

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 679 and 680**

[Docket No. 040831251-5309-05; I.D. 082504A]

RIN 0648-AS47

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: NMFS issues this final rule, correcting amendment to the regulations governing the Bering Sea and Aleutian Islands crab fisheries. This action is necessary to clarify procedures and to correct discrepancies provided in a previous rulemaking. This final rule is intended to promote the goals and objectives of the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs (FMP), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law.

DATES: Effective December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7008 or patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background**

In January 2004, the U.S. Congress amended section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. 108-199, section 801). As amended, section 313(j)(1) requires the Secretary of Commerce to approve and implement by regulation the Crab Rationalization Program (Program), as it was approved by the North Pacific Fishery Management Council (Council) between June 2002 and April 2003, and all trailing amendments, including those reported to Congress on May 6, 2003. In June 2004, the Council consolidated its actions on the Program into the Council motion, which is contained in its entirety in Amendment 18. Additionally, in June 2004, the Council developed Amendment 19, which represents minor changes necessary to implement the Program. The Notice of Availability for these amendments was published in the **Federal Register** on September 1, 2004 (69 FR 53397). NMFS

published a proposed rule to implement Amendments 18 and 19 on October 29, 2004 (69 FR 63200). NMFS approved Amendments 18 and 19 on November 19, 2004. NMFS published a final rule to implement Amendments 18 and 19 on March 2, 2005 (70 FR 10174). NMFS published a final rule (70 FR 13097; March 18, 2005) to correct OMB control numbers provided in the final rule dated March 2, 2005 (70 FR 10174). NMFS also published a final rule (70 FR 33390; June 8, 2005) to correct certain regulations in the final rule dated March 2, 2005 (70 FR 10174).

Need for Corrections

NMFS seeks to ensure the final rule (March 2, 2005; 70 FR 10174) conforms to the statutory requirements and intent of the Program, to provide clarification regarding the Program's regulatory requirements, and to correct minor technical errors.

1. Statutory Conformance Corrections

These corrections are made to sections of the rule that do not currently conform to the statutory requirements of the Program. This correction ensures that the final rule conforms to statutory requirements.

Section 680.20 Arbitration System

Paragraph (a)(1) is amended by removing "June 30, 2005" and adding in its place "June 30, 2008". This correction ensures that the final rule conforms to statutory requirements.

Paragraph (h)(5)(iv) is amended by removing "arbitration proceedings as provided" and adding in its place "arbitration proceedings except as provided".

Section 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) Issuance

Paragraph (c)(4)(vi) is amended by removing "equation: Adj. Factor" and adding in its place "equation: Adj. Amount."

2. Regulatory Intent Corrections and Clarifications

These corrections are clarifications that explain regulatory changes that are more substantive than typographical/editorial type corrections.

Section 679.5 Recordkeeping and Reporting Requirements (R&R)

Paragraph (a)(1)(iv)(C) is added to state that any catcher vessel that is using pot gear in the CR crab fisheries must use a combined groundfish/IFQ logbook to record all CR crab. This note was inadvertently omitted from the crab final rule. This regulatory text is found

at § 680.5(a)(2)(i)(A); therefore, this is not a new requirement.

Paragraph (g)(3)(iii) is amended by removing the words "and indicate the confirmation number of the original PTR" from the last line of the paragraph. Paragraph (g)(4)(i) is revised by removing the last sentence from the paragraph. Removal of the confirmation number is necessary because in actual PTR use, NMFS discovered that the confirmation number was not needed for recordkeeping and that the confirmation number caused confusion.

The heading for paragraph (k)(1) is amended by removing "Fish or fish product other than crab onboard" and replacing it with "Fish or fish product onboard." Early in the planning stages, the PTR was not to be used for crab. Later on, the decision was made to use the PTR to record crab product; however, this regulatory heading was inadvertently not changed.

Section 680.5 Recordkeeping and Reporting

Paragraph (b)(2) is amended by removing "An RCR must" and adding in its place "An RCR and his or her designee(s) must".

Paragraph (b)(3) is removed and reserved. Only the RCR and his or her designees must apply for a password. The information contained in this paragraph has been included in the eLanding report (see paragraph (d)(7)). Because it is the same information, only requested in a different place, this change does not add new information.

The heading of paragraph (c)(1) is amended by removing "IERS application for user ID" and adding in its place "IERS processor registration." The three agencies involved in the IERS determined to change the name of the form, and the changed forms subsequently posted on the Internet. This change inadvertently was not reflected in the regulatory text. This revision ensures that the regulations are uniform with the form.

Paragraph (c)(1)(i) is amended to reflect actual practice that an RCR and designee(s) of the RCR must submit an application for User ID, instead of "the crab IFQ permit holder, crab IFQ hired master, IPQ permit holder, or person who harvested Adak or CDQ crab." In addition, the web page address and specific reference to the landing reporting system, eLandings, are added. The name of the form required to obtain a User ID is changed to read "IERS processor registration" in the heading for paragraph (c)(1) and in paragraph (c)(1)(i).

Paragraph (c)(1)(ii) is amended to clarify how the IERS processor registration information will be processed. The form must be signed and mailed to the address on the form in addition to submittal by Internet.

Changes to paragraphs (c)(1)(i) and (ii) are necessary to indicate that only the RCR and his/her designees submit landing data; therefore, only these participants are required to submit an IERS processor registration form. These changes also clarify that applicants may obtain IERS processor registration forms from the NMFS Alaska Region home page.

The heading for paragraph (c)(2) is amended by removing "Contents of IERS application for user ID" and adding in its place "Contents of IERS processor registration."

The introductory paragraph (c)(2) is amended by removing "The IERS application for user ID" and adding in its place "The application for IERS processor registration."

Paragraph (d)(4)(i) is amended by removing "within 6 hours of the end of each weekly reporting period" and adding in its place "by Tuesday noon after the end of each weekly reporting period." The time limit for submitting this catcher/processor report in existing regulatory text actually means the report would need to be submitted between midnight and 6:00; this is because the weekly reporting period ends at 2400 hr, Alaska local time. In addition to the inconvenience to the regulated community, this is also difficult for NMFS, because the Internet server isn't processing return receipts during that time, and no staff are available for technical support. The original paragraph does not reflect the intent of the time limit for submitting of the crab landing report, which was intended to match the time limit for submitting the groundfish weekly production report. This revision fixes that problem.

Paragraph (d)(7)(i) is amended by removing "RCR permit number" and adding in its place "RCR permit number, IFQ permit number, and IPQ permit number, as appropriate." The regulations currently request the IFQ permit number and IPQ permit number in paragraph (b)(3). In actual practice the IFQ and IPQ permit number are requested in the landing report. In addition, no other person than the RCR and his/her designees need to obtain a password; therefore, with this action, paragraph (b)(3) is removed and reserved.

Paragraph (d)(7)(xxi) is amended by removing "scale weight of live crab in pounds;" and adding in its place "sold weight of live crab in pounds." This

change is necessary to align the regulations with actual practice.

Section 680.23 Equipment and Operational Requirements

Paragraph (b)(4) is amended by removing "by the State in which the product is landed" and adding in its place "by a state in which CR crab is landed". Current regulations require that a catcher/processor offload crab product and weigh that product on a scale approved by the state in which the crab is landed. Rationale for this change is as follows. In some cases, crab catcher/processors may offload product in more than one state. Because scale approval requirements are similar and adequate in all states, it does not make sense for a catcher/processor to be required to have the offload scale approved by more than one state. Regulations at § 680.23(b)(4) are revised to allow a crab catcher/processor to use a scale approved by any state where CR crab is landed.

Section 680.42 Limitations on Use of QS, PQS, IFQ, and IPQ

Paragraph (b)(3)(iii) is amended by removing "QS or IFQ" and adding in its place "PQS." This corrects an inadvertent error.

Paragraph (c)(2) is amended by removing "CPC QS used" and adding in its place "CPC IFQ used". This corrects an inadvertent error.

Paragraph (c)(4) is amended by removing "IFQ" in two places and adding in its place "CVO or CPO IFQ." This corrects an inadvertent error.

Figures 16 and 17 to Part 679

Figures 16 and 17 to Part 679 are removed. These figures relate to the License Limitation Program boundaries that were revised in the crab final rule. The removal of these figures clarifies potential confusion.

3. Technical Corrections

The following typographical and editorial corrections are made in this rule.

Section 679.5 Recordkeeping and Reporting (R&R)

Paragraph (l)(1)(iii)(B) is amended by removing "Table 14" and adding in its place "Tables 14a and 14b."

Section 680.20 Arbitration System

Paragraph (h)(3)(iv) is amended by removing "a crab fishery" and adding in its place "each crab fishery." This change is necessary for clarification.

Section 680.42 Limitations on Use of QS, PQS, IFQ, and IPQ

Paragraphs (a)(2)(i)(A), (B), and (C) are changed to correct inadvertent typographical errors.

Paragraph (a)(2)(i)(A) is amended by removing "2.0% = 240,00" and adding in its place "2.0% = 240,000".

Paragraph (a)(2)(i)(B) is amended by removing "2.0% = 600,00" and adding in its place "2.0% = 600,000".

Paragraph (a)(2)(i)(C) is amended by removing "2.0% = 120,00" and adding in its place "2.0% = 120,000".

Paragraph (a)(3)(ii) is amended by removing "(a)(2)(i)" and adding in its place "(a)(3)(i)".

Paragraph (a)(4)(ii) is amended by removing "(a)(2)(i)" and adding in its place "(a)(4)(i)".

Table 9 to Part 680

Table 9 is amended by removing "totally" from Column B for BST and adding in its place "total".

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final rule is necessary for the conservation and management of the BSAI crab fisheries. The Regional Administrator also has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553 (b)(B), the Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable, unnecessary, and contrary to the public interest. Through this action, NOAA seeks to ensure that the final rule conforms to the statutory requirements and intent of the Program, provide clarification regarding the Program's regulatory requirements and correct minor technical errors. Prior notice and an opportunity for public comment on this action would be impracticable, unnecessary, and contrary to the public interest for the following reasons.

First, corrections are necessary to ensure the rule's conformance with the Program's statutory requirements. Accordingly, NMFS has no discretion as to whether to implement them. As such, prior notice and an opportunity for public comment are unnecessary as the agency has no choice but to ensure its regulations are consistent with the statute. Second, corrections and clarifications to ensure the rules

compliance with the intent of the Program are necessary to ensure consistency and to accurately describe the various provisions of the regulations. Prior notice and an opportunity for public comment on these measures are impracticable and contrary to the public interest due to the ongoing nature of the fisheries. Finally, the editorial changes made by this rule are non-substantive. As a result, prior notice and an opportunity for comment on these changes are unnecessary.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

The changes made by this rule are not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d). The waiver of the 30-day delay in effective date requirement of 5 U.S.C. 553(d) is necessary to provide the regulated community with timely, adequate and accurate information with which to prosecute the ongoing fisheries.

List of Subjects in 50 CFR Parts 679 and 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 5, 2005.

James W. Balsiger,

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

■ For the reasons discussed in the preamble, 50 CFR parts 679 and 680 are corrected by making the following correcting amendments:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

■ 2. In § 679.5, add paragraph (a)(1)(iv)(C); revise the heading for paragraph (k)(1) and revise paragraphs (g)(3)(iii), (g)(4)(i), and (l)(1)(iii)(B) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

- (a) * * *
- (1) * * *
- (iv) * * *

(C) Any catcher vessel that is using pot gear in the CR crab fisheries must use a combined groundfish/IFQ logbook to record all CR crab.

- * * * * *
- (g) * * *

(3) * * *

(iii) If any information on the original PTR changes prior to the first destination of the shipment, submit a revised PTR by facsimile or electronic file to OLE, Juneau, AK (907–586–7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the change occurred.

(4) * * *

(i) *Original or revised PTR.* Whether a submittal is an original or revised PTR.

(k) * * *

(1) *Fish or fish product onboard.* * * *

* * * * *

- (l) * * *
- (1) * * *
- (iii) * * *

(B) Port of landing and port code from Tables 14a and 14b to this part;

* * * * *

PART 679—[AMENDED]

■ 3. Remove Figures 16 and 17 to Part 679.

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

■ 4. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862.

■ 5. In § 680.5, revise paragraph (b)(2), (c)(1) paragraph heading, (c)(1)(i), (c)(1)(ii), (c)(2) paragraph heading and first sentence, and remove and reserve paragraph (b)(3) to read as follows:

§ 680.5 Recordkeeping and reporting (R&R).

* * * * *

(b) * * *

(2) An RCR and his or her designee(s) must enter his or her authorized user ID and password to access the IERS.

* * * * *

(c) * * *

(1) *IERS processor registration.* (i) Before an RCR and his or her designee(s) can use the eLandings system to report landings, he/she must request authorization to use the system, reserve a particular user ID, and receive a password. Each RCR and his or her designee(s) must provide information needed to process account access into the IERS by completing an IERS Processor Registration at <http://www.fakr.noaa.gov/sustainablefisheries/crab/crfaq.htm>. Upon receiving the signed registration, the IERS will validate that all required information is submitted, that the information entered is in correct format, and that the requested user ID is not already in use. The IERS will generate a PDF document from the information entered by the applicant.

(ii) The user must print, sign, and submit the application to the address provided on the registration form. A user ID will be activated after a signed registration form is received. The signature of an applicant on the form means that the applicant agrees to use access privileges to the IERS for purposes of submitting legitimate fishery landing reports and to safeguard the user ID and password to prevent their use by unauthorized persons. In addition, signature of the RCR ensures that the applicant is authorized to submit landing reports for the processor permit number(s) listed.

* * * * *

(2) *Contents of the IERS processor registration.* The application for IERS processor registration must contain the following information: * * *

* * * * *

§ 680.5 [Corrected]

- 6. Correct § 680.5(d) as follows:
 - a. In paragraph (d)(4)(i), remove “within 6 hours of the end” and add in its place “by Tuesday noon after the end”;
 - b. In paragraph (d)(7)(i), remove “RCR permit number” and add in its place “RCR permit number, IFQ permit number, and IPQ permit number, as appropriate;” and
 - c. In paragraph (d)(7)(xxi), remove “Scale weight of live crab in pounds” and add in its place “Sold weight of live crab in pounds.”

§ 680.20 [Corrected]

- 7. Correct § 680.20 as follows:
 - a. Paragraph (a)(1), remove “June 30, 2005” and add in its place “June 30, 2008”;
 - b. Paragraph (h)(3)(iv)(A), remove “a crab QS fishery” and add in its place “each crab fishery”; and
 - c. Paragraph (h)(5)(iv), remove “arbitration proceeding as provided” and add in its place “arbitration proceeding except as provided”.

§ 680.23 [Corrected]

■ 8. In § 680.23, paragraph (b)(4), remove “approved by the State in which the product is landed” and add in its place “approved by a state in which CR crab is landed”.

§ 680.40 [Corrected]

■ 9. In § 680.40, paragraph (c)(4)(vi), remove “Adj. Factor” and add in its place “Adj. Amount.”

§ 680.42 [Corrected]

■ 10. Correct § 680.42 as follows:

- a. Paragraph (a)(3)(ii), remove “(a)(2)(i)” and add in its place “(a)(3)(i)”;
- b. Paragraph (a)(4)(ii), remove “(a)(2)(i)” and add in its place “(a)(4)(i)”;
- c. Paragraph (b)(3)(iii), remove “QS or IFQ” and add in its place “PQS;”

- d. Paragraph (c)(2), remove “CPC QS used” and add in its place “CPC IFQ used;” and
- e. Paragraph (c)(4), remove “IFQ” in two places and add in its place “CVO or CPO IFQ.”

- 11. In § 680.42, correct table entries in paragraphs (a)(2)(i)(A), (B), and (C) to read as follows:

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

- (a) * * *
- (2) * * *
- (ii) * * *

Fishery	CVO/CPO Use Cap in QS Units	CVC/CPC Use Cap in QS Units
(A) Percent of the initial QS pool for BBR	1.0 % = 3,880,000	2.0% = 240,000
(B) Percent of the initial QS pool for BSS	1.0% = 9,700,000	2.0% = 600,000
(C) Percent of the initial QS pool for BST	1.0% = 1,940,000	2.0% = 120,000
* * * * *		

- 12. In Table 9 to Part 680, correct the entry for Bering Sea Tanner crab (BST) to read as follows:

Table 9 to Part 680 Initial Issuance of Crab PQS by Crab QS Fishery

Column A: For each crab QS fishery	Column B: The Regional Administrator shall calculate PQS for any qualified person based on that person's total legal purchase of crab in each of the crab QS fisheries for any ...
* * *	* * *
Bering Sea Tanner Crab (BST)	Equivalent to 50 percent of the total legally processed crab in the Bering Sea snow crab fishery during the qualifying years established for that fishery, and 50 percent of the total legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that fishery.
* * *	* * *