



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

September 4, 2008

MEMORANDUM FOR: The Record

FROM: Robert D. Mecum   
Acting Administrator, Alaska Region

SUBJECT: Categorical Exclusion for Amendment 27 to the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs – Exemption of Custom Processing Arrangements from Individual Processor Quota Use Caps.

NOAA Administrative Order (NAO) 216-6, Environmental Review Procedures, requires all proposed agency actions to be reviewed for potential impacts on the human environment. This memo is to certify that the proposed action to revise Federal regulations at 50 CFR 680.7 and 680.42 related to the exemption of custom processing arrangements from the application of individual processor quota (IPQ) use caps is categorically excluded from the need to prepare an environmental assessment pursuant to the National Environmental Policy Act (NEPA).

**Description of the action:**

The proposed action would modify the method NMFS uses to determine how much IPQ a person has used under the Bering Sea and Aleutian Islands Crab Rationalization Program (Program). This action would modify IPQ use caps so that IPQ holders who own processing facilities would not be considered as using IPQ when that IPQ crab was (1) received by an IPQ holder at their facility under a custom processing arrangement; (2) limited to specific crab fisheries; (3) received and processed at specific types of processing facilities; or (4) was IPQ crab that was derived from PQS earned from processing in specific communities where crab has been historically delivered. In addition, this action would establish limits on the amount of IPQ crab that could be processed at a facility for the Aleutian Islands golden and red king crab fisheries so that crab processed under custom processing arrangements would not be applied to the IPQ use caps of the owners of facilities.

Currently, processors are limited in how much IPQ they can receive at a processing facility. In each of the nine crab fisheries under the Program, a person is limited to holding no more than 30 percent of the PQS initially issued in the fishery and using no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given fishery. In addition, no person is permitted to use more than 60 percent of the IPQ crab in the Bering Sea *C. opilio* fishery designated for exclusive use in the north region. Finally, no processing facility can be used to process more than 30 percent of the IPQ in a crab fishery.



The Program is designed to minimize the potential that PQS and IPQ use caps could be evaded through the use of corporate affiliations or other legal relationships that would effectively allow a single person to use PQS or IPQ even if they are not the majority owner of that PQS or IPQ. Specifically, the Program calculates a person's IPQ use cap by summing the total amount of IPQ that is (1) held by that person; (2) held by other persons who are affiliated with that person through common ownership or control; and (3) any IPQ crab that is custom processed at a facility owned by that IPQ holder. A custom processing arrangement exists when one IPQ holder (1) has a contract with the owners of a processing facility to have his crab processed at that facility; (2) does not have an ownership interest in the processing facility; and (3) is not otherwise affiliated with the owners of that crab processing facility. In custom processing arrangements, the IPQ holder contracts with a facility operator to have the IPQ crab processed according to his specifications. Custom processing arrangements typically occur when an IPQ holder does not own an onshore processing facility or cannot economically operate a stationary floating crab processor in a specific region.

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) became law on January 12, 2007 (Pub. L. 109-479). Section 122(e) of the MSRA specifically directed NMFS to modify the means for calculating IPQ use caps that apply to a person who is custom processing C. opilio crab in the north region. To fully implement Section 122(e), NMFS would need to adopt conforming regulations.

**Effects of the action:**

The proposed action would have social and economic effects, but no effect on the natural or physical environment not already considered in the EIS prepared for the Program. Modifying the custom processing use cap calculations to exempt custom processing arrangements would benefit processors by allowing greater production efficiencies, and would benefit harvesters by providing additional market opportunities. Not removing the requirement could also have very minor distributional effects among communities in which crab are processed. Socio-economic impacts are predicted to result from the proposed action; however, socio-economic effects are not intended by themselves to require preparation of an Environmental Assessment or Environmental Impact Statement under NEPA. The socio-economic impacts of this action are fully analyzed in the Regulatory Impact Review and Initial Regulatory Flexibility Analysis prepared for Amendment 27 and its implementing regulations.

The environmental impacts of the Program, including the application of IPQ use caps, were analyzed in the Bering Sea/Aleutian Islands Crab Fisheries Final Environmental Impact Statement (EIS). Due to the nature of this action, it is not predicted to have additional impacts beyond those identified in the EIS. Effectively, this action would merely modify the degree of processor consolidation permissible under the Program in a manner which has been analyzed in the EIS and would not have effects that differ from the current management. This proposed action would not be anticipated to affect delivery patterns or otherwise change the harvesting and processing of crab species in ways not previously analyzed in the alternatives provided in the EIS. The EIS concludes that for all of the components of the environment analyzed, the effects of the Program are insignificant based on the best available scientific information. This proposed action would not have an environmental impact different from the effects of the

Program, let alone a significant environmental impact. No new significant information is available that would change these determinations in the EIS.

**Categorical exclusion:**

This action would not result in any changes to the human environment. As defined in Sections 5.05b and 6.03a.3(b)(1) of NAO 216-6, the proposed action is a minor change to a previously analyzed and approved action and the proposed change has no effect individually or cumulatively on the human environment. As such, it is categorically excluded from the need to prepare an Environmental Assessment or an EIS.

CC: AKR NEPA Coordinator  
NOAA NEPA Coordinator