interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch in the West Yakutat District of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 10, 2006.

The AA also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 11, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–6235 Filed 7–11–06; 2:45 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 060330091–6185–02; 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: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 21 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). This action makes changes to the arbitration system in the Bering Sea and Aleutian Islands (BSAI) Crab Rationalization Program (Program) by modifying the timing for harvesters and processors to match harvesting and processing shares and the timing for initiating arbitration proceedings 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: Effective on August 14, 2006.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action, and the Bering Sea and Aleutian Islands Crab Fisheries Final Environmental Impact Statement (EIS) prepared for the Crab Rationalization Program, may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Walsh, Records Officer, and from the NMFS Alaska Region website at *http://www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *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 (Public Law 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. On May 25, 2006, the Secretary approved Amendment 20 to the FMP, which authorizes the issuance of an East Bering Tanner crab quota share (QS) and West Bering Tanner crab QS. The final rule to implement Amendment 20 was published in the **Federal Register** on June 7, 2006 (71 FR 32862).

In February 2006, the Council adopted Amendment 21 to the FMP. The notice of availability for Amendment 21 was published in the **Federal Register** on March 31, 2006 (71 FR 16278), with a public comment period through May 30, 2006. NMFS received one comment on Amendment 21. That comment is addressed as Comment 1 in the Response to Comment section. NMFS approved Amendment 21 on June 30, 2006.

NMFS published the proposed rule for Amendment 21 in the **Federal Register** on April 20, 2006 (71 FR 20378), with a public comment period through June 5, 2006. NMFS received two comment letters with four unique public comments on the proposed rule.

A more in depth description of this action is provided in the preamble to the proposed rule and is briefly summarized here. Under the Program, NMFS issued harvester 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 IFQs 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 if holders of Class A IFQ and IPQ are unable to negotiate those terms. The arbitration system provides harvesters and processors with the ability to reach price agreements through binding arbitration using two methods: (1) the ''share match'' approach that results in a binding arbitration decision prior to the season; and (2) the ''lengthy season'' approach that allows a binding arbitration proceeding to begin under a mutually agreed upon negotiation timeline.

After the annual issuance of IFQ and IPQ, the share match approach, at § 680.20(h)(3)(iv)(A), allows 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.

Alternatively, regulations at § 680.20(h)(3)(iii) allow unaffiliated harvesters to match IFQ with processors with available IPQ using a lengthy season approach. The lengthy season approach allows harvesters and processors to use the binding arbitration proceeding during a specific time during the fishing season rather than prior to the start of the season. The lengthy season approach requires a mutual agreement of both partes to schedule arbitration proceedings later in the season, which can affect negotiating positions.

The share match approach to resolve price disputes has not met the needs of IFQ holders because they are not able to

initiate arbitration 15 days prior to the start of the season, as required by regulation. IFQ holders have noted a desire to use the share match approach in the future. Under the current schedule for stock assessments and TAC setting, NMFS typically does not issue IFQ and IPQ 15 days prior to a season opening. NMFS issued quota 5 days prior to the season during the 2005/2006 fishing year for most fisheries. This schedule effectively limits the ability of IFQ holders to rely on the share match approach to achieve a price resolution.

Because of existing stock assessment and TAC setting procedures, it is not feasible for NMFS to change the timing of issuance of IFQ and IPQ. 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. The FMP outlines this process. 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. Once data is available, NMFS and ADF&G analysts perform stock assessments to estimate stock abundance as needed for determinating the status of the stocks relative to overfishing and determining the TACs. For most BSAI crab fisheries which open on October 15, ADF&G announces the TACs on October 1. The TAC announcement timing allows ADF&G and NMFS to thoroughly review the data prior to the TAC determinations, and for NMFS to issue IFQs and IPQs prior to the October 15 season opening. Announcing the TACs before October 1 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 issues IFQ to harvesters based upon their holdings of QS, and IPQ to processors based upon their holdings of PQS. The IFQ issuance process requires several days after the TAC is announced.

This final rule provides a mechanism ensuring that a binding arbitration proceeding could occur early in the fishing season and in accordance with the original Program. The new mechanism fulfills the FMP's intent to provide harvesters and processors with effective methods of resolving price disputes under the arbitration system. This final rule accommodates the existing stock assessment and TAC announcement processes by linking the timing for initiating share matching and a binding arbitration proceeding to the issuance of IFQ and IPQ. This will provide participants with a reasonable and reliable opportunity to fully use the arbitration system, consistent with the original intent of the Program.

With this final rule, the timing for share matching and initiation of binding arbitration is based on the issuance of IFQ and IPQ, including a five-day (120 hour) assessment period for negotiated commitments. For a period of five days (120 hours) after the issuance of IFQ and IPQ, unaffiliated harvesters holding Class A IFQ and holders of IPQ can voluntarily agree to commit their respective shares. After the five-day (120-hour) assessment period, holders of uncommitted Class A IFQ can 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 can unilaterally initiate a binding arbitration proceeding with the IPQ holder to which the IFQ were committed. An IFQ holder may not initiate a binding arbitration procedure after this 10 day period, which combined with the assessment period, is 360 hours after the issuance of IFQ and IPQ for a fishery.

This final rule does not change existing requirements that the arbitration parties meet with a contract arbitrator to schedule information submission to the arbitrator and the terms and timing for submission of last best offers. This final rule does not modify the lengthy season approach to binding arbitration proceeding. This final rule does not alter the basic structure or management of the Program and does not alter reporting, monitoring, fee collection, and other requirements to participate in the arbitration system. This final rule also does not increase the number of harvesters or processors in the Program fisheries or the current amount of crab that may be harvested. The final rule does not affect current regional delivery requirements or other restrictions on harvesting and processing.

Response to Comments

Comment 1: The commenter recommends that quotas need to be reduced by 50 percent this year, and that a marine sanctuary should be established.

Response: This rule is not intended to impose quotas or otherwise limit harvesting or processing activities. This rule is intended to modify procedures for initiating binding arbitration proceedings for price negotiations. Any changes in quota allocations or to establish a marine sanctuary under the Program would need to be addressed in a separate amendment to the FMP and are not part of this action. The rule is not modified based on this comment.

Comment 2: Although the proposed rule tracks Amendment 21, it provides no guidance to industry or the arbitration organization and fails to address inconsistencies created with other portions of the regulations that remain unchanged.

Response: Amendment 21 was not intended to address issues in the arbitration system other than those specifically identified in the analysis that supported this rule. While additional clarifications in the arbitration system may be desired in the future, the rule is intended only to address the timing of share matching shares and the timing of initiating a binding arbitration proceeding under this share matching process. Additional changes in the arbitration system would need to be addressed through a separate FMP amendment and regulatory process. The rule has not been modified based on this comment.

Comment 3: NMFS should revise the proposed rule to provide the details necessary to implement Amendment 21. Specifically, the rule should note that the voluntary sharematching period starts on the day and hour NOAA Fisheries posts the issuance of IFQ and IPQ for a crab QS fishery on the NOAA Fishery website, and continues for the next 120 hours. Additionally, the rule should state that a binding arbitration proceeding must be initiated 240 hours after the end of the voluntary sharematching period. (Equivalent to 360 hours after the issuance of IFQ and IPQ for a crab QS fishery).

Response: NMFS agrees that it is appropriate for the rule to provide some additional clarity in the definition of the specific time periods for initiating share matching and a binding arbitration proceeding in a crab QS fishery. The proposed rule indicated that Arbitration IFQ holders could begin matching shares with IPQ holders five days after NMFS issues IFQ and IPQ for that crab QS fishery, and that a Binding Arbitration proceeding must begin no later than 15 days after the issuance of IFQ and IPQ in a fishery. The clarifications below do not differ substantively from the time periods specified in the proposed rule, and will reduce potential conflicts when interpreting the intent of these provisions. NMFS modifies the rule with three clarifications:

1. The issuance of IFQ and IPQ for a crab QS fishery occurs on the time and date that IFQ and IPQ amounts for that crab QS fishery are posted on the NMFS, Alaska Region website at *http://www.fakr.noaa.gov*.

2. An uncommitted Arbitration IFQ holder may begin matching shares with an uncommitted IPQ holder no earlier than 120 hours after the issuance of IFQ and IPQ for that crab QS fishery. A 120-hour period is equivalent to five days.

3. An uncommitted Arbitration IFQ holder must initiate a Binding Arbitration proceeding for a crab QS fishery not later than 360 hours after NMFS issuance that crab QS fishery. A 360-hour period is equivalent to 15 days.

Comment 4: NMFS should advise the arbitration organizations that the details associated with implementation of Amendment 21 and the proposed rule are consistent with the third-party data provider mechanism established by arbitration organizations to share information on uncommitted IPQ.

Response: Amendment 21 and the accompanying final rule are intended to narrowly address the specific timing for initiating share matching and a binding arbitration proceeding in a crab QS fishery. Amendment 21 and the final rule were not intended to provide a mechanism to review the adequacy of the interpretation of specific contract terms or the operation of a third-party data provider for purposes of sharing information among Arbitration IFQ and IPQ holders. Nothing in the rule is intended to address the contract terms for a third-party data provider, and the rule is not inconsistent with the required contractual terms. NMFS notes that the interpretation and enforcement of those terms is specifically intended to be addressed through civil measures. Please see regulations at § 680.20(a) for additional details. Although the use of a third-party data provider as described by the commenter does not appear to be inconsistent with this rule, any interpretation, implementation, or enforcement of specific third-party data provider contract terms remains a civil matter. The rule has not been modified based on this comment.

Changes from the Proposed Rule

The final rule has been changed from the proposed rule at § 680.20(h)(3)(iv)(A) and (h)(3)(v) to clarify the time periods for initiating share matching and a binding arbitration proceeding as explained in the response to Comment 3.

Classification

NMFS has determined that the final rule is consistent with the FMP, 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 prepared a final regulatory flexibility analysis (FRFA) as required by section 604(a) of the Regulatory Flexibility Act (RFA). The FRFA describes the economic impact this rule will have on small entities. A description of the action, why it is being considered, and the legal basis for it are included in this preamble. A summary of the FRFA follows. A copy of the FRFA is available from NMFS (see **ADDRESSES**).

Issues Raised by Public Comments on the IRFA

NMFS received no public comments on the IRFA.

Need for and Objectives of this Action

This action is necessary to provide a mechanism to ensure that a binding arbitration proceeding can occur early in the fishing season in accordance with the original design of the Program.

Number and Description of Small Entities Directly Regulated by the Rule

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 both 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**).

Recordkeeping and Reporting Requirements

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

Description of Significant Alternatives and Description of Steps Taken to Minimize the Significant Economic Impacts on Small Entities

The Council considered three 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. The alternatives differ 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.

Alternative 1 is the status quo and would maintain the existing timing requirements 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, 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, provides harvesters and processors with the opportunity to

utilize the arbitration system to resolve disputes in a manner consistent with the original intent of Program. Although Alternative 2 does not provide a price resolution through arbitration prior to the start of the season as originally envisioned, it does provide an opportunity to resolve price disputes shortly after the start of the season. Alternative 2 does not have economic effects on harvesters or processors different from those already considered under the EIS prepared for the Program (see **ADDRESSES**). The five-day assessment period contributes 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 five-day period may 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 disrupt 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, as in Alternative 2.

Alternative 2 minimizes the potential negative impacts that could arise under the status quo or Alternative 3. Therefore, neither of the significant alternatives to the preferred alternative have the potential to achieve the objectives of this action, while minimizing the adverse economic impacts on directly regulated small entities. Furthermore, there is no evidence or basis for concluding that the impacts for the proposed action will have a disproportionate adverse effect on small entities, as compared to other entities operating under these rules in the BSAI crab fisheries.

Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on the Internet at *http://www.fakr.noaa.gov/sustainablefisheries/crab/rat/progfaq.htm* to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 11, 2006.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 680 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 120 hours (five 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. The issuance of IFQ and IPQ for a crab QS fishery occurs on the time and date that IFQ and IPQ amounts for that crab QS fishery are posted on the NMFS, Alaska Region website at *http://www.fakr.noaa.gov*.

* * * * *

(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 360 hours (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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[FR Doc. E6–11137 Filed 7–13–06; 8:45 am]

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