

compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because

it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environment documentation because this action relates to the promulgation of operating regulations or procedures for drawbridges. Under figure 2–1, paragraph (32)(e) of the instruction, an “Environmental Analysis Checklist” is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.537 is added to read as follows:

#### § 117.537 Townsend Gut.

The draw of the Southport (SR27) Bridge, at mile 16.8, across Townsend Gut between Booth Bay and Southport, shall open on signal; except that, from April 29 through September 30, between 6 a.m. and 6 p.m., the draw shall open on signal once an hour, on the hour only, after an opening request is given by calling the number posted at the bridge.

Dated: April 10, 2006.

**David P. Pekoske,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. E6–5909 Filed 4–19–06; 8:45 am]

**BILLING CODE 4910–15–P**

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 680

[Docket No. 060404093–6093–01; I.D. 032406D]

RIN 0648–AU37

#### Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations implementing Amendment 21 to the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner crabs (FMP). This action proposes a change to the BSAI Crab Rationalization Program (Program). If approved, Amendment 21 and its implementing rule would modify the timing for harvesters and processors to match harvesting and processing shares and the timing for initiating arbitration proceedings incorporated in the Program to resolve price and other

delivery disputes. This action is necessary to increase resource conservation and economic efficiency in the crab fisheries that are subject to the Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable law.

**DATES:** Comments must be received no later than June 5, 2006.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Records Office. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.

- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

- Facsimile: 907-586-7557.

- E-mail: 0648-AU37-

PRKTC21@noaa.gov. Include in the subject line of the e-mail the following document identifier: Crab Rationalization RIN 0648-AU37. E-mail comments, with or without attachments, are limited to 5 megabytes.

- Webform at the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions at that site for submitting comments.

Copies of Amendment 21 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region Web site at <http://www.fakr.noaa.gov/sustainablefisheries.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Glenn Merrill, 907-586-7228 or [glenn.merrill@noaa.gov](mailto:glenn.merrill@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The king and Tanner crab fisheries in the exclusive economic zone of the BSAI are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act as amended by the Consolidated Appropriations Act of 2004 (Pub. L. 108-199, section 801). Amendments 18 and 19 to the FMP included the Program. A final rule implementing these amendments was published on March 2, 2005 (70 FR 10174). Regulations implementing Amendments 18 and 19 are located at 50 CFR part 680. Amendment 20 to the FMP, which would authorize the management of an Eastern and Western Tanner crab (*C. bairdi*), is currently under Secretarial

review. A NOA for Amendment 20 was published in the **Federal Register** on February 27, 2006 (71 FR 9770). The comment period on the NOA ends on April 28, 2006. A proposed rule to implement Amendment 20 was published in the **Federal Register** on March 21, 2006 (71 FR 14153). The comment period on the proposed rule ends on May 5, 2006.

Under the Program, NMFS issued harvester quota share (QS) that yields annual individual fishing quota (IFQ). An IFQ is a permit to harvest a specific portion of the total allowable catch (TAC). A portion of the IFQ issued are "Class A" IFQ. Crab harvested under a Class A IFQ permit must be delivered to a specific processor. NMFS issued processor quota share (PQS) to processors that yield individual processing quota (IPQ). IPQ is a permit to receive and process a portion of the TAC harvested with Class A IFQ. A one-to-one relationship exists between Class A IFQ and IPQ. The Program includes an arbitration system to resolve price, delivery terms, and other disputes in the event that holders of Class A IFQ and IPQ are unable to negotiate those terms.

After the annual issuance of IFQ and IPQ, the arbitration system regulations at § 680.20(h)(3)(iv)(A) allow harvesters who are not affiliated with a processor through ownership or control linkages (unaffiliated harvesters) to unilaterally commit delivery of harvests from Class A IFQ to a processor with available IPQ. Once committed, the unaffiliated harvester is permitted to initiate a binding arbitration proceeding under § 680.20(h)(3)(v) if the parties are unable to agree to the terms of delivery. Regulations at § 680.20(h)(3)(v) require that an IFQ holder initiate binding arbitration at least 15 days prior to a season opening. This approach is commonly called the "share match" approach to binding arbitration.

Alternatively, regulations at § 680.20(h)(3)(iii) allow unaffiliated harvesters to match IFQ with processors with available IPQ using a "lengthy season approach." Although the lengthy season approach allows harvesters and processors to use the arbitration system, it requires a mutual agreement of both parties to schedule arbitration proceedings later in the season, which can affect negotiating positions. The arbitration system under the Program was intended to provide harvesters and processors with the ability to reach price agreements through binding arbitration using two methods: one that results in a binding arbitration decision prior to the season, the share match approach; and the other that would allow a binding arbitration proceeding

to begin under a mutually agreed upon negotiation timeline, the lengthy season approach.

Under NMFS' current schedule for stock assessments and TAC setting, the share match approach to resolve price disputes has not met the needs of IFQ holders. NMFS typically does not issue IFQ and IPQ 15 days prior to a season opening, limiting the ability of IFQ holders to rely on the share match approach to achieve a price resolution.

If approved, Amendment 21 to the FMP and its implementing rule would link the timing for initiating share matching and a binding arbitration proceeding to the issuance of IFQ and IPQ, providing participants with a reasonable and reliable opportunity to fully use the arbitration system. The timing for share matching and initiation of binding arbitration would be based on the issuance of IFQ and IPQ, including a five-day assessment period for negotiated commitments. For a period of five days after the issuance of IFQ and IPQ, unaffiliated harvesters holding Class A IFQ and holders of IPQ could voluntarily agree to commit their respective shares. After the five-day assessment period, holders of uncommitted Class A IFQ could unilaterally commit that IFQ to any holder of uncommitted IPQ. During the 10-day period beginning five days after the issuance of IFQ and IPQ, any holder of committed Class A IFQ could unilaterally initiate a binding arbitration proceeding with the IPQ holder to which the IFQ were committed. This proposed rule would not change existing requirements that the parties to the arbitration would meet with a contract arbitrator to schedule the submission of information to the arbitrator and the terms and timing for submission of last best offers.

Amendment 21 would implement an action that is consistent with the original intent of the arbitration system, with the necessary modifications to accommodate the existing stock assessment and TAC announcement processes. Each year, the State of Alaska Department of Fish and Game (ADF&G) establishes a TAC for BSAI crab through a collaborative process with NMFS. This process is outlined in the FMP. ADF&G considers the most recent and best available scientific data when determining the TAC for a fishery. In most cases, crab stock survey data become available for analysis between mid-August and mid-September. Following the availability of the data becoming available, NMFS and ADF&G analysts perform stock assessment analyses and estimation of stock abundance as needed for determination

of stock status relative to overfishing and TACs. For most BSAI crab fisheries, ADF&G has determined that announcement of TACs will occur on October 1. The TAC announcement timing is intended to allow ADF&G and NMFS to conduct a thorough review of the data prior to the TAC determinations by ADF&G, and for NMFS to issue IFQs and IPQs prior to the October 15<sup>th</sup> season opening. Accelerating the timing of the TAC announcement could compromise the integrity of the results, introduce additional errors, and limit the ability of ADF&G and NMFS to use the most recent and best available data. Once ADF&G announces the TAC, NMFS must issue IFQ to harvesters based upon their holdings of QS, and IPQ to processors based upon their holdings of PQS. This process requires several days after TAC is issued.

NMFS believes that delaying the start of the season to accommodate the stock assessment process and IFQ and IPQ issuance process is not a viable option. Under the FMP, the State of Alaska has the authority to establish season dates. Modifying season dates would require action by the Alaska Board of Fisheries. The Council and NMFS are not proposing a change in season dates. Delaying the season dates could reduce access to valuable markets and is not supported by the BSAI crab fishing industry.

Modifications proposed under Amendment 21 were discussed and reviewed during a Program workshop in Seattle held on November 18, 2005, (70 FR 10174, November 2, 2005). Industry representatives from both the harvesting and processing sector attended the meeting in roughly equal proportion. Based upon public comments NMFS received during that meeting, the approach described under Amendment 21 was favored by industry representatives from both the harvesting and processing sector over alternative approaches (e.g., delaying the season start date). Particularly favored was a brief assessment period once IFQ and IPQ have been issued before unaffiliated harvesters could unilaterally match their IFQ to IPQ holders. Several industry attendees from the processing sector noted that once IFQ and IPQ have been issued, harvesters and processors require time to assess their holdings and complete any voluntary matching agreements. In December 2005, NMFS briefed the Council detailing the timing conflict and industry comments received during the November 2005 public meeting. The Council considered additional public comments and proposed limiting the alternatives for

consideration to those that resolve the timing conflict in a manner that closely matches the timing of the share match approach to binding arbitration prescribed in the FMP. Amendment 21 as adopted by the Council incorporates this approach.

This proposed rule would not alter the basic structure or management of the Program. It would not alter reporting, monitoring, fee collection, and other requirements to participate in the arbitration system. The proposed rule also would not increase the number of harvesters or processors in the Program fisheries or the current amount of crab that may be harvested. The proposed action would not affect current regional delivery requirements or other restrictions on harvesting and processing. Amendment 21 would provide a mechanism to ensure that a binding arbitration proceeding could occur early in the fishing season in accordance with the original design of the Program. Amendment 21 would not modify the lengthy season approach to binding arbitration proceeding, and would fulfill the intent of the FMP to provide harvesters and processors with effective methods of resolving price disputes under the arbitration system.

#### Classification

At this time, NMFS has not determined that Amendment 21 and the provisions in this rule that would implement Amendment 21 are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the determination that this proposed rule is consistent, will take into account the data, views, and comments received during the comment period (see **DATES**).

A Regulatory Impact Review (RIR) was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. Additionally, an initial regulatory flexibility analysis (IRFA) was prepared that describes the impact this proposed rule would have on small entities. Copies of the RIR/IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**). The RIR/IRFA prepared for this proposed rule incorporates by reference an extensive RIR/IRFA prepared for Amendments 18 and 19 that detailed the impacts of the Program on small entities.

The IRFA for this proposed action describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the proposed rule, and discusses both small and non-small regulated entities to adequately characterize the fishery

participants. The IRFA contains a description and estimate of the number of directly affected small entities.

Estimates of the number of small harvesting entities under the Program are complicated by several factors. First, each eligible captain will receive an allocation of QS under the program. A total of 186 captains received allocations of QS for the 2005–2006 fishery. In addition, 269 allocations of QS to license limitation permit (LLP) license holders were made under the Program, for a total of 454 QS allocations. Because some persons participated as LLP license holders and captains and others received allocations from the activities of multiple vessels, only 294 unique persons received QS. Of those entities receiving QS, 287 are small entities because they either generated \$4.0 million or less in gross revenue, or they are independent entities not affiliated with a processor. Estimates of gross revenues for purposes of determining the number of small entities, relied on the low estimates of prices from the arbitration reports based on the 2005/2006 fishing season.

Allocations of PQS under the Program were made to 29 processors. Of these PQS recipients, nine are estimated to be large entities, and 20 are estimated to be small entities. Estimates of large entities were made based on available records of employment and the analysts' knowledge of foreign ownership of processing companies. These totals exclude catcher/processors, which are included in the LLP license holder discussion.

Other supporting businesses also may be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are treated in the RIR/IRFA prepared for this action (see **ADDRESSES**).

Implementation of the proposed rule would not change the overall reporting structure and recordkeeping requirements of the participants in the BSAI crab fisheries or arbitration system.

No Federal rules that may duplicate, overlap, or conflict with this proposed action have been identified.

The Council considered alternatives as it designed and evaluated the potential methods for accommodating current fishery management timing and the need to provide an opportunity for a binding arbitration proceeding early during a crab fishing season in the EA prepared for this proposed action. The alternatives differed only in the timing of when unaffiliated harvesters with IFQ could match their shares with processors with uncommitted IPQ. The alternatives have no effect on fishing

practices or patterns and therefore have no effects on the physical and biological environment. Effects of the Program, including the arbitration system and the timing of binding arbitration proceedings, on the physical and biological environment (including effects on benthic species and habitat, essential fish habitat, the ecosystem, endangered species, marine mammals, and sea birds) are fully analyzed in the EIS prepared for the Program (Crab EIS) and are incorporated by reference in the EA prepared for this proposed action.

This proposed action is not anticipated to have additional impacts on the BSAI crab fisheries beyond those identified in the Crab EIS. No new significant information is available that would change these determinations in the Crab EIS. Please refer to the Crab EIS and its appendices for more detail (see **ADDRESSES**).

The EA/RIR/IRFA prepared for this action analyzed three alternatives. Alternative 1 would maintain the existing timing for initiating a binding arbitration proceeding. This would maintain the inconsistency between the timing of the issuance of IFQ and IPQ in a crab QS fishery and the requirement to initiate a binding arbitration prior to the start of the season. Alternative 1 would not provide an opportunity for harvesters to initiate a binding arbitration proceeding early in the season. Alternative 1 does not effectively implement a portion of the Program as recommended by the Council. In effect, the reliability of the arbitration system to resolve price disputes earlier in the season is limited. Although participants have relied on the "lengthy season approach" to effectively extend the deadline for initiating an arbitration proceeding to resolve a dispute concerning terms of delivery, the greater degree of cooperation required by the approach limits its reliability. In addition, the lengthy season approach could delay resolution of disputes beyond the period that would be expected, if the process for initiating arbitration could be applied as expected. The result could be either a loss of operational certainty arising from unsettled terms of delivery and potentially a shift in negotiating leverage if one party were disproportionately affected by the uncertainty.

Alternative 2, the preferred alternative, would provide harvesters with the opportunity to utilize the arbitration system to resolve disputes in a manner consistent with the original

intent of Program. Although Alternative 2 likely would not provide a price resolution through arbitration prior to the start of the season as originally envisioned, it would provide an opportunity to resolve price disputes shortly after the start of the season. Alternative 2 would not have effects on harvesters or processors different from those already considered under the EIS prepared for the Program. The five-day assessment period would be likely to contribute to stability in relationships among IFQ holders and IPQ holders, by permitting persons to resolve negotiated commitments prior to allowing unilateral commitments. In addition, this 5-day period could result in more negotiated commitments by prioritizing negotiated relationships over unilateral commitments.

Alternative 3 is similar to Alternative 2 but does not provide a five-day assessment period to match shares after the issuance of IFQ and IPQ. The absence of such a period could provide an advantage to persons who are unable, or unwilling, to develop voluntary commitments. The absence of this period to allow IFQ and IPQ holders to finalize negotiated commitments also could be disruptive to markets by flooding IPQ holders with unilateral commitments from IFQ holders who fear being displaced by others. An orderly settlement of commitments is more likely to take place if a period of negotiated commitments were permitted prior to allowing unilateral commitments.

Although the different alternatives under consideration in this action would have distributional and efficiency impacts for individual participants, in no case are these impacts in the aggregate expected to be substantial. Although none of the alternatives has substantial negative impacts on small entities, preferred Alternative 2 minimizes the potential negative impacts that could arise under Alternative 3. Differences in efficiency that could arise are likely to affect most participants in a minor way having an overall insubstantial impact. As a consequence, none of the alternatives is expected to have any significant economic or socioeconomic impacts.

#### *Collection-of-information*

This rule does not contain new collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

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

#### **List of Subjects in 50 CFR Part 680**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 14, 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 680 is proposed to be amended as follows:

#### **PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for part 680 continues to read as follows:

**Authority:** 16 U.S.C. 1862.

2. In § 680.20, paragraphs (h)(3)(iv)(A) and (h)(3)(v) introductory text are revised to read as follows:

#### **§ 680.20 Arbitration System.**

\* \* \* \* \*

(h) \* \* \*

(3) \* \* \*

(iv) \* \* \*

(A) At any time 5 days after NMFS issues IFQ and IPQ for that crab QS fishery in that crab fishing year, holders of uncommitted Arbitration IFQ may choose to commit the delivery of harvests of crab to be made with that uncommitted Arbitration IFQ to an uncommitted IPQ holder.

\* \* \* \* \*

(v) *Initiation of Binding Arbitration.* If an Arbitration IFQ holder intends to initiate Binding Arbitration, the Arbitration IFQ holder must initiate the Binding Arbitration procedure not later than 15 days after NMFS issues IFQ and IPQ for that crab QS fishery in that crab fishing year. Binding Arbitration is initiated after the committed Arbitration IFQ holder notifies a committed IPQ holder and selects a Contract Arbitrator. Binding Arbitration may be initiated to resolve price, terms of delivery, and other disputes. There will be only one Binding Arbitration Proceeding for an IPQ holder but multiple Arbitration IFQ holders may participate in this proceeding. This limitation on the timing of Binding Arbitration proceedings does not include proceedings that arise due to:

\* \* \* \* \*

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