

viable option for WAVD licensees. We thus conclude that these additional exclusions will have only a minor effect on WAVD operations, and hence a minimal economic impact on WAVD licensees. Therefore, we certify that the requirements of the *Memorandum Opinion and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Memorandum Opinion and Order*, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the *Memorandum Opinion and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

**Ordering Clauses**

14. Pursuant to sections 1, 4(i), 302, 303(f), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 302a, 303(f), 303(r), and 332, this Memorandum Opinion and Order is adopted.

15. Part 74 of the Commission's Rules is amended as specified in Rule

Changes, effective January 12, 2004. This action is taken pursuant to sections 1, 4(i), 302, 303(f), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 302a, 303(f), 303(r), and 332.

16. The petition for reconsideration of the *Report and Order* in this proceeding filed by Nassau County Police Department (NCPD) is granted, and the petition for reconsideration filed by the Society of Broadcast Engineers, Inc., is granted in part and denied in part, consistent with the terms of this Memorandum Opinion and Order.

17. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Memorandum Opinion and Order, ET Docket No. 01-75, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

18. Finally, the proceeding in ET Docket No. 01-75 is terminated.

**List of Subjects in 47 CFR Part 74**

Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

**Rule Changes**

■ For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 74 as follows:

**PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

■ 1. The authority citation for part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 2. Section 74.870 is amended by revising the entry for New York/NE New Jersey in the table of paragraph (c)(4) to read as follows:

**§ 74.870 Wireless video assist devices.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

| Area                   | North latitude | West longitude | Excluded frequencies (MHz) | Excluded channels |       |       |
|------------------------|----------------|----------------|----------------------------|-------------------|-------|-------|
|                        |                |                |                            | 200               | 128   | 52 km |
| * * * * *              |                |                |                            |                   |       |       |
| New York/NE New Jersey | 40°45'         | 73°59'37.5"    | 470-476                    | 14                | .     | *     |
|                        |                |                | 476-482                    | 15                | .     |       |
|                        |                |                | 482-488                    | 16                | .     |       |
|                        |                |                | 488-494                    | .....             |       | 17    |
|                        |                |                | 494-500                    | .....             |       | 18    |
|                        |                |                | 500-506                    | 19                | ..... |       |
|                        |                |                | 506-512                    | .....             |       | 20    |
| * * * * *              |                |                |                            |                   |       |       |

\* \* \* \* \*  
[FR Doc. 03-30749 Filed 12-11-03; 8:45 am]  
BILLING CODE 6712-01-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 600**

[Docket No. 020424095-3252-02, I.D. 032801B]

RIN 0648-AP25

**Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs**

**AGENCY:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes a fishing capacity reduction program in the fishery for the crab species managed under the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan (crab FMP). The program will reduce excess capacity and promote economic efficiency in the crab fishery. It is authorized under both special legislation and existing National Marine Fisheries Service (NMFS) regulations governing fishing capacity reduction programs. Its objectives include: increasing harvesting productivity for crab fishermen who remain after capacity reduction, helping conserve and manage fishery resources, and encouraging harvesting effort rationalization. Program participation is

voluntary. Under the program, NMFS will pay participants for withdrawing vessels from fishing, relinquishing fishing licenses, and surrendering fishing histories. NMFS will finance the program's \$100 million cost with a 30-year loan to be repaid by post-reduction fishermen.

**DATES:** The final rule is effective January 12, 2004.

**ADDRESSES:** Copies of the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis are available from Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3282.

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted to Michael L. Grable at the above address and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

Anyone wishing to contact the NMFS Restricted Access Management Program (which issues crab species fishing licenses) may do so at this address: Restricted Access Management Program, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Grable, (301)713-2390.

**SUPPLEMENTARY INFORMATION:**

**Statutory and Regulatory Background**

The Consolidated Appropriations Act of 2001 (Pub. L. 106-554, section 144) directed the Secretary of Commerce to establish a \$100 million fishing capacity reduction program (crab program) in the Bering Sea/Aleutian Islands king and Tanner crab fishery (crab fishery). That law was subsequently amended twice (Pub. L. 107-20, section 2201; and Pub. L. 107-117, section 205) to clarify the vessels eligible to participate in the crab fishery and change the crab program's funding from a \$50 million appropriation and a \$50 million loan to a \$100 million loan (reduction loan). The authority for making loans of this type is sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g)(MMA)(Title XI).

The North Pacific Fishery Management Council (Council) developed, and NMFS implemented, the crab FMP under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*)(Magnuson-Stevens Act). The Council developed Amendment 5 to the crab FMP to establish a license limitation program

(LLP) for the crab fishery (63 FR 52642). The Council also developed Amendment 10 to the crab FMP which further defined the eligibility criteria for crab LLP licenses (66 FR 48813). NMFS implemented Amendment 10 and later corrected the implementing regulation's eligibility criteria (68 FR 46117). Regulations implementing the crab FMP govern the fishery's management.

Subpart L to 50 CFR part 600, a framework rule promulgated pursuant to section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a(b)-(e)), governs fishing capacity reduction in general. NMFS publishes this rule as a new § 600.1018 appearing immediately after the framework rule's last existing section.

**Primary Statutory Objective**

Section 144 of Pub. L. 106-554 established the crab program's primary objective as reducing "the fishing capacity in the BSAI crab fisheries by permanently reducing the number of license limitation program crab licenses . . . ."

**Summary of Proposed Rule and Response to Comments**

On December 12, 2002, NMFS published proposed regulations to establish this crab program (67 FR 76329). The preamble to the proposed rule provides additional information on the program as it was proposed. NMFS extended and later reopened the proposed rule's public comment period. NMFS received comments from 28 entities. Comments were evenly distributed among individuals and organizations representing the views of many parties. The comments generally supported the crab program, but some disagreed with proposed rule aspects. The following is a summary of the comments and NMFS' responses.

**Comment 1:** Three comments involve the definition of the term "reduction vessel". Two of these suggest redefining the term "reduction vessel" to mean the vessel currently designated on a crab reduction permit. The other suggests expanding the definition to include vessels which replaced other vessels under the Amendment 10 exceptions.

**Response:** NMFS structured the proposed rule to make the majority of crab LLP license holders eligible to participate in the crab program. The comments suggest, however, that the proposed rule might exclude some holders who either qualified for their LLP crab licenses under the Amendment 10 exceptions or transferred these licenses, after their issuance, to vessels other than those whose catch histories gave rise to the

licenses. Accordingly, NMFS has revised the proposed rule to better accommodate license holders in these circumstances.

The proposed rule defined the term "reduction vessel" as the vessel whose crab fishing history during the FMP's three qualification periods gave rise to an LLP crab license. This was the reduction vessel for all crab program purposes (e.g., loss of fishing privileges, loss of crab fishing history, bid scoring, and reduction loan apportionment). The final rule, however, replaces the term "reduction vessel" with two separate terms, "reduction/privilege vessel" and "reduction/history vessel".

In the final rule, a reduction/privilege vessel is the vessel designated on a crab LLP license on the date of the final rule's publication in the **Federal Register** and a reduction/history vessel is the vessel whose catch history gave rise to the crab LLP license. In many cases, the reduction/privilege vessel and the reduction/history vessel will be the same vessel, but the distinction between these two reduction vessel functions will better accommodate license holders in the circumstances these comments involve. The reduction/privilege vessel no longer has any significance for any crab program purpose other than the loss of fishing privileges, and the reduction/history vessel is determinative for all other crab program purposes which involve fishing history.

**Comment 2:** One comment suggests redefining the term "crab reduction permit" to mean a bidder's non-interim crab LLP license plus all of its predecessor history.

**Response:** NMFS has resolved this issue by adding the terms "reduction/history vessel" and "reduction fishing history".

**Comment 3:** One comment suggests redefining "crab reduction history" as all crab fishing history giving rise to or accruing under a crab reduction permit.

**Response:** NMFS has resolved this issue by adding the term "reduction fishing history".

**Comment 4:** One comment suggests modifying the term "bid crab" to recognize that documented harvests of crab for crab program purposes may have been made from several different vessels.

**Response:** NMFS agrees and has appropriately revised the final rule.

**Comment 5:** Five comments involve the confidentiality of Alaska's fish ticket data.

Two of these suggest adding a final rule provision requiring bidders to waive confidentiality for the crab fishing history associated with their bids, primarily as a way of providing

more accurate information to voters in the crab program referendum. Two others suggest a provision allowing the disclosure of crab fishing histories to potential bidders. The last suggests that NMFS and the State of Alaska resolve confidentiality issues affecting the crab program.

*Response:* Alaska law (AS 16.05.815) make the fish ticket data confidential. Neither NMFS nor State officials have authority to use the State's fish ticket data inconsistently with the State's law. Accordingly, NMFS cannot accommodate these comments.

*Comment 6:* One comment suggests that NMFS review Alaska's fish ticket data to ensure they reflect post-landing adjustments to landing data.

*Response:* The crab program must rely on the State's data, and NMFS cannot review them for this purpose.

*Comment 7:* Thirteen comments addressed the five-year period for determining "bid crab".

Ten of these agreed with the proposed rule's provision in this respect. Two disagreed with the proposed rule's provisions and suggested that a more appropriate period was the most recent five-years in which a bidder's reduction/history vessel actually harvested crab in each endorsement fishery (rather than the most recent five-year period during which each endorsement fishery was open for directed fishing). The last suggests the final rule provide for this period in some area/species endorsement fisheries to mirror certain years in the Council's proposed crab rationalization plan.

*Response:* The proposed rule defined the term "bid crab" as the documented harvest of crab during the most recent 5 years of a 10-year period, beginning on January 1, 1990, and ending on December 31, 1999, during which each of the reduction endorsement fisheries were open. NMFS believes this is the fairest approach most consistent with the crab program's authorizing legislation as well as the approach most closely resembling certain years in the Council's proposed crab rationalization plan. The crab program's authorizing statute specifies the beginning and ending date of the 10-year period, and NMFS has no authority to provide otherwise.

*Comment 8:* Ten comments discuss the stacking of more than one crab LLP license and associated crab fishing histories on a single reduction vessel. Nine of these suggest NMFS accommodate stacking for crab program bidding purposes. One asked how NMFS would provide for this if it were allowed.

*Response:* NMFS believes each crab program bid should include only one crab reduction permit and the crab fishing history which gave rise to it. Stacked crab LLP licenses and their future disposition is a matter for fisheries managers' resolution.

*Comment 9:* Three comments suggest the final rule provide the non-crab reduction permit component of a bid's reduction fishing interest be restricted to the reduction vessel's non-crab licenses and exclude any halibut/sablefish individual fishing quota (IFQ).

*Response:* NMFS believes the crab program's legislative authority requires bidders to relinquish all fishing licenses, permits, or other privileges they hold which were issued based on the fishing histories of the bids' reduction/history vessels. Consequently, each bidder holding halibut/sablefish IFQ on the date this final rule is published in the **Federal Register** must relinquish the IFQ if its issuance was based on the fishing history of the bidder's reduction/history vessel.

*Comment 10:* One comment suggests five specific technical clarifications. These include: inserting "Bering Sea and Aleutian Islands (BSAI)" before "crab species" in 50 CFR 600.1018(a); inserting "BSAI" before "crab" in 50 CFR 600.1018(b); striking paragraph "(h)" and inserting paragraph "(i)" in 50 CFR 600.1018(h)(2), (h)(4), and (h)(6); striking "and" at the end of 50 CFR 600.1018(h)(4); and striking paragraph "(i)(1)" and inserting paragraph "(j)(1)" in 50 CFR 600.1018(j)(2).

*Response:* NMFS agrees and has appropriately revised the final rule.

*Comment 11:* One comment suggests NMFS revise the final rule to clarify that co-bidders are not required for non-crab reduction permits.

*Response:* NMFS agrees and has appropriately revised the final rule. There are no co-bidders for non-crab reduction permits because non-crab reduction permits are restricted to those for which bidders were the holders of record on the date this final rule is published in the **Federal Register**.

*Comment 12:* One comment states that the proposed rule unfairly omits crab vessels under 32 feet (9.75 meters) as well as parties without crab LLP licenses.

*Response:* The authorizing statute established the crab program's eligibility criteria and does not allow NMFS to accommodate this comment.

*Comment 13:* One comment suggests the definition of "bid crab" does not include the crab fishing histories of vessels that were lost or destroyed and subsequently replaced by other vessels.

*Response:* NMFS intended the proposed rule's definition of "bid crab" to do so and has appropriately revised the proposed rule to remove any ambiguity about this.

*Comment 14:* Nine comments involve lost or destroyed vessels and their reduction fishing histories. Eight of these suggest bids involving lost or destroyed vessels require existing (i.e., neither lost nor destroyed) reduction vessels that lose their fishing privileges.

*Response:* NMFS agrees that each bid requires an existing reduction vessel that loses its fishing privileges. In the final rule, this is the reduction/privilege vessel. NMFS believes this is a matter of equity. Most bidders will have existing reduction/privilege vessels that will lose their fishing privileges. Allowing lost or destroyed vessels to be reduction/privilege vessels for this purpose would allow a minority of bidders to receive value for something which no longer has any value. Moreover, casualty insurance has in all likelihood already compensated most of those whose vessels were previously lost or destroyed.

*Comment 15:* Five comments suggest that the crab program make no exceptions beyond those provided in Amendment 10 for lost or destroyed vessels or crab LLP licenses acquired through fishing history transfers.

*Response:* NMFS agrees. Neither the proposed nor the final rule makes any such exceptions.

*Comment 16:* One comment requests that NMFS report crab program results by "region".

*Response:* NMFS will report crab program results only by reduction endorsement fishery and by the crab fishery as a whole.

*Comment 17:* One comment asks how the crab program accommodates the captain's share provisions of the Council's crab rationalization plan.

*Response:* The crab program does not accommodate this provision and makes no provision for captains' shares because NMFS has no statutory authority to do so.

*Comment 18:* One comment asks what constitutes the reduction loan borrower.

*Response:* After NMFS completes the crab program, all reduction fishery license holders under whose licenses vessels land crab and whose fees begin repaying the reduction loan are collectively the reduction loan borrower. Neither the reduction loan nor its collective borrower are conventional. The reduction loan and its repayment method are statutory. There are no promissory notes, mortgages, or other loan security documents. No individual is responsible

for repaying any specific loan portion. After the fees commence, the first ex-vessel purchasers of crab from the reduction fishery automatically deduct the fees from trip proceeds before paying the proceeds' balance to the parties otherwise entitled to them. No individual's assets secure the loan's repayment (although nonpayment, for whatever reason, of the fees could subject an individual's assets to enforced payment of any unpaid fees).

*Comment 19:* One comment suggests the final rule clarify whether Community Development Quota landings are subject to the reduction loan repayment fees.

*Response:* Community Development Quota landings are subject to the fees.

*Comment 20:* One comment objects both to the statutory method of collecting the reduction loan repayment fees and the capacity reduction framework regulation provisions to which collection of the fee is subject.

*Response:* NMFS has no alternative to using the statutory method and believes the framework provisions in this respect are reasonable and necessary.

*Comment 21:* One comment suggests the final rule provide that the crab program not result in crab catcher processors using a greater share of total allowable crab catches after reduction than they did before reduction due to the likelihood that most crab program bids will involve crab catcher vessel delivering ashore.

*Response:* This is a voluntary program, and NMFS makes no bidding distinction between crab catcher processors and crab vessels delivering their catches ashore. The Council is the proper forum for dealing with this issue.

*Comment 22:* One comment suggests that the final rule provide for crab catcher processors' relinquishing their processing histories.

*Response:* NMFS has no statutory authority to do this as part of the crab program.

*Comment 23:* One comment requests clarification of any second referendum's basis.

*Response:* A second referendum may occur, at NMFS' discretion, if the first referendum fails. The general basis would be the expectation that a second round of bids might result in lower bid amounts producing greater capacity reduction per dollar of reduction cost than the first round of bids and, consequently, might improve the likelihood of a second referendum success.

*Comment 24:* One comment suggests the final rule provide for paying creditors whose security includes

vessels or licenses involved in the crab program.

*Response:* NMFS believes the proposed rule made adequate provision for public notice to secured creditors.

*Comment 25:* One comment suggests the final rule provide for including the holders of interim crab licenses in the crab program based on whatever portions of their fishing histories are undisputed.

*Response:* The authorizing statute restricts the crab program to non-interim crab LLP license holders, and NMFS has no authority to provide otherwise.

*Comment 26:* One comment suggests releasing, before conducting the fee referendum, aggregate data about bids involving affiliated fishing interests.

*Response:* NMFS does not have any way of knowing which bidders may be affiliated with other bidders.

*Comment 27:* One comment suggests reduction vessels should not lose their fishing privileges in fisheries other than the reduction fishery.

*Response:* The authorizing statute requires that reduction/privilege vessels lose their worldwide fishing privileges, and NMFS has no discretion in this matter.

*Comment 28:* One comment suggests the reduction loan be prorated over the various crab area/species endorsement fisheries.

*Response:* The authorizing statute specifically provides for doing this, and the proposed rule provided for it in accordance with the statute.

*Comment 29:* One comment was concerned that the crab program might result in revoking crab fishing history other than the crab fishing history which may be used as the basis of any future crab rationalization plan.

*Response:* The crab program will result in revoking the complete crab fishing history of each crab reduction/history vessel.

*Comment 30:* One comment suggests the crab program involve relinquishment of the worldwide fishing privileges of what, under the final rule, are reduction/privilege vessels.

*Response:* Both the proposed rule and the final rule so provide.

### Changes to Proposed Rule

Although public comment about the proposed rule did not address the issue of when NMFS notifies crab program bidders whether NMFS accepted or rejected their bids, the final rule differs in this respect from the proposed rule. The proposed rule provided for this notification occurring before the referendum about the reduction loan repayment fee. Based on interim public comment during the Pacific Coast

groundfish fishing capacity reduction program (68 FR 42613), however, NMFS now believes that postponing this notice until after the referendum has already occurred may help neutralize any potential which the proposed rule aspect might have had for biasing referendum results. If referendum voters know before they vote whose bids NMFS accepted and whose bid NMFS rejected, they may vote differently than they otherwise would have if they did not know whose bids NMFS accepted and whose bids NMFS rejected.

The following reflects the minor or clarifying revisions of the proposed rule which the final rule incorporates:

(1) NMFS revised the term "reduction vessel" by replacing it with two separate terms, "reduction/privilege vessel" and "reduction/history vessel".

Consequently, the term "reduction vessel" does not appear anywhere in the final rule. The effect of this revision is that the vessel, for loss of fishing privileges purposes, will be the vessel designated on a crab LLP license at the time the final rule is published in the **Federal Register**; and the vessel, for loss of fishing history, bid scoring, and loan apportionment purposes, will be the vessel (or in some cases, vessels) whose fishing history gave rise to a crab LLP license. In most cases, the vessels will be the same for both purposes; in other cases, the vessels for each purpose will be different.

(2) NMFS included a new term, "reduction fishing history", in order to clarify that the fishing history component of each bidder's reduction fishing interest includes the complete documented harvest, upon any part of which NMFS based issuance of the crab LLP license included as a crab reduction permit in the bid, plus such fishing history, after the issuance of such crab LLP license, of any other vessel upon which the bidder used such crab reduction permit;

(3) NMFS clarified that co-bidders are not required for non-crab reduction permits;

(4) NMFS eliminated any ambiguity about whether replacement vessels are, under appropriate Amendment 10 exceptions, reduction/history vessels;

(5) NMFS added a definition for the term "replacement vessel" in order to clarify certain aspects of multiple reduction/history vessels under the exceptions to Amendment 10; and

(6) NMFS revised the bidder acceptance/rejection notice provisions to postpone this notice until after the crab program's referendum.

Finally, NMFS herein clarifies that it has no direct authority to revoke worldwide fishing privileges. The U.S.

Department of Transportation's Maritime Administration (MARAD) is responsible under section 9 of the Shipping Act of 1916, 46 App. U.S.C. 808, for approving transfers of vessels from the U.S. flag to a foreign flag. MARAD has the authority and already had a mechanism in the regulations to deny the approval to flag foreign fishing industry vessels over 1,000 gross tons. However, MARAD's regulations at 46 C.F.R. part 221.15 also included a general approval for transfers of fishing industry vessels under 1,000 gross tons. Upon learning of the crab program provision, MARAD amended the regulations to also address vessels under 1,000 gross tons that are subject to the crab program and to make it clear that any vessel that participates in the crab program will be ineligible for a section 9 approval to transfer the vessel to a foreign flag. Further, MARAD is planning to again amend its section 9 regulations to address the broader issue of fishing vessels that are subject to a capacity reduction program.

**Key Steps**

NMFS will, in the following chronological order, now implement the crab program by:

- (1) Publishing the final regulations;

- (2) Publishing in the **Federal Register** a notification listing all qualified bidders and all qualified voters;

- (3) Publishing in the **Federal Register** an invitation to bid, along with a bidding form and terms of capacity reduction agreement;

- (4) Issuing detailed bidding guidance to each qualifying bidder;

- (5) Sending a crab program invitation to bid and a bidding form and terms of capacity reduction agreement to each qualifying bidder;

- (6) Receiving bids during the period in which bidding remains open;

- (7) Tallying the resulting bids;

- (8) Accepting or rejective the bids (without notice to the bidders);

- (9) Issuing detailed voting guidance to each qualifying voter;

- (10) Sending a referendum ballot to each qualifying voter;

- (11) Receiving referendum votes during the period in which voting remains open;

- (12) Tallying the resulting votes;

- (13) Notifying referendum voters of the referendum's results; and

- (14) In the instance of a successful referendum:

- (a) Notifying accepted bidders that their bids were accepted and that the resulting reduction contracts are unconditional,

- (b) Publishing in the **Federal Register** a reduction payment tender notification,

- (c) Tendering reduction payments,

- (d) Disbursing reduction payment in accordance with accepted bidders written payment instructions,

- (e) Accomplishing the necessary crab program revocations and restrictions, and

- (f) Administering the payment and collecting reduction loan repayment fees.

**Reading the Rule in Conjunction with the Framework Rule**

This final rule establishes which framework rule provisions (this subpart's § 600.1000 through § 600.6017) do not apply to the crab program. Consequently, a comprehensive understanding of the crab program requires reading this final rule in conjunction with the remaining framework rule provisions that continue to apply to the crab program. NMFS recommends that all interested persons carefully read the former in close conjunction with the latter.

**Summary of Crab Program Notices and Mailings**

This table summarizes, in chronological order, key crab program actions that will involve providing notice to affected persons:

| Notice Actions   | Method           |         |         |
|--|------------------|---------|---------|
|  | FEDERAL REGISTER | Mailing | Website |
| Final rule   | X                |         | X       |
| Bidder and voter list  | X                | X       | X       |
| Invitation to bid, along with bidding form and terms of capacity reduction agreement | X                | X       | X       |
| Referendum ballots   |                  | X       | X       |
| Referendum results   |                  | X       | X       |
| Bidder acceptance/reduction contracts unconditional                                  |                  | X       |         |
| Reduction payment tender notice  | X                |         |         |
| Reduction payment tender   |                  | X       |         |
| Fee payment and collection   |                  | X       | X       |

NMFS will also mail each of the following:

| Action   | NMFS will mail:   |
|--|---|
| Bidder and voter notice  | A notice to each crab license holder who is prospectively a qualifying bidder, voter, or both.  |
| Bidder guidance  | Detailed guidance to all qualifying bidders about the crab program, how to bid, and other bidding matters.  |
| Invitation to bid, bidding form, and terms of capacity reduction agreement | An invitation to bid and a bidding form and bidding terms and agreements to each crab license holder who is on our prospectively qualifying bidder list.                |
| Voter guidance   | Detailed guidance to all qualifying voters about how to vote and other referendum matters.  |
| Referendum ballots   | A referendum ballot and instructions to each crab license holder who is on NMFS prospectively qualifying voter list.  |
| Referendum results   | The results of the referendum to each crab license holder.  |
| Bid Acceptance/Reduction Contracts Unconditional                           | Notification, to each accepted bidder, that its bid was accepted and a successful referendum has fulfilled the one condition to performance of the reduction contracts. |
| Reduction payment tender   | NMFS' tender of reduction payment to each accepted bidder (requesting the bidder's written reduction payment instructions).   |
| Fee payment and collection notice  | A notice to each fish seller and each fish buyer of the initial fee payment and collection requirement.   |

All website postings will be solely for the public's convenience and our failure or inability to post anything on a website does not affect the rights, privileges, duties, or obligations of any person involved.

**Classification**

The Assistant Administrator for Fisheries, National Marine Fisheries Service, determined that this final rule is consistent with the Consolidated Appropriations Act of 2001, as amended, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

In compliance with the National Environmental Policy Act, NMFS prepared an environmental assessment for this final rule. The assessment discusses the impact of this rule on the natural and human environment and integrates a Regulatory Impact Review and a Final Regulatory Flexibility Analysis. NMFS assessment has resulted in a finding of no significant impact. NMFS will send the assessment, the review and analysis to anyone who requests it (see **ADDRESSES**).

NMFS determined that this final rule is economically significant for purposes of Executive Order 12866. The rule may result in a reverse auction that could total up to \$100 million worth of successful bids. These bids represent the compensation for the net present value of the total losses that the fishermen expect to bear from exiting the market. The expected costs of the rule would also include administrative costs that would be incurred by NMFS in facilitating this auction. The benefits of the rule would be the increase in producer and consumer surplus resulting from the lower costs of harvesting the same amount of crab. The benefits expected by the remaining fishermen should at least equal the cost of compensating the exiting fishermen since this auction is voluntarily undertaken.

In compliance with the Regulatory Flexibility Act, NMFS prepared an analysis that describes the economic impact this final rule may have on small entities. In this final rule's preamble, NMFS described the rule and its legal basis. NMFS intends the analysis to aid in considering all reasonable regulatory alternatives that can minimize the economic impact on affected small entities.

This final rule's effect on post-reduction crab harvesters will depend on the crab program's nature and size. Our assessment, review, and analysis considered:

- (1) The effect of three alternatives:
  - (a) The status quo,
  - (b) Uniform reduction loan repayment fees, and
  - (c) Weighted reduction loan repayment fees; and
- (2) Based on five potential magnitudes of revoked crab licenses and vessels:
  - (a) 30,
  - (b) 45,
  - (c) 60,
  - (d) 75, and
  - (e) 90.

The preferred alternative, weighted reduction loan repayment fees, provides the most equitable method for allocating reduction loan repayment, and this is

the reduction loan repayment method section 144 of Pub. L. 106-554 requires.

The final rule's impact will be positive for both bidders whose bid offers NMFS accepts and post-reduction harvesters whose landing fees repay the reduction loan because the bidders and harvesters will assume the impact and fewer crab license holders after capacity reduction will be collectively able to catch more fish than if capacity had not been reduced:

(1) Bidders will volunteer to make bid offers at bid amounts of their own choice. Presumably, no bidder will volunteer to make a bid offer with a bid amount that is inconsistent with the bidder's interest; and

(2) Reduction loan repayment landing fees will be authorized, and NMFS can complete the crab program, only if at least two-thirds of crab license holders voting in a post-bidding fee referendum voted in favor of the fee. Presumably, crab license holders would not vote in favor of the fee unless they concluded that the crab program's prospective capacity reduction was sufficient to enable them to increase their post-reduction revenues enough to justify the fee.

Given the large levels of overcapacity existent in U.S. and other global fisheries, buyback vessels and permits should not be allowed to move into other fisheries. This cascade effect would only exacerbate the overcapacity problems that exist in those fisheries. For example, the sale of domestic vessels to overseas operators while reducing capacity in the U.S. would harm stocks of fish harvested globally. This would cause U.S. fishermen to compete with additional foreign fishermen; e.g. bluefin tuna, swordfish, sharks. This indirectly reduces net benefits to U.S. and global fishermen. Overall net benefit levels would be reduced in those fisheries in which capacity was transferred and indirectly in all related fisheries through continued or increased discarded bycatch levels, degradation of habitat, and other related problems.

NMFS believes that this action will affect neither authorized crab harvest levels nor crab harvesting practices.

NMFS has prepared a Regulatory Compliance Guide (RCG) for this final rule to comply with a requirement of the Small Business Administration. The RCG takes the form of questions and answers which explain the requirements for participation and other aspects of the program. It will be mailed by NMFS to all prospective bidders who may participate in the crab program.

This final rule contains information collection requirements subject to the

Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) approved this information collection under OMB control number 0648-0376. NMFS estimates that the public reporting burden for this information collection will average 4 hours for bidding and 4 hours for voting in a referendum. Persons affected by this final rule will also be subject to other collection-of-information requirements referred to in the rule and also approved under OMB control number 0648-0376. These requirements and their associated response times are: completing and filing a fish ticket (10 minutes), submitting monthly fish buyer reports (2 hours), submitting annual fish buyer reports (4 hours), and fish buyer/fish seller reports when a person fails either to pay or to collect the loan repayment fee (2 hours).

This final rule also contains a new collection-of-information requirement that OMB has approved under the same OMB control number. The provision allows the public 30 days to advise us of any license or permit holder or vessel owner claims that conflict with accepted bidders' representations about holding, owning, or retaining any of the crab or non-crab reduction permits, the reduction/privilege and reduction/history vessels, or the crab or non-crab reduction fishing histories. Responses are voluntary, but NMFS estimates the public reporting burden for this collection of information will be 1 hour per response.

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Interested persons may send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the PRA requirements unless that information collection displays a currently valid OMB control number.

This action will not result in any adverse effects on endangered species or marine mammals.

#### List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs -business, Reporting and recordkeeping requirements.

Dated: December 8, 2003.

**Rebecca Lent,**

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

■ For the reasons in the preamble, the National Marine Fisheries Service amends 50 CFR part 600 as follows:

#### **PART 600—MAGNUSON-STEVENS ACT PROVISIONS**

■ 1. The authority citation for part 600 is revised to read as follows:

**Authority:** 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106-554, section 2201 of Pub. L. 107-20, and section 205 of Pub. L. 107-117.

■ 2. Section 600.1018 is added to Subpart L to read as follows:

#### **§ 600.1018 Bering Sea and Aleutian Islands (BSAI) Crab species program.**

(a) *Purpose.* This section's purpose is to implement the program that Section 144(d) of Division B of Pub. L. 106-554, as amended by section 2201 of Pub. L. 107-20 and section 205 of Pub. L. 107-117, enacted for BSAI crab species.

(b) *Terms.* Unless otherwise defined in this section, the terms defined in § 600.1000 expressly apply to the program for BSAI crab. Likewise, the terms defined in § 679.2 of this chapter also apply to terms not otherwise defined in either § 600.1000 or this section. The following terms used in this section have the following meanings for the purpose of this section:

*Acceptance* means NMFS' acceptance, on behalf of the United States, of a bid.

*Bid* means a bidder's irrevocable offer, in response to an invitation to bid under this section, to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner this section requires, the bidder's reduction fishing interest.

*Bid amount* means the dollar amount of each bid.

*Bidder* means either a qualifying bidder bidding alone or a qualifying bidder and a co-bidder bidding together who at the time of bidding holds the reduction fishing interests specified at § 600.1018(e).

*Bid crab* means the crab that NMFS determines each bidder's reduction/history vessel (see definition) harvested, according to the State of Alaska's records of the documented harvest of crab, from each reduction endorsement fishery and from the Norton Sound fishery during the most recent 5 calendar years in which each reduction

endorsement fishery was for any length of time open for directed crab fishing during a 10-calendar-year period beginning on January 1, 1990, and ending on December 31, 1999.

*Bid score* means the criterion by which NMFS decides in what order to accept bids in the reverse auction this section specifies.

*Co-bidder* means a person who is not a qualifying bidder, but who at the time of bidding owns the reduction/privilege vessel this section requires to be included in a bid and is bidding together with a qualifying bidder.

*Crab* means the crab species covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs pursuant to § 679.2 of this chapter.

*Crab license* means a License Limitation Program license for crab issued pursuant to § 679.4(k)(5) of this chapter.

*Crab reduction permit* means a non-interim crab license endorsed for one or more reduction endorsement fisheries, regardless of whether it is also endorsed for the Norton Sound fishery.

*FSD* means NMFS' Financial Services Division, located in NMFS' Silver Spring, MD, headquarters office.

*Non-crab reduction permit* means a fishing license, including all of its predecessor history, for which a bidder is the holder of record on December 12, 2003 and which was issued based on the fishing history of the bidder's -reduction/history vessel.

*Norton Sound fishery* means the non-reduction fishery defined in § 679.2 of this chapter as the area/species endorsement for Norton Sound red king and Norton Sound blue king crab.

*NVDC* means the U.S. Coast Guard's National Vessel Documentation Center located in Falling Waters, WV.

*Qualifying bidder* means a person who at the time of bidding is the license holder of record of a crab reduction permit.

*Qualifying voter* means a person who at the time of voting in a referendum is the license holder of record either of an interim or a non-interim crab license, except a crab license whose sole area/species endorsement is for the Norton Sound fishery.

*RAM Program* means NMFS' Restricted Access Management Program located in NMFS' Juneau, AK, regional office.

*Reduction endorsement fishery* means any of the seven fisheries that § 679.2 of this chapter defines as area/species endorsements except the area/species endorsement for the Norton Sound fishery.

*Reduction fishery* means the fishery for all crab covered by the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan under all area/species endorsements that section 679.2 of the chapter defines, except the area/species endorsement for the Norton Sound fishery.

*Reduction fishing history* means, for each bid, the complete documented harvest of the bidder's reduction/history vessel, upon any part of which such harvest NMFS based issuance of the crab license included in the bid as a crab reduction permit, plus such fishing history, after the issuance of such crab license, of any other vessel upon which the bidder used such crab license.

*Reduction fishing interest* means, for each bid, the bidder's:

(1) Reduction fishing privilege (see definition);

(2) Crab reduction permit;

(3) Non-crab reduction permit;

(4) Reduction fishing history (see definition); and

(5) Any other claim that could in any way qualify the owner, holder, or retainer of any of the reduction components, or any person claiming under such owner, holder, or retainer, for any present or future limited access system fishing license or permit in any United States fishery (including, but not limited to, any harvesting privilege or quota allocation under any present or future individual fishing quota system).

*Reduction fishing privilege* means the worldwide fishing privileges of a bid's reduction/privilege vessel (see definition).

*Reduction/history vessel* means the vessel or vessels which generated the reduction fishing history.

*Reduction loan sub-amount* means the portion of the original principal amount of reduction loan this section specifies each reduction endorsement fishery must repay with interest.

*Reduction/privilege vessel* means the vessel designated on a crab license on December 12, 2003.

*Referendum* means a referendum under this section to determine whether voters approve the fee required to repay this program's reduction loan.

*Replacement vessel* means a reduction/history vessel which replaced the lost or destroyed one whose reduction fishing history qualified during the general qualification period and the endorsement qualification period and, which under the exceptions in Amendment 10, qualified during the recent participation period.

(c) *Relationship to this subpart*—(1) *Provisions that apply.* The provisions of § 600.1000 through § 600.1017 of this subpart apply to this program except as

paragraph (c)(2) of this section provides; and

(2) *Provisions that do not apply.* The following sections, or portions of them, of this subpart do not apply to this program:

(i) All of:

(A) Section 600.1001,

(B) Section 600.1002,

(C) Section 600.1003,

(D) Section 600.1004,

(E) Section 600.1005,

(F) Section 600.1006, and

(G) Section 600.1007,

(ii) The portions of § 600.1008:

(A) Pertaining to an implementation plan,

(B) Pertaining to a 60-day comment period for a proposed implementation regulation,

(C) Pertaining to public hearings in each State that the this program affects,

(D) Pertaining to basing the implementation regulation on a business plan,

(E) Within paragraphs (d)(1)(ii) through (viii),

(F) Within paragraph (d)(2)(ii),

(G) Within paragraph (e), and

(H) Within paragraph (f) and pertaining to fishing capacity reduction specifications and a subsidized program,

(iii) The portions of § 600.1009:

(A) Pertaining to fishing capacity reduction specifications,

(B) Within paragraph (a)(4),

(C) Pertaining to a reduction amendment,

(D) Within paragraph (a)(5)(ii), to the extent that the paragraph is inconsistent with the requirements of this section,

(E) Within paragraph (b)(i), and

(F) Pertaining to an implementation plan,

(iv) The portions of § 600.1010:

(A) Within paragraph (b),

(B) Pertaining to fishing capacity reduction specifications,

(C) Within paragraph (d)(1), and

(D) Within paragraphs (d)(4)(iv) through (vii),

(v) The portions of § 600.1011:

(A) That comprise the last sentence of paragraph (a),

(B) Within paragraph (d), and

(C) Within paragraph (e)(2),

(vi) The portions of § 600.1012:

(A) Within paragraph (b)(3) following the word "subpart", and

(B) Within paragraph (b)(3), and

(vii) The last sentence of § 600.1014(f).

(d) *Reduction cost financing.* NMFS will use the proceeds of a reduction loan, authorized for this purpose, to finance 100 percent of the reduction cost. The original principal amount of the reduction loan will be the total of all

reduction payments that NMFS makes under reduction contracts. This amount shall not exceed \$100 million.

(e) *Who constitutes a bidder.* A bidder is a person or persons who is the:

(1) Holder of record and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's crab reduction permit and the bid's non-crab reduction permit;

(2) Reduction/privilege vessel owner, title holder of record, and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's reduction fishing privilege; and

(3) Retainer and person otherwise fully and legally entitled to offer, in the manner this section requires, the bid's reduction fishing history.

(f) *How crab licenses determine qualifying bidders and qualifying voters*—

(1) *Non-interim crab licenses.* Each person who is the record holder of a non-interim crab license endorsed for one or more reduction endorsement fisheries is both a qualifying bidder and a qualifying voter and can both bid and vote;

(2) *Interim crab licenses.* Each person who is the record holder of an interim crab license endorsed for one or more reduction endorsement fisheries is a qualifying voter but not a qualifying bidder and can vote but not bid;

(3) *Crab licenses endorsed solely for the Norton Sound Fishery.* Each person who is the record holder of any crab license endorsed solely for the Norton Sound fishery is neither a qualifying bidder nor a qualifying voter and can neither bid nor vote; and

(4) *Time at which qualifying bidders and voters must hold required crab licenses.* A qualifying bidder must be the record holder of the required crab license at the time the qualifying bidder submits its bid. A qualifying voter must be the record holder of the required crab license at the time the qualifying voter submits its referendum ballot.

(g) *Qualifying bidders and co-bidders*—(1) *Qualifying bidders bidding alone.* There is no co-bidder when a qualifying bidder owns, holds, or retains all the required components of the reduction fishing interest;

(2) *Qualifying bidders bidding together with co-bidders.* When a qualifying bidder does not own the reduction/privilege vessel, the person who does may be the qualifying bidder's co-bidder; and

(3) *Minimum reduction components that qualifying bidders must hold or retain when bidding with co-bidders.* At a minimum, a qualifying bidder must hold the crab reduction permit and the non-crab reduction permit and retain



the reduction fishing history. The reduction/privilege vessel may, however, be owned by another person who is a co-bidder.

(h) *Reduction fishing interest*—(1) *General requirements.* Each bidder must:

(i) In its bid, offer to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner that this section requires, the reduction fishing interest,

(ii) At the time of bidding, hold, own, or retain the reduction fishing interest and be fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest, and

(iii) Continuously thereafter hold, own, or retain the reduction fishing interest and remain fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest until:

(A) The bid expires without NMFS first having accepted the bid,

(B) NMFS notifies the bidder that NMFS rejects the bid,

(C) NMFS notifies the bidder that a reduction contract between the bidder and the United States no longer exists, or

(D) NMFS tenders reduction payment to the bidder;

(2) *Reduction/privilege vessel requirements.* The reduction/privilege vessel in each bid must be:

(i) The vessel designated, at the time this final rule is published in the **Federal Register**, on a crab license which becomes a bid's crab reduction permit, and

(ii) Be neither lost nor destroyed at the time of bidding;

(3) *Reduction fishing privilege requirements.* The reduction fishing privilege in each bid must be the reduction/privilege vessel's:

(i) Fisheries trade endorsement under the Merchant Marine Act, 1936 (46 U.S.C.A. 12108),

(ii) Qualification for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement under foreign registry or operation under the authority of a foreign country, and

(iii) Any other privilege to ever fish anywhere in the world;

(4) *Crab reduction permit*

*requirements.* (i) Except as otherwise provided in paragraph (i) of this section, the crab reduction permit must in each bid:

(A) Be the crab license that NMFS issued on the basis of the bidder's reduction fishing history,

(B) Be non-interim at the time each bidder submits its bid, and

(C) Include an area/species endorsement for any one or more reduction endorsement fisheries,

(ii) Although the Norton Sound fishery is not a reduction endorsement fishery, an area/species endorsement for the Norton Sound fishery occurring on a crab reduction permit must be surrendered and revoked (and all fishing history involving it relinquished) in the same manner as all other reduction endorsement fisheries occurring on the crab reduction permit;

(5) *Non-crab reduction permit requirements.* The non-crab reduction permit must in each bid be every license, permit, or other harvesting privilege that:

(i) NMFS issued on the basis of the fishing history of the bidder's reduction/history vessel, and

(ii) For which the bidder was the license holder of record on the effective date of this section; and

(6) *Reduction fishing history requirements.* Except as otherwise provided in paragraph (i) of this section, the reduction fishing history in each bid must that of a single reduction/history vessel.

(i) *Exceptions to the reduction fishing interest requirements*—(1) *Lost or destroyed vessel salvaged.* When a bidder has salvaged a lost or destroyed vessel and has made from the salvaged vessel the documented harvest of crab § 679.4(k)(5)(iii)(B)(3) of this chapter requires, the crab portion of the reduction fishing history is the salvaged vessel's documented harvest of crab; and

(2) *Lost or destroyed vessel not salvaged.* When a bidder has not salvaged the lost or destroyed vessel but has made from a replacement vessel the documented harvest of crab § 679.4(k)(5)(iii)(B)(3) of this chapter requires:

(i) The crab portion of the reduction fishing history is the total of the lost or destroyed vessel's documented harvest of crab through the date of such vessel's loss or destruction plus the replacement vessel's documented harvest of crab after such date, and

(ii) For the purposes of this program, the lost or destroyed vessel's documented harvest of crab merges with, and becomes a part of, the replacement vessel's documented harvest of crab; and

(3) *Acquired crab fishing history.* When a bidder, in the manner § 679.4(k)(5)(iv) of this chapter requires, has made a documented harvest of crab from one vessel and has acquired a replacement vessel's documented harvest of crab:

(i) The crab portion of the reduction fishing history is the total of the acquired documented harvest of crab through December 31, 1994, plus the documented harvest of crab after December 31, 1994, of the vessel from which the bidder made the documented crab harvest § 679.4(k)(5)(iv) of this chapter requires, and

(iii) For the purposes of this program, the acquired documented harvest of crab merges with, and becomes a part of, the non-acquired documented harvest of crab.

(j) *Determining value of reduction/history vessels' bid crab*—(1) *In each fishery.* NMFS will determine the dollar value of each reduction/history vessel's bid crab in each reduction endorsement fishery and in the Norton Sound Fishery by multiplying each reduction/history vessel's number of pounds of each species of bid crab by the average ex-vessel price per pound that the State of Alaska annually publishes for each crab species in the bid crab; and

(2) *In all fisheries.* NMFS will determine the dollar value of each reduction/history vessel's bid crab in all reduction endorsement fisheries and in the Norton Sound fishery by adding each of the products of the multiplications in paragraph (j)(1) of this section; and

(3) *Crab excluded from bid crab.* A reduction/history vessel's bid crab may not include, to the extent that NMFS has knowledge:

(i) Triangle tanner crab, grooved tanner crab, and any other crab not involved in the various area/species endorsements,

(ii) Discarded crab,

(iii) Crab caught for personal use,

(iv) Unspecified crab, and

(v) Any other crab for which the dollar value, crab fishery, landing date, or harvesting vessel NMFS cannot, for whatever reason, determine.

(k) *Determining bid score.* NMFS will determine each bid score by dividing each bid amount by the sum in paragraph (j)(2) of this section.

(l) *Determining reduction loan sub-amount*—(1) *Value of all bid crab in each fishery.* NMFS will add the dollar value of bid crab of all accepted bidders' reduction/history vessels in each reduction endorsement fishery;

(2) *Value of all bid crab in all fisheries.* NMFS will add the dollar value of bid crab of all accepted bidders' reduction/history vessels in all reduction endorsement fisheries plus the Norton Sound fishery;

(3) *Each fishery as a percentage of all fisheries.* NMFS will divide each of the sums in paragraph (l)(1) of this section by the sum in paragraph (l)(2) of this

section. The result of this calculation will be the dollar value of all bid crab in each reduction endorsement fishery as a percentage of the dollar value of all bid crab in all reduction endorsement fisheries plus the Norton Sound fishery;

(4) *Applying percentages to loan amount.* NMFS will multiply the reduction loan's full original principal amount by each of the yields in paragraph (l)(3) of this section; and

(5) *Loan sub-amount.* Each of the amounts resulting from the calculation in paragraph (l)(4) of this section will be the reduction loan subamount that a reduction endorsement fishery must repay.

(m) *Prospectively qualifying bidder and voter notification—(1) General.* At the appropriate point before issuing an invitation to bid, NMFS will publish a notification in the **Federal Register** listing all persons who at the time of publishing the notification prospectively are qualifying bidders and qualifying voters;

(2) *Qualifying bidder list.* The prospectively qualifying bidder list will include the names and addresses of record of each license holder of record for all non-interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;

(3) *Qualifying voter list.* The prospectively qualifying voter list will include the names and addresses of record of each license holder of record for all non-interim and interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;

(4) *Basis of lists.* NMFS will base both the lists on the RAM Program's license holder records for crab licenses meeting the requirements of § 679.4(k)(5) of this chapter as well as the requirements of this section;

(5) *Purpose.* The purpose of the notification is to provide the public notice of:

(i) The prospectively qualifying bidders, and

(ii) The prospectively qualifying voters; and

(6) *Public comment.* Any person who wants to comment about the notification has 30 days from the notification's publication date to do so. Persons should send their comments to both FSD and the RAM Program (at addresses that the notification will specify). Comments may address:

(i) Persons who appear on one or more lists but should not,

(ii) Persons who do not appear on one or more lists but should, and

(iii) Persons who believe their names and/or business mailing addresses

appearing on one or more lists are incorrect.

(n) *Invitation to bid—(1) Notification.* At the appropriate point after issuing the notification in paragraph (m) of this section, NMFS will publish the invitation to bid in the **Federal Register** notification further specified in § 600.1009(c) of this subpart, along with a bidding form and terms of capacity reduction agreement. No person may, however, bid at this stage;

(2) *Notification contents.* The invitation to bid notification will state all applicable bid submission requirements and procedures (including, but not limited to, those included in this section). In particular, the invitation to bid notification will:

(i) State the date on which NMFS will invite bids by mailing an invitation to bid to each person on the prospectively qualifying bidder list,

(ii) State a bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,

(iii) State a bid expiration date after which each bid expires unless, prior to that date, NMFS accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,

(iv) State the manner of bid submission and the information each bidder must submit for NMFS to deem a bid responsive,

(v) State any other information required for bid submission, and

(vi) Include a facsimile of the invitation to bid, along with a bidding form and terms of capacity reduction agreement comprising the entire terms and conditions of the reduction contract under which each bidder must bid and under which NMFS must accept a bid; and

(3) *Mailing.* On the date specified in this notification, NMFS will invite bids by mailing the invitation to bid and a bidding package, including a bidding form terms of capacity reduction agreement, to each person then on the prospectively qualifying bidder list. NMFS will not mail the invitation to bid to any potential co-bidder because NMFS will not then know which bids may include a co-bidder. Each qualifying bidder is solely responsible to have any required co-bidder properly complete the bid. No person may bid before receiving the invitation to bid and the bidding package that NMFS mailed to that person.

(o) *Bids—(1) Content.* Each invitation to bid that NMFS mails to a qualifying bidder will have a bid form requiring each bid to:

(i) Identify, by name, regular mail address, telephone number, and (if available) electronic mail address, the qualifying bidder and each co-bidder,

(ii) State the bid amount in U.S. dollars,

(iii) Identify, by crab license number, the qualifying bidder's crab reduction permit and include an exact copy of this crab license (which the RAM Program issued),

(iv) Identify, by vessel name and official number, the bidder's reduction/privilege vessel, and include an exact copy of this vessel's official document (which NVDC issued),

(v) Identify, by license or permit number, each of the bidder's non-crab reduction permits; and include an exact copy of each of these licenses or permits (which the RAM Program issued for licenses or permits involving species under the jurisdiction of NMFS' Alaska Region and which other NMFS offices issued for licenses or permits involving species under those offices' jurisdiction),

(vi) Identify, separately for crab and for each other species:

(A) The qualifying bidder's reduction fishing history, and

(B) The dates that each portion of the reduction fishing history encompasses; the name and official number of the reduction/history vessel or vessels which gave rise to it; and the dates during which the qualifying bidder owned such vessels or, if the qualifying bidder acquired any reduction fishing history from another person, the name of the person from which the qualifying bidder acquired such reduction fishing history and the manner in which and the date on which the qualifying bidder did so,

(vii) State, declare, and affirm that the qualifying bidder holds the crab reduction permit and retains the complete reduction fishing history, and is fully and legally entitled to offer both in the manner this section requires,

(viii) State, declare, and affirm that either the qualifying bidder or the co-bidder owns the reduction/privilege vessel and holds the non-crab reduction permit and is fully and legally entitled to offer both in the manner that this section requires, and

(ix) Provide any other information or materials that NMFS believes is necessary and appropriate; and

(2) *Rejection.* NMFS, regardless of bid scores, will reject any bid that NMFS believes is unresponsive to the invitation to bid. All bid rejections will constitute final agency action as of the date of rejection. Before rejection, NMFS may, however, contact any bidder to attempt to correct a bid deficiency if

NMFS, in its discretion, believes the attempt warranted.

(p) *Acceptance*—(1) *Reverse auction*. NMFS will determine which responsive bids NMFS accepts by using a reverse auction in which NMFS first accepts the responsive bid with the lowest bid score and successively accepts each additional responsive bid with the next lowest bid score until either there are no more responsive bids to accept or acceptance of the last responsive bid with the next lowest bid score would cause the reduction cost to exceed \$100 million. If two or more responsive bid scores are exactly the same, NMFS will first accept the bid that NMFS first received;

(2) *Notification*. NMFS will, after the conclusion of a successful referendum, notify accepted bidders that NMFS had, before the referendum, accepted their bids; and

(3) *Post-acceptance reduction permit transfer*. After NMFS has accepted bids, neither the RAM Program (nor any other NMFS office) will transfer to other persons any reduction permits that accepted bidders included in the bids unless and until FSD advises the RAM Program (or some other NMFS office) that the resulting reduction contracts are no longer in effect because a referendum failed to approve the fee that this section requires to repay this program's reduction loan.

(q) *Reduction contracts subject to successful post-bidding referendum condition*. Although this program involves no fishing capacity reduction specifications under this subpart, each bid, each acceptance, and each reduction contract is nevertheless subject to the successful post-bidding referendum condition that § 600.1009(a)(3) of this subpart specifies for bidding results that do not conform to the fishing capacity reduction specifications.

(r) *Post-bidding referendum*—(1) *Purpose*. NMFS will conduct a post-bidding referendum whose sole purpose is to determine whether, based on the bidding results, qualifying voters who cast referendum ballots in the manner that this section requires authorize the fee required to repay this program's reduction loan;

(2) *Manner of conducting*. NMFS will mail a referendum ballot to each person then on the prospectively qualifying voter list for each crab license that the person holds and otherwise conduct the referendum as specified in § 600.1010 of this subpart;

(3) *One vote per crab license*. Each qualifying voter may cast only one vote for each crab license that each qualifying voter holds;

(4) *Crab license numbers on ballots*. Each referendum ballot that NMFS mails will contain the license number of the prospectively qualifying voter's crab license to which the ballot relates;

(5) *Potential reduction results stated*. Each referendum ballot that NMFS mails will state the aggregate potential reduction results of all the bids that NMFS accepted, including:

(i) The amount of reduction that all accepted bids potentially effect, including:

(A) The number of crab reduction permits, together with each area/species endorsement for which each of these licenses is endorsed,

(B) The number of reduction/privilege vessels and reduction/history vessels, and

(C) The aggregate and average dollar value of bid crab (together with the number of pounds of bid crab upon which NMFS based the dollar value), in each reduction endorsement fishery and in the reduction fishery, for all reduction/history vessels during the period for which NMFS calculates the dollar value of bid crab,

(ii) The reduction loan sub-amount that each reduction endorsement fishery must repay if a referendum approves the fee, and

(iii) Any other useful information NMFS may then have about the potential sub-fee rate initially necessary in each reduction endorsement fishery to repay each reduction loan sub-amount; and

(6) *Notice that condition fulfilled*. If the referendum is successful, NMFS will notify accepted bidders, in the manner that § 600.1010(d)(6)(iii) of this subpart specifies, that a successful referendum has fulfilled the reduction contracts' successful post-bidding referendum condition specified in paragraph (q) of this section.

(s) *Reduction method*. In return for each reduction payment, NMFS will permanently:

(1) Revoke each crab reduction permit;

(2) Revoke each non-crab reduction permit;

(3) Revoke each reduction fishing privilege (which revocation will run with the reduction/privilege vessel's title in the manner § 600.1009(a)(5)(ii)(A) of this subpart requires and in accordance with 46 U.S.C. 12108(d));

(4) Effect relinquishment of each reduction fishing history for the purposes specified in this section by noting in the RAM Program records (or such other records as may be appropriate for reduction permits issued elsewhere) that the reduction fishing

history has been relinquished under this section and will never again be available to anyone for any fisheries purpose; and

(5) Otherwise restrict in accordance with this subpart each reduction/privilege vessel and fully effect the surrender, revocation, restriction, relinquishment, withdrawal, or extinguishment by other means of all components of each reduction fishing interest.

(t) *Reduction payment tender and disbursement*—(1) *Fishing continues until tender*. Each accepted bidder may continue fishing as it otherwise would have absent the program until NMFS, after a successful referendum, tenders reduction payment to the accepted bidder;

(2) *Notification to the public*. After a successful referendum but before tendering reduction payment, NMFS will publish a notification in the **Federal Register** listing all proposed reduction payments and putting the public on notice:

(i) Of the crab reduction permits, the reduction/privilege vessels, the reduction fishing histories, and the non-crab reduction permits upon whose holding, owning, retaining, or other legal authority representations accepted bidders based their bids and NMFS based its acceptances, and

(ii) That NMFS intends, in accordance with the reduction contracts, to tender reduction payments in return for the actions specified in paragraph (s) of this section;

(3) *Public response*. The public has 30 days after the date on which NMFS publishes the reduction payment tender notification to advise NMFS in writing of any holding, owning, or retaining claims that conflict with the representations upon which the accepted bidders based their bids and on which NMFS based its acceptances;

(4) *Tender and disbursement parties*. NMFS will tender reduction payments only to accepted bidders, unless otherwise provided contrary written instructions by accepted bidders.

Creditors or other parties with secured or other interests in reduction/privilege vessels or reduction permits are responsible to make their own arrangements with accepted bidders;

(5) *Time of tender*. At the end of the reduction payment tender notification period, NMFS will tender reduction payments to accepted bidders, unless NMFS then knows of a material dispute about an accepted bidder's authority to enter into the reduction contract with respect to any one or more components of the reduction fishing interest that warrants, in NMFS' discretion, an alternative course of action;

(6) *Method of tender and disbursement.* NMFS will tender reduction payment by requesting from each accepted bidder specific, written instructions for paying the reduction payments. Upon receipt of these payment instructions, NMFS will immediately disburse reduction payments in accordance with the payment instructions; and

(7) *Effect of tender.* Concurrently with NMFS' tender of reduction payment to each accepted bidder:

(i) All fishing activity for any species anywhere in the world in any way associated with each accepted bidder's reduction fishing interest must cease,

(ii) Each accepted bidder must retrieve all fixed fishing gear for whose deployment the accepted bidder's reduction/privilege vessel was responsible, and

(iii) NMFS will fully exercise its reduction contract rights with respect to the reduction fishing interest by taking the actions specified in paragraph (s) of this section.

(u) *Fee payment and collection—(1) Fish sellers who pay the fee.* Any person who harvests any crab, but whom ADF&G's fisheries reporting requirements do not require to record and submit an ADF&G fish ticket for that crab, is a fish seller for the purpose of paying any fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart;

(2) *Fish buyers who collect the fee.* Any person whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for any crab that another person harvested is a fish buyer for the purpose of collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart; and

(3) *Persons who are both fish sellers and fish buyers and both pay and collect the fee.* Any person who harvests any crab, and whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for that crab, is both a fish seller and a fish buyer for the purpose of paying and collecting the fee on that crab and otherwise complying with the

requirements of § 600.1013 of this subpart.

(v) *Fishing prohibition and penalties—(1) General.* Fishing, for the purpose of this section, includes the full range of activities defined in the term "fishing" in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801),

(2) *Prohibitions.* Concurrently with NMFS' tender of each reduction payment, and with the sole exception in paragraph (t)(7)(i) of this section, no person whatsoever may, and it is unlawful for any person to:

(i) Fish with or attempt to fish with, or allow others to fish with or attempt to fish with, the reduction/privilege vessel anywhere in the world for any species under any conditions and regardless of the reduction/privilege vessel's ownership or registry for so long as the reduction/privilege vessel exists. This prohibition includes, but is not limited to, fishing on the high seas or in the jurisdiction of any foreign country (to the extent prohibited by law) while operating under U.S. flag,

(ii) Place or attempt to place, or allow others to place or attempt to place, the reduction/privilege vessel under foreign flag or registry,

(iii) Operate or attempt to operate, or allow others to operate or attempt to operate, the reduction/privilege vessel under the authority of a foreign country to the extent prohibited by law,

(iv) Otherwise avoid or attempt to avoid, or allow others to avoid or attempt to avoid, the revocation of the reduction fishing privilege with respect to any reduction/privilege vessel, and

(v) Make any claim or attempt to make any claim, or allow others to claim or attempt to make any claim, for any present or future limited access fishing license or permit in any U.S. fishery (including, but not limited to, any quota allocation under any present or future individual quota allocation system) based in any way on any portion of a reduction fishing interest surrendered, revoked, restricted, relinquished, withdrawn, or extinguished by other means under this section; and

(3) *Penalties.* The activities that this paragraph prohibits are subject to the full penalties provided in § 600.1017 of

this subpart, and immediate cause for NMFS to take action to, among other things:

(i) At the reduction/privilege vessel owner's expense, seize and scrap the reduction/privilege vessel, and

(ii) Pursue such other remedies and enforce such other penalties as may be applicable.

(w) *Program administration—(1) FSD responsibilities.* FSD is responsible for implementing and administering this program. FSD will:

(i) Issue all notifications and mailings that this section requires,

(ii) Prepare and issue the invitation to bid,

(iii) Receive bids,

(iv) Reject bids,

(v) Score bids,

(vi) Make acceptances,

(vii) Prepare and issue referendum ballots,

(viii) Receive referendum ballots,

(ix) Tally referendum ballots,

(x) Determine referendum success or failure,

(xi) Tender and disburse reduction payments,

(xii) Administer reduction contracts,

(xiii) Administer fees and reduction loan repayment, and

(xiv) Discharge all other management and administration functions that this section requires;

(2) *RAM Program responsibilities.* Upon FSD's advice, the RAM Program (for fishing licenses under the jurisdiction of NMFS's Alaska Region) and any other appropriate NMFS authority (for fishing licenses under the jurisdiction of any other NMFS office) will revoke reduction permits and effect the surrender of fishing histories in accordance with this section; and

(3) *NVDC and MARAD responsibilities.* FSD will advise NVDC, MARAD, such other agency or agencies as may be involved, or all of them to revoke reduction/privilege vessels' fisheries trade endorsements and otherwise restrict reduction/privilege vessels in accordance with this section.

(x) *Reduction loan and reduction loan sub-amounts.* [Reserved]

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