19,
4. Aleutian Islands red king, \$237,588.04,
5. Pribilof red king and blue king, \$1,571,216.35, and
6. St. Matthew blue king, \$5,668,991.10.

On November 24, 2004, NMFS published another **Federal Register**

notice (69 FR 68313) advising the public that NMFS would, beginning on December 27, 2004, tender the crab reduction program's reduction payments to the 25 accepted bidders. On December 27, 2004, NMFS required all accepted bidders to then permanently stop all further fishing with the reduction vessels and permits.

Subsequently, NMFS:

1. Disbursed \$97,399,357.11 in reduction payments to 25 accepted bidders;
2. Revoked the relinquished reduction permits;
3. Revoked each reduction vessel's fishing history;
4. Notified the National Vessel Documentation Center to revoke the reduction vessels' fishery trade endorsements and appropriately annotate the reduction vessel's document; and
5. Notified the U.S. Maritime Administration to prohibit the reduction vessel's transfer to foreign ownership or registry.

On July 28, 2005, NMFS published a **Federal Register** document (70 FR 43673) proposing regulations to implement the crab buyback program's industry fee system.

On September 16, 2005, NMFS published a **Federal Register** document (70 FR 54652) implementing the crab buyback program's industry fee system regulations. Fee collection and payment began on October 17, 2005.

On March 1, 2006, NMFS published a **Federal Register** document (71 FR 10459) proposing to exempt any crab landed by the recipients of the CDQ allocations from the fee regulations because they did not vote in the crab buyback program's fee referendum and NMFS did not include the ex-vessel value of crab landed under the CDQ allocations in the required formula for establishing the reduction loan sub-amounts for whose repayment the reduction fishery was responsible. The recipients of the CDQ allocations do not directly benefit from the crab buyback.

In addition, NMFS was informed by crab buyers that requiring fee principal disbursement to NMFS on the last business day of the month presents problems in properly accounting for crab landings in a timely fashion. Crab buyers are unable to complete their accounting process prior to the end of that business day. Therefore, in order to allow crab buyers sufficient time to disburse fee principal, NMFS proposed that deposit principal disbursement shall be made to NMFS not later than the 7th calendar day of each month.

NMFS also proposed that the annual report from each crab buyer shall be

submitted to NMFS by July 1 of each calendar year. This should allow ample time for the State of Alaska to publish average crab price data for the previous calendar year.

In this final rule, NMFS adopts the proposed provisions without change.

### Summary of Comments and Responses

NMFS received one comment from an attorney representing the six CDQ groups as well as individual comments from each of the six CDQ groups.

*Comment 1:* Four of the comments agreed with the proposed rule. However, they asserted that NMFS wrongfully interpreted the program's enabling legislation to include CDQ crab.

*Response:* NMFS did not assert in the proposed rule that it was taking this action due to an incorrect interpretation of the program's enabling legislation. NMFS determined that the regulations should be changed because participants of the CDQ program did not vote in the crab buyback program's fee referendum and NMFS did not include the ex-vessel value of crab landed under the CDQ allocations in the required formula for establishing the reduction loan sub-amounts for whose repayment the reduction fishery was responsible.

*Comment 2:* All of the seven comments strongly agree and support the exclusion of CDQ crab allocations from the definition of reduction fishery.

*Response:* NMFS concurs and accordingly publishes this final rule.

*Comment 3:* All of the comments requested that all fee collections from CDQ allocations be repaid to the CDQ groups and that NMFS interpret the rule as retroactive to the effective date.

*Response:* NMFS determined that CDQ landings should not be subject to the buyback fees and is amending the regulations accordingly. NMFS will issue full refunds to crab buyers of any fees paid on CDQ crab landings.

*Comment 4:* Four of the comments requested that interest be repaid on all fee collections from CDQ allocations.

*Response:* NMFS has no legal authority or appropriated funding for the payment of interest. Therefore, NMFS is unable to pay interest on the fees collected from CDQ allocations.

### Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS has certified to the Small Business Administration, under Section 605(b) of the Regulatory Flexibility Act, that this final rule would not have a significant economic impact on a substantial number of small entities.

There are currently six CDQ groups that receive CDQ crab allocations and participate in the BSAI crab fisheries. This final rule revises the regulations to expressly exclude the recipients of the CDQ allocations from the crab buyback program's fee collection system. The CDQ groups allocations did not vote in the crab buyback program's fee referendum and NMFS did not include the ex-vessel value of crab landed under the CDQ allocations for establishing the reduction loan sub-amounts.

The total fee to be collected for any given year is calculated based on a formula using projected landings, the interest rate, and the amortization schedule, and it is calculated in advance for the entire year. In determining the annual fee, the contributions from recipients of the CDQ allocations were not considered in the calculation. The collection of fees on CDQ crab landings would result in the repayment of fees above what was expected for this year. As a result of the additional revenue, the buyback loan would be repaid slightly earlier than expected and would result in a slight decrease in the overall amount of interest accrued on the loan. Removal of the CDQ landings from the fee assessment would not have a negative impact on the expectations of the remaining BSAI crab harvesters since they were not expecting fee payments from the CDQ landings based on the fee calculations provided by NMFS. Furthermore, the contributions from CDQ landings are relatively small compared to the overall reduction loan amount. The contributions from the CDQ crab landings would represent 10 percent of the total reduction loan amount. This final rule is necessary to ensure that recipients of CDQ crab are

excluded from the requirement to pay fees on their BSAI crab landings. The six CDQ groups would be positively affected by this final rule.

### List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels.

Dated: May 4, 2006.

**James W. Balsiger,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 600 is amended as follows:

### PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600, subpart M, continues to read as follows:

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

■ 2. In § 600.1104, paragraph (b), the definition of "Reduction fishery" is revised and paragraph (h)(4) is revised to read as follows:

#### § 600.1104 Bering Sea and Aleutian Islands (BSAI) crab species fee payment and collection system.

\* \* \* \* \*

(b) \* \* \*

*Reduction fishery* means the fishery for all crab rationalization crab, excluding CDQ allocations, in all crab rationalization fisheries.

\* \* \* \* \*

(h) \* \* \*

(4) Fish buyers in each reduction endorsement fishery shall in accordance with § 600.1014, deposit and disburse, as well as keep records for and submit reports about, the fees applicable to each such fishery; except the requirements specified under paragraph (c) of this section concerning the deposit principal disbursement shall be made to NMFS not later than the 7th calendar day of each month; and the requirements specified under paragraph (e) of this section concerning annual reports which shall be submitted to NMFS by July 1 of each calendar year; and,

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