

## Fishery Conservation and Management

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more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full deposit principal then in the deposit account, provided that the deposit principal then totals \$100 or more. If the deposit principal then totals less than \$100, the fish buyer need not disburse the deposit principal until either the next month during which the deposit principal then totals \$100 or more, or not later than the 14th calendar day after the last calendar day of any year in which the deposit principal has not since the last required disbursement totaled \$100 or more, whichever comes first. The fish buyer shall disburse deposit principal by check made payable to the groundfish program's fund subaccount. The fish buyer shall mail each such check to the groundfish program's fund subaccount lockbox that NMFS establishes for the receipt of groundfish program disbursements. Each disbursement shall be accompanied by the fish buyer's fee collection report completed in the manner and form which NMFS specifies. NMFS will, before fee payment and collection begins, specify the groundfish program's fund subaccount lockbox and the manner and form of fee collection report. NMFS will do this by means of the notification in §600.1013(d) of subpart L. NMFS' fee collection report instructions will include provisions for the fish buyer to specify the amount of each disbursement which was disbursed from the reduction fishery subaccount and/or from each of the six fee-share fishery subaccounts;

(4) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information:

(i) For all deliveries of fee fish that the fish buyer buys from each fish seller:

- (A) The date of delivery,
- (B) The fish seller's identity,
- (C) The weight, number, or volume of each species of fee fish delivered,
- (D) Information sufficient to specifically identify the fishing vessel which delivered the fee fish,

(E) The delivery value of each species of fee fish,

(F) The net delivery value of each species of fee fish,

(G) The identity of the payor to whom the net delivery value is paid, if different than the fish seller,

(H) The date the net delivery value was paid,

(I) The total fee amount collected as a result of all fee fish, and

(J) The total fee amount collected as a result of all fee fish from the reduction fishery and/or all fee fish from each of the six fee-share fisheries; and

(ii) For all collected fee deposits to, and disbursements of deposit principal from, the deposit account include:

(A) The date of each deposit,

(B) The total amount deposited,

(C) The total amount deposited in the reduction fishery subaccount and/or in each of the six fee-share fishery subaccounts,

(D) The date of each disbursement to the Fund's lockbox,

(E) The total amount disbursed,

(F) The total amount disbursed from the reduction fishery subaccount and/or from each of the six fee-share fishery subaccounts, and

(G) The dates and amounts of disbursements to the fish buyer, or other parties, of interest earned on deposits; and

(5) *Annual report.* No fish buyer needs to submit an annual report about fee fish collection activities unless, during the course of an audit under §600.1014(g), NMFS requires a fish buyer to submit such a report or reports.

(j) Other provisions. The reduction loan is, in all other respects, subject to the provisions of §600.1012 through applicable portions of §600.1017, except §600.1014(e).

[70 FR 40229, July 13, 2005, as amended at 71 FR 28, Jan. 3, 2006]

### § 600.1103 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

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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 re-

- quired 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:

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(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

(ii) [Reserved]

(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

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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.

(1) *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 (1)(1) of this section by the sum in paragraph (1)(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 reduc-

tion loan's full original principal amount by each of the yields in paragraph (1)(3) of this section; and

(5) *Loan sub-amount.* Each of the amounts resulting from the calculation in paragraph (1)(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 pay-

ment, 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

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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]

[68 FR 69337, Dec. 12, 2003. Redesignated at 69 FR 53362, Sept. 1, 2004]

### **§ 600.1104 Bering Sea and Aleutian Islands (BSAI) crab species fee payment and collection system.**

(a) *Purpose.* As authorized by Public Law 106-554, this section's purpose is to:

- (1) In accordance with § 600.1012 of subpart L, establish:
  - (i) The borrower's obligation to repay a reduction loan, and
  - (ii) The loan's principal amount, interest rate, and repayment term; and

(2) In accordance with § 600.1013 through § 600.1016 of subpart L, implement an industry fee system for the reduction fishery.

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L and § 600.1103 of this subpart expressly apply to this section. The following terms have the following meanings for the purpose of this section:

*Crab rationalization crab* means the same as in § 680.2 of this chapter.

*Crab rationalization fisheries* means the same as in § 680.2 of this chapter.

*Reduction endorsement fishery* means any of the seven fisheries that § 679.2 of this chapter formerly (before adoption of part 680 of this chapter) defined as crab area/species endorsements, except the area/species endorsement for Norton Sound red king. More specifically, the reduction endorsement fisheries, and the crab rationalization fisheries which (after adoption of part 680 of this chapter) correspond to the reduction endorsement fisheries, are:

(1) Bristol Bay red king (the corresponding crab rationalization fishery is Bristol Bay red king crab),

(2) Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi* (the corresponding crab rationalization fisheries are two separate fisheries, one for Bering Sea snow crab and another for Bering Sea Tanner crab),

(3) Aleutian Islands brown king (the corresponding crab rationalization fisheries are the two separate fisheries, one for Eastern Aleutian Islands golden king crab and another for Western Aleutian Islands golden king crab),

(4) Aleutian Islands red king (the corresponding crab rationalization fishery is Western Aleutian Islands red king crab),

(5) Pribilof red king and Pribilof blue king (the corresponding crab rationalization fishery is Pribilof red king and blue king crab), and

(6) St. Matthew blue king (the corresponding crab rationalization fishery is also St. Matthew blue king crab).

*Reduction fishery* means the fishery for all crab rationalization crab, excluding CDQ allocations, in all crab rationalization fisheries.