the earliest time that is medically appropriate.

(3)(i) Having a current physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; or

(ii) Having a history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior; or

(iii) Having drug abuse or drug addiction;

(c) The board shall consist of the following:

(1) In circumstances covered by paragraph (b)(1) of this section, the board shall consist of at least one medical officer who is experienced in the diagnosis and treatment of the communicable disease for which the medical notification has been made;

(2) In circumstances covered by paragraph (b)(2) of this section, the board shall consist of at least one medical officer who is experienced in the diagnosis and treatment of the vaccine-preventable disease for which the medical notification has been made;

(3) In circumstances covered by paragraph (b)(3) of this section, the board shall consist of at least one medical officer who is experienced in the diagnosis and treatment of the physical or mental disorder, or substance-related disorder for which medical notification has been made.

(d) The decision of the majority of the board shall prevail, provided that at least two medical officers concur in the judgment of the board.

(e) Reexamination shall include:

(1) Review of all records submitted by the alien, other witnesses, or the board;

(2) Use of any laboratory or additional studies which are deemed clinically necessary as a result of the physical examination or pertinent information elicited from the alien's medical history;

(3) Consideration of statements regarding the alien's physical or mental condition made by a physician after his/her examination of the alien; and

(4) A physical or psychiatric examination of the alien performed by the board, at the board's discretion;

(f) An alien who is to be reexamined shall be notified of the reexamination not less than 5 days prior thereto.

(g) The alien, at his/her own cost and expense, may introduce as witnesses before the board such physicians or medical experts as the board may in its discretion permit; provided that the alien shall be permitted to introduce at least one expert medical witness. If any witnesses offered are not permitted by the board to testify (either orally or through written testimony), the record of the proceedings shall show the reason for the denial of permission.

(h) Witnesses before the board shall be given a reasonable opportunity to review the medical notification and other records involved in the reexamination and to present all relevant and material evidence orally or in writing until such time as the reexamination is declared by the board to be closed. During the course of the reexamination the alien's attorney or representative shall be permitted to question the alien and he/she, or the alien, shall be permitted to question any witnesses offered in the alien's behalf or any witnesses called by the board. If the alien does not have an attorney or representative, the board shall assist the alien in the presentation of his/her case to the end that all of the material and relevant facts may be considered.

(i) Any proceedings under this section may, at the board's discretion, be conducted based on the written record, including through written questions and testimony.

(j) The findings and conclusions of the board shall be based on its medical examination of the alien, if any, and on the evidence presented and made a part of the record of its proceedings.

(k) The board shall report its findings and conclusions to DHS, and shall also give prompt notice thereof to the alien if his/her reexamination has been based on his/her appeal. The board's report to DHS shall specifically affirm, modify, or reject the findings and conclusions of prior examining medical officers.

(l) The board shall issue its medical notification in accordance with the applicable provisions of this part if it finds that an alien it has reexamined has a Class A or Class B condition.

(m) If the board finds that an alien it has reexamined does not have a Class A or Class B condition, it shall issue its medical notification in accordance with the applicable provisions of this part.

(n) After submission of its report, the board shall not be reconvened, nor shall a new board be convened, in connection with the same application for admission or for adjustment of status, except upon the express authorization of the Director.

Dated: January 12, 2016.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2016–01418 Filed 1–25–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 151223999–6040–01]

RIN 0648–BF68

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: This rule addresses how individual processing quota (IPQ) use caps apply to Bering Sea *Chionoecetes bairdi* Tanner crab fisheries: The eastern *C. bairdi* Tanner (EBT) and the western *C. bairdi* Tanner (WBT). This rule exempts EBT and WBT IPQ crab that is custom processed at a facility through contractual arrangements with the facility owners from being applied against the IPQ use cap of the facility owners. This rule applies to EBT and WBT IPQ crab received for custom processing during the 2015/2016 crab fishing year. Without this rule, substantial amounts of EBT and WBT Class A IFQ crab would remain unharvested, and fishermen, shoreside processors, and communities that participate in the EBT and WBT fisheries have no viable alternatives to mitigate the resulting significant, negative economic effects before the fisheries end for the season. This rule is necessary to temporarily relieve a restriction that is preventing the full harvest of EBT and WBT Class A IFQ crab. This rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, and other applicable law.

DATES: Effective January 26, 2016 through June 30, 2016. Comments must be received by February 25, 2016.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2015–0168, by any of the following methods:

• Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0168* click the ''Comment Now!'' icon, complete the

required fields, and enter or attach your comments.

• Mail: Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review (RIR) and the Categorical Exclusion prepared for this rule may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.* The Environmental Impact Statement (Program EIS), RIR (Program RIR), Final Regulatory Flexibility Analysis (Program FRFA), and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the king and Tanner crab fisheries in the U.S. exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The Council prepared, and NMFS approved, the Crab FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the Crab FMP appear at 50 CFR parts 600 and 680.

This rule modifies regulations that specify how IPQ use caps apply to IPQ issued for EBT and WBT crab fisheries for the 2015/2016 crab fishing year. The 2015/2016 crab fishing year ends on June 30, 2016. The following sections describe (1) the BSAI crab fisheries, (2) general background on IPQ use caps and custom processing arrangements, (3) IPQ use caps applicable to the EBT and WBT crab fisheries, and (4) this rule and justification for emergency action.

The BSAI Crab Fisheries

The Crab Rationalization Program (Program) was implemented on March 2, 2005 (70 FR 10174). The Program established a limited access privilege program for nine crab fisheries in the BSAI, including the EBT and WBT crab fisheries, and assigned quota share (QS) to persons based on their historic participation in one or more of those nine BSAI crab fisheries during a specific time period. Under the Program, NMFS issued four types of QS: catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch to shoreside crab processors or to stationary floating crab processors; catcher/processor vessel owner QS was assigned to LLP license holders who harvested and processed their catch at sea; captains and crew on board catcher/processor vessels were issued catcher/processor crew QS; and captains and crew on board catcher vessels were issued catcher vessel crew QS. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch, called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the Program. Each year PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. Quota share derived from deliveries made by catcher vessel owners (*i.e.,* CVO QS) is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a specific processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

NMFS issued QS and PQS for the EBT and WBT crab fisheries. Unlike the QS and PQS issued for most other crab fisheries, the QS and PQS issued for the EBT and WBT crab fisheries are not subject to regional delivery and processing requirements, commonly known as regionalization. Therefore, the Class A IFQ that results from EBT and WBT QS, and the IPQ that results from EBT and WBT PQS, can be delivered to, and processed at, any otherwise eligible processing facility.

In addition, the PQS and resulting IPQ issued for the EBT and WBT crab fisheries are not subject to right-of-first-refusal (ROFR) provisions included in the Program. The ROFR provisions provide certain communities with an option to purchase PQS or IPQ that would otherwise be used outside of the community holding the ROFR.

Because the EBT and WBT crab fisheries are not subject to regionalization or ROFR provisions, crab harvested under a Class A IFQ permit in these fisheries can be delivered to processors in a broad geographic area more easily than crab harvested under Class A IFQ permits in crab fisheries subject to regionalization and ROFR provisions. The rationale for exempting the EBT and WBT crab fisheries from regionalization and ROFR provisions is described in the Program EIS (see **ADDRESSES**), and in the final rule implementing the Program (March 2, 2005, 70 FR 10174).

General Background on IPQ Use Caps and Custom Processing Arrangements

When the Council recommended the Program, it expressed concern about the potential for excessive consolidation of QS and PQS, and the resulting annual IFQ and IPQ. Excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors considered and described in the Program EIS (see **ADDRESSES**). To address these concerns, the Program limits the amount of QS that a person can hold, the amount of IFQ that a person can use, and the amount of IFQ that can be used on board a vessel. Similarly, the Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use, and the amount of IPQ that can be processed at a given facility. These limits are commonly referred to as use caps.

In each of the nine BSAI 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, with a limited exemption for persons receiving more than 30 percent of the initially issued PQS. The rationale for the IPQ use caps is described in the Program EIS (see **ADDRESSES**) and the final rule implementing the Program (70

FR 10174, March 2, 2005). According to information in section 6.1.1 of the RIR (see **ADDRESSES**), no person in the EBT or WBT crab fisheries received in excess of 30 percent of the initially issued PQS. Therefore, no person may use an amount of EBT or WBT IPQ greater than an amount resulting from 30 percent of the initially issued EBT or WBT PQS.

The Program is designed to minimize the potential for a single person to evade the PQS and IPQ use caps through the use of corporate affiliations or other legal relationships. To accomplish this, § 680.7(a)(7) prohibits an IPQ holder from using more IPQ than the maximum amount of IPQ that may be held by that person and states that a person's IPQ use cap is calculated by summing the total amount of IPQ that is held by that person and IPQ held by other persons who are affiliated with that person. The term ''affiliation'' is defined in § 680.2. Additional terms used in the definition of ''affiliation'' are described in § 680.2, and NMFS refers the reader to that section for additional detail.

Under § 680.7(a)(7), any IPQ crab that is ''custom processed'' at a facility an IPQ holder owns will be applied against the IPQ use cap of the facility owner, unless specifically exempted by § 680.42(b)(7). A custom processing arrangement exists when an IPQ holder has a contract with the owners of a processing facility to have his or her crab processed at that facility, and the IPQ holder (1) does not have an ownership interest in that processing facility, and (2) is not otherwise affiliated with the owners of that processing facility. In custom processing arrangements, the IPQ holder contracts with a facility operator to have the IPQ crab processed according to that IPQ holder's specifications. Custom processing arrangements typically occur when an IPQ holder does not own a shoreside processing facility or cannot economically operate a stationary floating crab processor.

Shortly after implementation of the Program, the Council submitted and NMFS approved Amendment 27 to the Crab FMP (74 FR 25449, May 28, 2009). Amendment 27 was designed to improve operational efficiencies in crab fisheries with historically low total allowable catches or that occur in more remote regions by exempting certain IPQ crab processed under a custom processing arrangement from applying against the IPQ use cap of the owner of the facility at which IPQ crab are custom processed. For ease of reference, this preamble refers to this exemption as a ''custom processing arrangement exemption.'' NMFS refers the reader to the preamble to the final rule implementing Amendment 27 to the Crab FMP for additional information regarding the rationale for custom processing arrangement exemptions in specific BSAI crab fisheries. Section 680.42(b)(7) describes the BSAI crab fisheries and other requirements that qualify for a custom processing arrangement exemption.

Section 680.42(b)(7)(ii)(A) lists the six BSAI crab fisheries for which the custom processing arrangement exemption applies. These are: Bering Sea *C. opilio* with a North Region designation, Eastern Aleutian Islands golden king crab, Pribilof Island blue and red king crab, Saint Matthew blue king crab, Western Aleutian golden king crab processed west of 174° W. long., and Western Aleutian Islands red king crab. As described later in this preamble, the custom processing arrangement exemption implemented under Amendment 27 does not apply to custom processing arrangements in the EBT and WBT crab fisheries.

Under the custom processing arrangement exemption, NMFS does not apply any IPQ used at a facility through a custom processing arrangement against the IPQ use cap of the owners of that facility provided there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility. Effectively, § 680.42(b)(7)(ii)(A) does not count IPQ crab that are custom processed at a facility owned by an IPQ holder against the IPQ use cap of the owner of the processing facility. In such a case, a person who holds IPQ and who owns a processing facility is credited only with the amount of IPQ crab used by that person, or any affiliates of that person, when calculating IPQ use caps. In sum, these regulations allow processing facility owners who also hold IPQ to be able to use their facility, or facilities, to establish custom processing arrangements with other IPQ holders to process more crab, thereby improving throughput and providing a more economically viable processing operation.

Section 680.42(b)(7)(ii)(B) provides a custom processing arrangement exemption in the six BSAI crab fisheries described above provided that the facility, at which the IPQ crab are custom processed, meets specific requirements. Under the custom processing arrangement exemption, IPQ crab that are custom processed do not count against the IPQ use cap of persons owning the facility if the facility is located within the boundaries of a home rule, first class, or second class city in the State of Alaska on the effective date of regulations implementing Amendment 27 (June 29, 2009) and is either (1) a shoreside crab processor or (2) a stationary floating crab processor that is located within a harbor and moored at a dock, docking facility, or other permanent mooring buoy, with specific provisions applicable to the City of Atka. The specific provisions applicable to facilities operating within the City of Atka are not directly relevant to the EBT and WBT crab fisheries and this rule, and are not addressed further. Additional information on the facilities to which the custom processing arrangement exemption applies is found in the preamble to the final rule implementing Amendment 27 (74 FR 25449, May 28, 2009) and is not repeated here.

Finally, § 680.7(a)(8) prohibits a shoreside crab processor or a stationary floating crab processor in which no IPQ holder has a 10 percent or greater ownership interest in the processing facility from receiving more than 30 percent of the IPQ issued for a particular crab fishery. However, IPQ crab processed under a custom processing arrangement does not apply against the limit on the maximum amount of IPQ crab that can be processed at a facility. These regulations effectively allow more than 30 percent of the IPQ for the six BSAI crab fisheries to be processed at a facility if there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility.

Regulations implementing Amendment 27 also modified the calculation of IPQ use caps for IPQ crab subject to ROFR provisions (see § 680.42(b)(7)(ii)(C)). However, as noted earlier in this preamble, ROFR requirements do not apply to EBT and WBT crab. Therefore, modifications to IPQ use cap calculations for IPQ crab subject to ROFR provisions are not described further in this rule.

IPQ Use Caps Applicable to the EBT and WBT Crab Fisheries

As noted earlier, EBT and WBT IPQ crab that are processed under a custom processing arrangement are not exempt from IPQ use caps and will apply against a person's IPQ use cap if that person owns the facility (*i.e.,* has a 10 percent or greater direct or indirect ownership interest) at which those IPQ crab are processed. Given the percentage at which the IPQ use caps are set, a minimum of four persons who are not affiliated with each other must receive and process EBT or WBT IPQ crab to ensure that all Class A IFQ can be delivered and processed with no person exceeding the IPQ use caps. Similarly, at least four facilities that are not

affiliated through common ownership (*i.e.,* a 10 percent or greater direct or indirect ownership interest) must be used to receive and process EBT and WBT IPQ crab to ensure that all Class A IFQ can be delivered and processed with no facility exceeding the IPQ use caps.

When the Council recommended and NMFS implemented Amendment 27, the Council and NMFS did not deem it necessary to grant the EBT and WBT crab fisheries a custom processing arrangement exemption. The preamble to the proposed rule implementing Amendment 27 explains that the Council and NMFS did not recommend a custom processing arrangement exemption for EBT and WBT IPQ crab because ''Bering Sea *C. bairdi* crab are not subject to regionalization and therefore the need to exempt custom processing arrangements from the IPQ use cap does not appear necessary because crab can be effectively delivered to any processor with matching IPQ in any location'' (73 FR 54351, September 19, 2008).

Since the implementation of Amendment 27, there has been additional consolidation in the BSAI crab processing sector. As Section 6.2.1 of the RIR describes (see ADDRESSES), during the 2015/2016 crab fishing year there appear to be only three unique unaffiliated persons (processors) who have received EBT and WBT IPQ crab at their facilities. These three processors are the Maruha-Nichiro Corporation, which includes Alyeska Seafoods, Peter Pan Seafoods, and Westward Seafoods; Trident Seafoods; and Unisea Seafoods. Information in section 6.2.1 indicates that these three processors also own and operate all facilities that have processed EBT and WBT IPQ crab during the 2015/2016 crab fishing year.

The net effect of this processor consolidation is that there are less than the required minimum of four unique and unaffiliated processors active in the EBT and WBT crab fisheries. Therefore, only 90 percent of the Class A IFQ can be delivered to, and only 90 percent of the IPQ may be used at, facilities owned and operated by Maruha-Nichiro Corporation, Trident Seafoods, and Unisea Seafoods without causing the IPQ use caps to be exceeded. The remaining 10 percent of the 2015/2016 EBT Class A IFQ/IPQ, or 826,322 pounds, and the remaining 10 percent of the 2015/2016 WBT Class A IFQ/IPQ, or 615,489 pounds, must be either delivered to processing facilities that are not affiliated with Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods or left unharvested (see Section 6.2.1 of the RIR for more detail). In total, 10 percent of the Class A IFQ/IPQ for both the EBT and WBT crab fisheries equals 1,441,811 pounds.

Sections 7.1 and 7.2 of the RIR indicate that developing or using an alternative processing facility not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods would not be a feasible processing option for the remainder of the 2015/2016 crab fishing year for several reasons. First, even though the 2015/2016 crab fishing year ends on June 30, 2016, under the Crab FMP, the Crab FMP authorizes the State of Alaska to establish specific regulations that define the length of a crab fishing season during a crab fishing year. By State of Alaska regulation, the EBT and WBT 2015/2016 crab fishing seasons end on March 31, 2016. This regulatory closure date of the EBT and WBT crab fisheries provides very limited time for IPQ holders to find an alternative processing facility.

Second, although there are alternative shoreside processing facilities not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods, most of those facilities are located far from the Bering Sea crab fishing grounds, such as in Kodiak, Alaska. Transporting EBT or WBT crab to those locations would result in longer trips with increased fuel and operating costs for harvesters, result in lost fishing days while the crab are being transported, and increase the potential for deadloss (death) of crab, which becomes increasingly likely the longer that the crab are held in storage tanks and transported. In addition, alternative shoreside processing facilities, regardless of their location to the BSAI crab fishing grounds, have not provisioned and planned their processing operations to accommodate a relatively small proportion of the EBT and WBT IPQ allocations (*i.e.,* only 10 percent of the EBT and WBT IPQ). The costs of provisioning those alternative shoreside facilities for a relatively small amount of crab and without adequate planning would likely impose substantial additional costs relative to processing operations provisioned and planned prior to the start of the EBT and WBT crab fisheries. Deliveries to alternative shoreside processing facilities would impose a substantial burden and cost on Class A IFQ holders in terms of added delivery costs and time.

Third, sections 7.1 and 7.2 of the RIR indicate that using a stationary floating crab processor would not be a feasible processing option for the remainder of the 2015/2016 crab fishing year. Establishing a contract with a stationary floating crab processor, outfitting the vessel, and establishing a market for delivered Class A IFQ EBT and WBT crab in the short amount of time available before the end of the fisheries would present many of the same logistical challenges that are present for alternative shoreside processing facilities.

Finally, any IPQ holder hoping to secure an alternative shoreside processing facility or a stationary floating crab processor will have very little negotiating leverage with any unaffiliated processing facility given the amount of time remaining for the EBT and WBT crab season. That lack of negotiating leverage in establishing delivery terms and conditions could impose additional costs on IPQ holders and harvesters that may make such deliveries uneconomic. Sections 7.1 and 7.2 of the RIR conclude that there do not appear to be any viable delivery options available for 10 percent of the EBT and WBT Class A IFQ during the remainder of the 2015/2016 crab fishing year.

This Rule and Justification for Emergency Action

This rule temporarily suspends the existing § 680.42(b)(7)(ii) and adds a temporary § 680.42(b)(7)(iii) that includes EBT and WBT IPQ crab received during the 2015/2016 crab fishing year to the list of BSAI crab fisheries already receiving a custom processing arrangement exemption. This allows EBT and WBT IPQ crab received for custom processing by the three processors operating in these fisheries to qualify for a custom processing arrangement exemption and not apply against the IPQ use caps for these processors. With this rule, all EBT and WBT IPQ crab received during the 2015/2016 crab fishing year under custom processing arrangements at the facilities owned by the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods will not be counted against the IPQ use cap of the facility or the facility owners. The custom processing arrangement exemption implemented by this rule will allow the three processors to custom process crab for unaffiliated IPQ holders who have custom processing arrangements with the processors, thereby allowing harvesters with Class A IFQ to fully harvest and deliver their allocations of EBT and WBT crab to IPQ holders with a custom processing arrangement at facilities operating in the these fisheries.

Section 305(c) of the Magnuson-Stevens Act provides authority for rulemaking to address an emergency. Under that section, a regional fishery management council may recommend

emergency rulemaking if it finds an emergency exists. NMFS' Policy Guidelines for the Use of Emergency Rules provide that the only legal prerequisite for such rulemaking is that an emergency must exist, and that NMFS must have an administrative record justifying emergency regulatory action and demonstrating compliance with the Magnuson-Stevens Act and the National Standards (see NMFS Instruction 01–101–07 (March 31, 2008) and 62 FR 44421, August 21, 1997). Emergency rulemaking is intended for circumstances that are ''extremely urgent,'' where ''substantial harm to or disruption of the . . . fishery . . . would be caused in the time it would take to follow standard rulemaking procedures.''

Under NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421, August 21, 1997), the phrase ''an emergency exists involving any fishery'' is defined as a situation that meets the following three criteria:

(1) Results from recent, unforeseen events or recently discovered circumstances; and

(2) Presents serious conservation or management problems in the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

The following sections review each of these criteria and describe why the Council and NMFS determined that allowing EBT and WBT IPQ crab to qualify for a custom processing arrangement exemption for the remainder of the 2015/2016 crab fishing year meets these criteria.

Criterion 1—Recent, Unforeseen Events or Recently Discovered Circumstances

The Council and NMFS recently discovered that the processors currently receiving EBT and WBT crab are constrained by the IPQ use caps from being able to fully process all Class A IFQ issued for the EBT and WBT crab fisheries in 2015/2016. The one processing facility that previously operated in the EBT and WBT crab fisheries, and that was not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods, recently terminated its 2015/2016 BSAI crab processing operations. Harvesters with the Intercooperative Crab Exchange (ICE) notified the Council and NMFS that given these operational factors, the application of IPQ use caps in the EBT and WBT fisheries could limit their ability to fully harvest their Class A IFQ allocations. ICE is a crab cooperative that represents most of the EBT and WBT QS holders and receives most of Class A IFQ in the EBT and WBT crab fisheries. ICE submitted a petition to the Council requesting that the Council recommend an emergency rule to provide a custom processing arrangement exemption for EBT and WBT IPQ crab on December 9, 2015. The Council recommended an emergency rule to provide that custom processing arrangement exemption on December 15, 2015.

Harvesters with EBT and WBT Class A IFQ and the Council noted that harvesters are not responsible for the operational decisions of processors, and harvesters were not aware until recently of the impact of this decision on IPQ use cap calculations and their ability to fully harvest and deliver their Class A IFQ. Harvesters with Class A IFQ have stated that they did not become aware of the lack of adequate processing capacity under the IPQ use caps until after the EBT and WBT crab fisheries were underway for the 2015/2016 crab fishing year. Consequently, harvesters with Class A IFQ did not foresee that the IPQ use cap would constrain them from delivering the full amount of their EBT and WBT Class A IFQ allocations.

Section 680.20(h) requires Class A IFQ holders to ''share match'' with processors holding available IPQ as a condition of making crab deliveries. Harvesters with Class A IFQ were able to share match their EBT and WBT Class A IFQ before the fishery start date of October 15, 2015, and reasonably concluded they would be able to deliver their Class A IFQ crab to specific IPQ holders operating at specific facilities. The application of the IPQ use caps in the EBT and WBT crab fisheries, the consolidation of processors receiving EBT and EBT Class A IFQ, and the lack of a custom processing arrangement exemption for EBT and WBT IPQ constrain the ability for Class A IFQ holders to fully harvest and deliver their crab given the processing options available in the EBT and WBT crab fisheries. The Council and NMFS determined that this is a recent and unforeseen event due to recently discovered circumstances outside of the control of Class A IFQ holders. The consolidation of processors below the minimum needed to process all of the EBT and WBT Class A IFQ without exceeding the IPQ use caps was not foreseen by the Council and NMFS and was recently discovered after the start of the 2015/2016 EBT and EBT crab fishing seasons.

Criterion 2—Presents Serious Conservation or Management Problems in the Fishery

The Council and NMFS determined that this criterion is met because without an emergency rule there will be a substantial adverse economic impact on harvesters, processors, and communities. Without an emergency rule, as much as 10 percent of the Class A IFQ for both the EBT and WBT crab fisheries, or 1,441,811 pounds of crab, will be unable to be harvested due to an insufficient number of adequate processing facilities that can receive Class A IFQ without IPQ holders exceeding their IPQ use caps. The lost revenue from this forgone harvest is estimated to be approximately $ 3.4 million in ex-vessel value and $ 4.95 million in first wholesale value based on estimated ex-vessel and wholesale values of EBT and WBT crab in 2015/2016 (see Sections 7.1 and 7.2 of the RIR for additional detail).

Without a custom processing arrangement exemption, harvesters with Class A EBT and WBT IFQ would be unable to harvest allocations provided to them due to limitations imposed on IPQ holders and processors that receive EBT and WBT crab would not be able to fully process the EBT and WBT crab resource. In addition to lost revenue to harvesters and processors, communities where EBT and WBT crab are delivered will not receive benefits from labor payments and tax revenue without this rule. This rule is the only mechanism to restore the forgone harvest and lost revenue because other BSAI crab fisheries that could substitute for this lost revenue are fully allocated and are not available to compensate EBT and WBT Class A IFQ holders. Section 7 of the RIR provides additional detail on the economic impacts of this rule.

The Council and NMFS also determined that implementation of this rule will not create conservation issues with regard to BSAI crab generally, or the EBT and WBT crab fisheries specifically. This rule will allow Class A IFQ holders in the EBT and WBT crab fisheries to fully harvest their IFQ allocations, but still limit the overall amount of harvest in these fisheries to the IFQ allocations authorized for the 2015/2016 crab fishing year.

Criterion 3—Can Be Addressed Through Emergency Rulemaking for Which the Immediate Benefits Outweigh the Value of Notice and Comment Rulemaking

NMFS and the Council have determined that the emergency situation created by the lack of adequate processing facilities that can be used to

receive all EBT and WBT IPQ crab can be addressed by emergency regulations. As explained earlier in this preamble, creating a temporary custom processing arrangement exemption through this rule will allow harvesters to fully harvest their Class A IFQ allocations in the EBT and WBT crab fisheries without creating conservation and management issues for the resource or direct users of BSAI crab resources, and is consistent with the goals of the Program (see Section 5 of the RIR for additional detail).

To address the emergency, NMFS must implement an emergency rule that waives the comment period and delay in effective date otherwise required by law. The benefits of these waivers will serve the public interest by allowing for the complete harvest of EBT and WBT crab within the relatively short amount of time remaining in the 2015/2016 EBT and WBT crab seasons. Any delay in effectiveness will preclude the ability to completely harvest and process EBT and WBT crab during the 2015/2016 crab fishing year.

Without the waivers, Class A IFQ holders in the EBT and WBT crab fisheries will not have sufficient time to prosecute these fisheries as intended. As noted earlier, the EBT and WBT crab fisheries close by State of Alaska regulation on March 31, 2016. Harvesters are currently prosecuting the EBT and WBT crab fisheries and due to the unique nature of the EBT and WBT crab fisheries, harvesters will need as much time as possible to harvest the 1,441,811 pounds of Tanner crab. Additionally, for the rule to be effective in providing relief, Class A IFQ holders need to know as soon as possible that they have available processors to deliver the remainder of their EBT and WBT Class A IFQ.

Harvesters in the EBT and WBT crab fisheries submitted a petition for emergency action to the Council shortly before the start of the Council's December 2015 meeting that began on December 9, 2015. They asked that the Council revise the custom processing arrangement exemption to include the EBT and WBT crab fisheries. The fisheries that receive a custom processing arrangement exemption are specified in the Crab FMP and applying the exemption to additional fisheries would require an amendment to the Crab FMP. In order for the Council to recommend an amendment to the Crab FMP, the Council would need to notice the public that such an action was being considered prior to a Council meeting consistent with established public notice requirements. Because the Council was not aware of this issue until shortly before its December 2015 meeting, no such notice could have been provided for the December 2015 Council meeting. The next scheduled meeting of the Council is February 2016, and that is the earliest date at which the Council could notice the public that it is considering amending the Crab FMP.

Secretarial review of fishery management plan (FMP) amendments must follow the process set forth in section 304 of the Magnuson-Stevens Act, which requires more time to complete than is available to provide relief for the EBT and WBT crab fishery participants given the regulatory closure of the EBT and WBT crab fisheries on March 31, 2016. While the normal rulemaking process is the preferred avenue for making regulatory changes, as it provides interested parties the full ability to comment, the Council and NMFS have determined that in this case, the cost of the forgone harvest opportunity outweighs the benefit of using the more protracted, standard process because it would be ineffective for addressing the immediate issue. The Council initiated a typical FMP amendment process in December 2015 to address this situation in a more permanent manner.

The purpose of this rule is to temporarily allow EBT and WBT IPQ crab to be subject to a custom processing arrangement exemption for the 2015/2016 crab fishing year, while allowing continued analysis of the issue in a separate, and standard, FMP amendment process. This rule is needed to allow the complete harvesting and processing of the EBT and WBT crab fisheries during the 2015/2016 crab fishing year and will temporarily ameliorate unforeseen adverse economic consequences due to the insufficient number of adequate processing facilities.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the National Standards, other provisions of the Magnuson-Stevens Act, and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. This rule will allow for the full harvesting and processing of the EBT and WBT crab fisheries and should prevent economic losses from the limitations on the use of EBT and WBT IPQ created by the unforeseen lack of adequate processing capacity. This rule will avoid adverse economic impacts to harvesters, processors, and communities that would otherwise result if the EBT and WBT crab fisheries could not be fully harvested during the 2015/2016 crab fishing year. If this rule were delayed to allow for notice and comment, impacted entities would likely be prevented from harvesting 826,322 pounds of EBT crab and 615,489 pounds of WBT crab that would otherwise be available to impacted entities through the remainder of the 2015/2016 crab fishing year. The lost revenue from this forgone harvest is estimated to be approximately $3.4 million in ex-vessel value and $4.95 million in first wholesale value. In addition to lost revenue to harvesters and processors, communities where EBT and WBT crab are delivered will not receive benefits from labor payments and tax revenue without this rule. Fishermen, shoreside processors, and communities that participate in the EBT and WBT crab fisheries would have limited alternatives to mitigate this significant, negative economic impact. Providing relief through this rule as soon as possible is likely to ensure that these crab can be harvested before the regulatory closure of the EBT and WBT crab fisheries, provide the associated harvesting and processing revenues, and provide benefits to communities engaged in these crab fisheries. This rule promotes the goals and objectives of the Program, the Crab FMP, and the Magnuson-Stevens Act by removing a restriction that is preventing the otherwise authorized harvesting and processing of fishery resources.

As explained earlier, the lack of sufficient processing capacity in the EBT and WBT crab fisheries was not foreseen prior to or at the start of the EBT and EBT crab fisheries and was only recently discovered. Harvesters with Class A IFQ in the EBT and WBT crab fisheries are not responsible for the decisions of processors to cease operations of processing facilities, and were not aware of the impact of any operational decisions on their ability to harvest and deliver their Class A IFQ. Class A IFQ holders are not able to mitigate fishing operations in a manner that avoids the use of IPQ. Therefore, Class A IFQ holders cannot undertake actions that will allow them to fully harvest their EBT and WBT Class A IFQ without being constrained by regulations that require that IPQ use caps not be exceeded.

Finally, if required to go through notice-and-comment rulemaking, Class A IFQ holders would not have sufficient time to harvest their Class A IFQ prior to the closure of the EBT and WBT crab

fisheries on March 31, 2016. In addition to the notice-and-comment requirements under the Administrative Procedure Act, the Magnuson-Stevens Act FMP amendment process sets forth certain requirements that must be followed, such as a 60-day comment period on an FMP amendment. Because the EBT and WBT crab fisheries close by regulation on March 31, 2016, there is not enough time to follow the FMP amendment process prescribed by the Magnuson-Stevens Act and provide sufficient time for the harvest of EBT and WBT Class A IFQ. NMFS has no way other than this rule to amend IPQ use cap regulations to provide fishing opportunities for the EBT and WBT crab fisheries during the 2015/2016 crab fishing year that would otherwise be forgone. Amending IPQ use cap regulations in the EBT and WBT crab fisheries through this rule for the remainder of the 2015/2016 crab fishing year provides immediate economic benefits that outweigh the value of the deliberative notice-and-comment rulemaking process.

Similarly, for the reasons above that support the need to implement this rule in a timely manner, the Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness provision of the Administrative Procedure Act and make this rule effective immediately upon publication in the **Federal Register**. As stated above, this rule will allow for harvesting and processing of the remainder of the Class A IFQ in the EBT and WBT crab fisheries for the 2015/2016 crab fishing year, and will prevent economic losses from the inability to fully harvest and process Class A IFQ in the EBT and WBT crab fisheries.

This action is being taken pursuant to the emergency provision of the Magnuson-Stevens Act and is exempt from Office of Management and Budget review. The RIR prepared for this rule is available from NMFS (see **ADDRESSES**).

This rule is exempt from the procedures of the Regulatory Flexibility Act because this rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 20, 2016.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 680 is amended as follows:

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

■ 1. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 2. In § 680.42:

■ a. Suspend paragraph (b)(7)(ii) effective January 26, 2016 through June 30, 2016; and

■ b. Add paragraph (b)(7)(iii) effective January 26, 2016 through June 30, 2016.

The addition reads as follows:

§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

* * * * *

(b) * * *

(7) * * *

(iii) The following conditions apply:

(A) The IPQ crab is:

(*1*) BSS IPQ crab with a North region designation;

(*2*) EAG IPQ crab;

(*3*) EBT IPQ crab received by an RCR during the 2015/2016 crab fishing year;

(*4*) PIK IPQ crab;

(*5*) SMB IPQ crab;

(*6*) WAG IPQ crab provided that IPQ crab is processed west of 174 degrees west longitude;

(*7*) WAI IPQ crab; or

(*8*) WBT IPQ crab received by an RCR during the 2015/2016 crab fishing year; and

(B) That IPQ crab is processed at:

(*1*) Any shoreside crab processor located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on June 29, 2009; or

(*2*) Any stationary floating crab processor that is:

(*i*) Located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on June 29, 2009;

(*ii*) Moored at a dock, docking facility, or at a permanent mooring buoy, unless that stationary floating crab processor is located within the boundaries of the city of Atka in which case that stationary floating crab processor is not required to be moored at a dock, docking facility, or at a permanent mooring buoy; and

(*iii*) Located within a harbor, unless that stationary floating crab processor is located within the boundaries of the city of Atka on June 29, 2009 in which case that stationary floating crab processor is not required to be located within a harbor; or

(C) The IPQ crab is:

(*1*) Derived from PQS that is, or was, subject to a ROFR as that term is defined at § 680.2;

(*2*) Derived from PQS that has been transferred from the initial recipient of those PQS to another person under the requirements described at § 680.41;

(*3*) Received by an RCR who is not the initial recipient of those PQS; and

(*4*) Received by an RCR within the boundaries of the ECC for which that PQS and IPQ derived from that PQS is, or was, designated in the ROFR.

* * * * *

[FR Doc. 2016–01406 Filed 1–25–16; 8:45 am]

BILLING CODE 3510–22–P