

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[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: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require the Secretary of Commerce (Secretary) to approve the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (Program). The Program allocates BSAI crab resources among harvesters, processors, and coastal communities. Amendment 21 would modify the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner crabs (FMP) and the Program to alter 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 among harvesters and processors. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

DATES: Comments on the amendment must be received on or before May 30, 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-

NOAKTC21@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. Follow the instructions at that site for submitting comments.

Copies of Amendment 21 and the 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.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

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 amended the FMP to include the Program. Regulations implementing these amendments were published on March 2, 2005 (70 FR 10174) and 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. 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.

The Council submitted Amendment 21 to the FMP for Secretarial review, which would make minor changes to the FMP necessary for the management of the arbitration system under the Program. If approved, Amendment 21 to the FMP would modify the timing of both share matching and initiation of a binding arbitration proceeding by removing the requirement that share

matching and binding arbitration must be initiated at a certain point prior to the date of the first crab fishing season. Amendment 21 would require initiation of share matching and binding arbitration after the issuance of individual fishing quota (IFQ) and individual processor quota (IPQ). This revision would provide participants with a reasonable and reliable opportunity to fully use the arbitration system.

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. Under the existing arbitration system regulations, after the issuance of IFQ and IPQ, harvesters that are not affiliated with a processor through ownership or control linkages (unaffiliated harvesters) are permitted 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 if the parties are unable to agree to the terms of delivery. The IFQ holder must initiate binding arbitration proceedings at least 15 days prior to a season opening. This approach is commonly called the "share match" approach to binding arbitration.

The share match approach to resolve price disputes does not meet the needs of IFQ holders. Under the current schedule for the stock assessment process and total allowable catch determination, NMFS typically does not issue IFQ and IPQ 15 days prior to a season opening, which limits the ability of IFQ holders to rely on the share match component to achieve a price resolution. Amendment 21 would modify the timing for the initiation of binding arbitration under share matching so that it would be based upon the issuance of IFQ and IPQ, including a five-day assessment period for negotiated commitments, instead of upon the starting date of a crab season. 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 may 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.

Public comments are being solicited on proposed Amendment 21 through the end of the comment period (see **DATES**). NMFS intends to publish a proposed rule that would implement Amendment 21 in the **Federal Register** for public comment, following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on Amendment 21 to be considered in the

approval/disapproval decision on Amendment 21. All comments received by the end of the comment period on Amendment 21, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendments. To be considered, comments must be received not just

postmarked or otherwise transmitted by the close of business on the last day of the comment period.

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

Dated: March 27, 2006.

Alan D. Risenhoover,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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