security agreement. An application for transfer that would cause a person to exceed the transfer limit of this provision will not be approved. A transfer of an Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section to another LLP license, or the transfer of a groundfish license with an Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section attached to it will be considered to be a transfer of that Aleutian Island area endorsement.

* * * * *

(viii) * * *

(A) Area endorsements or area/species endorsements specified on a license are not severable from the license and must be transferred together, except that Aleutian Island area endorsements on a groundfish license with a trawl gear designation issued under the provisions of paragraph (k)(4)(ix)(A) of this section and that are assigned to a groundfish license with an MLOA of less than 60 feet LOA may be transferred separately from the groundfish license to which that Aleutian Island area endorsement was originally issued to another groundfish license provided that the groundfish license to which that Aleutian Island endorsement is transferred:

(*1*) Was not derived in whole or in part from the qualifying fishing history of an AFA vessel;

(*2*) Has a catcher vessel designation;

(*3*) Has a trawl gear designation;

(*4*) Has an MLOA of less than 60 feet LOA; and

(*5*) A complete transfer application is submitted to the Regional Administrator as described under this paragraph (k)(7), and that application is approved.

* * * * *

■ 3. In § 679.7, paragraphs (i)(2) through (i)(5), and paragraph (i)(8)(i) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(i) * * *

(2) Conduct directed fishing for license limitation groundfish without a legible copy of a valid groundfish license, except as provided in § 679.4(k)(2);

(3) Conduct directed fishing for LLP crab species without a legible copy of a valid crab license, except as provided in § 679.4(k)(2);

(4) Process license limitation groundfish on board a vessel without a legible copy of a valid groundfish license with a catcher/processor designation;

(5) Process LLP crab species on board a vessel without a legible copy of a valid crab species LLP license with a catcher/processor designation;

* * * * *

(8) * * *

(i) Without a copy of a valid scallop license on board;

* * * * *

[FR Doc. E9–19568 Filed 8–13–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 080630808–91192–03]

RIN 0648–AW97

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea/Aleutian Islands Crab Rationalization Program; Amendment 28

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations implementing Amendment 28 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). These regulations amend the Bering Sea/Aleutian Islands Crab Rationalization Program to allow post-delivery transfers of all types of individual fishing quota and individual processing quota to cover overages. This action is necessary to improve flexibility of the fleet, reduce the number of violations for overages, reduce enforcement costs, and allow more complete harvest of crab allocations. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective September 14, 2009.

ADDRESSES: This action was categorically excluded from the need to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act. Copies of Amendment 28, the categorical exclusion memorandum, and the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action, as well as the Environmental Impact Statement prepared for the Crab Rationalization Program, may be obtained from the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill or Rachel Baker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). The FMP was prepared by the North Pacific Fishery Management Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendments 18 and 19 to the FMP implemented the BSAI Crab Rationalization Program (CR Program). Regulations implementing Amendments 18 and 19 were published on March 2, 2005 (70 FR 10174), and are located at 50 CFR part 680.

Background

Under the CR Program, NMFS issued quota share (QS) to persons based on their qualifying harvest histories in the BSAI crab fisheries during a specific time period. Each year, the QS issued to a person yields an amount of individual fishing quota (IFQ), which is a permit that provides an exclusive harvesting privilege for a specific amount of raw crab pounds, in a specific crab fishery, in a given season. The size of each annual IFQ allocation is based on the amount of QS held by a person in relation to the total QS pool in a crab fishery. For example, a person holding QS equaling 1 percent of the QS computation pool in a crab fishery receives IFQ to harvest 1 percent of the annual total allowable catch (TAC) in that crab fishery. Catcher/processor license holders were allocated catcher/processor vessel owner (CPO) QS for their LLP license's history as catcher/processors; catcher vessel license holders were issued catcher vessel owner (CVO) QS based on their LLP license's catcher vessel history.

Under the CR Program, 97 percent of the initial allocation of QS was issued to LLP license holders as CPO or CVO QS. The remaining three percent was issued to vessel captains and crew as ''C shares'' based on their harvest histories as crew members onboard crab fishing vessels. Of the CVO IFQ, 90 percent is issued as ''A shares,'' or ''Class A IFQ,'' which, in most fisheries, is subject to regional landing requirements and must be delivered to a processor holding unused individual processor quota (IPQ). This regional landing requirement is commonly referred to as ''regionalization.'' The remaining 10 percent of the annual vessel owner IFQ

is issued as ''B shares,'' or ''Class B IFQ,'' which may be delivered to any processor and is not subject to regionalization. C shares also are not subject to regionalization.

Processor quota shares are long term shares issued to processors. These processor quota shares yield annual IPQ, which represents a privilege to receive a certain amount of crab harvested with Class A IFQ. IPQ are issued for 90 percent of the CVO TAC, creating a one-to-one correspondence between Class A IFQ and IPQ.

NMFS can issue IFQ to the QS holder directly, or to a crab harvesting cooperative composed of multiple QS holders who have assigned their annual IFQ to the cooperative. Crab harvesting cooperatives have been used extensively by QS holders to allow them to receive a larger IFQ allotment and coordinate deliveries and price negotiations among numerous quota holders and vessel owners. Most QS holders joined cooperatives in the first four years of the CR Program and are likely to continue membership because of the economic and administrative benefits of consolidating their IFQs.

IFQ Overages Prior to this Final Rule Implementing Amendment 28

Prior to Amendment 28, IFQ permit holders, including QS holders, lessees, and cooperatives, were prohibited from exceeding the amount of IFQ that was issued to them (see § 680.7(e)(2)). If a harvester delivered more crab than the amount of IFQ that he held, he committed a violation of regulations, commonly referred to as an ''overage''. Overages occur either through deliberate actions, or more commonly through unintentional errors such as miscalculating the weight of catch to be delivered relative to the amount of IFQ available. Because harvesters do not know the precise weight of a delivery of crab, estimates made onboard the vessel using a sample of average weight may be lower than the actual delivery weight. If a harvester is making his or her last fishing trip for a season and insufficient IFQ is available in his or her account, an overage would occur. In most cases, harvesters attempted to account for potential overages by maintaining catch below their IFQ holdings, slightly underharvesting the maximum amount of crab.

Similarly, processors were prohibited from receiving more Class A IFQ than the amount of unused IPQ that they held (see regulations at § 680.7(a)(5)). Generally, processors establish relationships with specific harvesters before crab fishing begins and may not have unused IPQ available to receive crab from harvesters that do not have an established relationship with that processor. Under the provisions of the CR Program's Arbitration System, harvesters can choose to commit their Class A IFQ to match the IPQ held by processors (see regulations at § 680.20). Once IFQ shares are committed and matched with a specific amount of IPQ, that IPQ cannot be matched to another harvester's IFQ without first removing the match from the harvester who committed delivery of Class A IFQ crab to the IPQ held by that processor. Removing a match of Class A IFQ and IPQ requires the consent of the harvester. Therefore, it is possible that a processor holding IPQ may not have any available unmatched IPQ if a harvester were to deliver more Class A IFQ than the amount specified on his IFQ permit. For this reason, processors typically refuse to accept a delivery of Class A IFQ that is greater than the amount of available unmatched IPQ.

Although matching Class A IFQ and IPQ among the numerous harvesters and processors can be complicated, overages are uncommon. In the first two crab fishing years under the CR Program (2005–2006 and 2006–2007), most of the IFQs were harvested and few overages occurred. There were 16 overages in the first year and 25 in the second year under the CR Program. These overages represented less than 0.1 percent (1/1000) of the TAC in each year.

Effects of the Action

The following sections briefly describe the effects of allowing post-delivery transfers to cover overages of IPQ as well as Class A IFQ, Class B IFQ, C shares, and CPO IFQ. Additional discussion of the rationale for and effects of this action is provided in the preamble to the proposed rule published on December 12, 2008 (73 FR 75661), and is not repeated here.

Under this final rule, there is no limit on the size of a post-delivery transfer or on the number of post-delivery transfers a person could make. However, a person may not begin a new fishing trip for a crab QS fishery (e.g., snow crab) if any of the IFQ accounts of the IFQ permits available to be used on a vessel are zero or negative for that crab QS fishery, and no person may have a negative balance in an IFQ or IPQ account after June 30, the end of a crab fishing year. For IFQ holders, no person may begin a new fishing trip in a crab QS fishery until the overage is accounted for and the IFQ balances of the persons onboard that vessel for that crab QS fishery are positive.

The final rule defines the term ''fishing trip'' for crab QS fisheries as the period beginning when a vessel operator commences harvesting crab in a crab QS fishery and ending when the vessel operator offloads or transfers any crab, whether processed or unprocessed, from that crab QS fishery from that vessel. Under the definition in this final rule, a fishing trip starts with the first harvest in a crab QS crab fishery and continues until the beginning of a delivery of crab from a catcher vessel, or the beginning of offloading or transferring of processed crab from a catcher/processor. This definition ensures that a vessel operator cannot commence fishing for a crab QS fishery on any vessel until all the IFQ accounts of all IFQ permits used onboard that vessel are positive for that crab QS fishery. This provision is intended to discourage harvesters from continuing to debit crab against their IFQ account for numerous fishing trips and run an increasingly negative balance without ensuring that there is adequate available unused IFQ that can be transferred to cover that negative balance. This provision allows a vessel operator to begin a fishing trip for one crab QS fishery (e.g., snow crab) provided the harvester had unused IFQ in that fishery, even if that harvester had a negative balance in another crab QS fishery (e.g., Bristol Bay red king crab). However, in this example, if a vessel operator harvested (i.e., caught and retained) any Bristol Bay red king crab while fishing for snow crab, the harvester would be in violation of the regulations. This final rule does not modify existing regulations that require that IFQ issued to a cooperative may be transferred only between cooperatives, and that IFQ held outside of cooperatives may be transferred only to another person who holds that IFQ outside of a cooperative.

This action minimizes the risk of negative IFQ or IPQ accounts by prohibiting an IFQ or IPQ holder from maintaining a negative balance in an IFQ or IPQ account after the end of the crab fishing year for which that IFQ or IPQ account was issued. This final rule requires that all post-delivery transfers of IFQ or IPQ must be completed by June 30 of each year, the end of the crab fishing year. Overages that are not covered by June 30 of each year can be subject to a penalty or other enforcement action. Allowing post-delivery transfers will likely reduce the number of overages that result in forfeiture of catch and other penalties.

Overall, NMFS anticipates that the number of overages at the time of landing may increase slightly under this action, but overages subject to penalty should decline. Harvesters are likely to

realize production efficiency gains under this action, which allows greater flexibility in harvesting. Under the status quo, harvesters may be required to wait in port or remain idle on the fishing grounds until a transfer can be processed and a positive IFQ balance is available. Under this final rule, harvesters could finish their fishing trip and settle the balance when back in port. Some production efficiency gains should be realized by allowing harvesters to more precisely harvest the total IFQ allocation with fewer uncovered overages. Harvesters are also likely to benefit from a reduction in the number of overage violations, which should be reduced through post-delivery transfers. It is unlikely that harvesters will have excessive overages by unreasonable reliance on the provision for post-delivery transfers because the majority of all IFQ issued in crab QS fisheries is Class A IFQ, which harvesters can choose to match with IPQ held by processors before crab fishing begins (see IFQ Overages Prior to This Final Rule Implementing Amendment 28 section above). Persons holding IFQ outside of a cooperative may have a limited opportunity to make post-delivery transfers because most IFQ allocations are assigned to cooperatives.

This action has limited impacts on processors. Processors should have few overages, since overages can be avoided by simply refusing delivery of landings in excess of IPQ holdings. Only when a harvester has an IFQ overage that is covered by a post-delivery transfer of Class A IFQ might a processor need to obtain IPQ to cover an overage.

This action requires NMFS to debit IPQ accounts if a processor accepts delivery of Class A IFQ in excess of the amount of Class A IFQ that is matched with that processor. Prior to this action, NMFS has not debited an IPQ account if an excess of Class A IFQ was delivered because NMFS did not wish to encourage waste by having processors refuse delivery of Class A IFQ, or debit an IPQ account of a processor and potentially cause the processor to exceed his IPQ account due to the actions of a harvester. However, with this final rule, NMFS will debit the IPQ account of a processor that accepts Class A IFQ in excess of the amount in its IPQ account. At the time of landing, NMFS will assume the landing overage will be covered by a subsequent post-delivery transfer to balance the IPQ account.

Summary of Regulatory Changes

This action makes the following changes to the existing regulatory text at 50 CFR part 680:

- Add a new definition for the term ''fishing trip'' at § 680.2;
- Modify the existing prohibition at § 680.7(a)(5) to clarify that a person may not receive Class A IFQ greater than the amount of unused IPQ that person holds in a crab QS fishery unless they subsequently receive unused IPQ before the end of the crab fishing year to ensure their final yearly IPQ balance is not negative;
- Modify the existing prohibition at § 680.7(e)(2) to clarify that a person cannot begin a fishing trip with a vessel in a crab QS fishery if the total amount of unharvested crab IFQ that is currently held in the IFQ accounts of all crab IFQ permit holders or Crab IFQ Hired Masters onboard that vessel for that crab QS fishery is zero or less; and
- Add a prohibition at § 680.7(e)(3) to prohibit a person from having a negative balance in an IFQ or IPQ account for a crab QS fishery after the end of the crab fishing year for which that IFQ or IPQ permit was issued.

Notice of Availability and Proposed Rule

NMFS published the notice of availability for Amendment 28 on November 25, 2008 (73 FR 71598), with a public comment period that closed on January 24, 2009. NMFS published the proposed rule to implement Amendment 28 on December 12, 2008 (73 FR 75661), and the public comment period closed on January 26, 2009. Two public comments were received regarding Amendment 28 and the proposed rule. These are summarized and responded to below.

Response to Comments

Comment 1: The commenter raises general concerns about fisheries management, asserting that fishery policies have not been to the benefit of American citizens.

Response: The comment provided opinions of the federal government's general management of marine resources and was not specific to the proposed action. The comment did not raise new issues or concerns that have not been addressed in the RIR/IRFA prepared to support this action or the preamble to the proposed rule.

Comment 2: The commenter asserts that NMFS is biased and should not be allowed to manage fisheries.

Response: This comment is not specifically related to the proposed rule and recommends broad changes to fisheries management that are outside of the scope of this action.

Changes from the Proposed Rule

NMFS did not make any substantive changes from the proposed to the final rule but made one editorial change to the regulatory language at § 680.7(e)(2) for clarity.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that Amendment 28 is necessary for the conservation and management of the BSAI crab fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

A FRFA was prepared that describes the economic impact that this action has on small entities. The RIR/FRFA prepared for this final rule is available from NMFS (see ADDRESSES). The RIR/FRFA prepared for this final rule incorporates by reference an extensive RIR/FRFA prepared for Amendments 18 and 19 to the FMP that detailed the impacts of the CR Program on small entities.

The FRFA for this action describes the action, why this action is being proposed, the objectives and legal basis for the final rule, the type and number of small entities to which the final rule applies, and projected reporting, recordkeeping, and other compliance requirements of the final rule. It also identifies any overlapping, duplicative, or conflicting federal rules and describes any significant alternatives to the final rule that accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes, and that would minimize any significant adverse economic impact of the final rule on small entities. The description of the action, its purpose, and its legal basis are described in the preamble and are not repeated here.

The proposed rule for this action was published on December 12, 2008 (73 FR 75661). An IRFA was prepared and summarized in the classifications section of the preamble to the proposed rule. The public comment period ended on January 26, 2009. NMFS received two public submissions on Amendment 28 and the proposed rule. These comments did not address the IRFA.

For purposes of a FRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of $4.0 million for all its

affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for those businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. NMFS currently is reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors.

The FRFA contains a description and estimate of the number of small entities to which this final rule will apply. The FRFA estimates that 44 entities received IFQ allocations. Of these, 31 were considered small entities. Estimates of small entities holding IPQ are based on the number of employees of IPQ holding entities. Currently, 24 entities receive IPQ allocations. Of these, 13 are considered small entities.

This action directly regulates all holders of IFQ and IPQ, who could engage in post-delivery transfers to cover overages. Estimates of the number of small entities holding IFQ are based on estimates of gross revenues. Since many IFQs are held by cooperatives, landings data from the most recent season for which data are available in the crab fisheries (2006–2007) were used to estimate the number of small entities.

All of the directly regulated entities are expected to benefit from this action relative to the status quo alternative because the action allows greater flexibility and a period of time in which to reconcile overages. Class A IFQ holders are expected to benefit the most because Class A IFQ comprises the majority of all IFQ issued in crab QS fisheries, and this action will provide all IFQ holders greater flexibility to maximize harvests of their allocations without risking overages. Persons holding IFQ outside of a cooperative are expected to benefit the least from this action because only a small portion of the total IFQ issued is issued to persons who hold IFQ outside of cooperatives, and they have a limited pool of persons with whom to negotiate transfers.

Among the three alternatives considered for this action, Alternative 2 (implemented by this rule) would best minimize potential adverse economic impacts on the directly regulated entities. Under the status quo (Alternative 1), no post-delivery transfers would be allowed and small entities would continue to be penalized for overages. Alternative 3 would have allowed post-delivery transfers, but with more limitations and restrictions than Alternative 2, the alternative that provides small entities the most flexibility to cover overages.

Recordkeeping and Reporting Requirements

This final rule does not change existing reporting, recordkeeping, or other compliance requirements. Any person wishing to cover an overage will be required to engage in a transfer of IFQ (or IPQ, in the case of a processor). The required reporting and recordkeeping for a post-delivery transfer is the same as for any other transfer of IFQ (or IPQ). NMFS' Restricted Access Management (RAM) Division will continue to oversee share accounts and share use. At the time of landing, RAM will maintain a record of any overage, but instead of reporting overages to NOAA Office of Law Enforcement immediately, RAM will defer reporting until June 30, the end of the crab fishing year. RAM will use the same process for post-delivery transfers as currently used under regulations at § 680.41.

Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on its website at *http://alaskafisheries.noaa.gov/sustainablefisheries/crab/rat/progfaq.htm* to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996 requirement for a plain language guide to assist small entities in complying with this rule.

List of Subjects in 50 CFR Part 680

Alaska, Fisheries.

Dated: August 10, 2009.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 680 is amended as follows:

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

■ 1. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 2. In § 680.2, the term ''Fishing trip for purposes of § 680.7(e)(2)'' is added in alphabetical order to read as follows:

§ 680.2 Definitions.

* * * * *

Fishing trip for purposes of § 680.7(e)(2) means the period beginning when a vessel operator commences harvesting crab in a crab QS fishery and ending when the vessel operator offloads or transfers any processed or unprocessed crab in that crab QS fishery from that vessel.

* * * * *

■ 3. In § 680.7, paragraphs (a)(5) and (e)(2) are revised, and paragraph (e)(3) is added to read as follows:

§ 680.7 Prohibitions.

* * * * *

(a) * * *

(5) Receive any crab harvested under a Class A IFQ permit in excess of the total amount of unused IPQ held by the RCR in a crab QS fishery unless that RCR subsequently receives unused IPQ by transfer as described under § 680.41 that is at least equal to the amount of all Class A IFQ received by that RCR in that crab QS fishery before the end of the crab fishing year for which an IPQ permit was issued.

* * * * *

(e) * * *

(2) Begin a fishing trip for crab in a crab QS fishery with a vessel if the total amount of unharvested crab IFQ that is currently held in the IFQ accounts of all crab IFQ permit holders or Crab IFQ Hired Masters aboard that vessel in that crab QS fishery is zero or less.

(3) Have a negative balance in an IFQ or IPQ account for a crab QS fishery after the end of the crab fishing year for which an IFQ or IPQ permit was issued.

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[FR Doc. E9–19567 Filed 8–13–09; 8:45 am]

BILLING CODE 3510–22–S