

Dated: April 30, 2013.

**Daniel M. Ashe,**

*Director, U.S. Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 902

#### 50 CFR Part 680

[Docket No. 110207108-3430-02]

RIN 0648-BA82

#### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 41 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 (CR Program) by establishing a process whereby holders of regionally designated individual fishing quota (IFQ) and individual processor quota (IPQ) in six CR Program fisheries may receive an exemption from regional delivery requirements in the North or South Regions. The six CR Program fisheries are Bristol Bay red king crab, Bering Sea snow crab, Saint Matthew Island blue king crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, and Pribilof Islands red and blue king crab. This action is necessary to mitigate disruptions in a CR Program fishery that prevent participants from complying with regional delivery requirements. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

**DATES:** Effective June 14, 2013.

**ADDRESSES:** Electronic copies of Amendment 41 to the FMP, the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), and the Categorical Exclusion prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The

Environmental Impact Statement, RIR, and Social Impact Assessment prepared for the CR Program are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or faxed to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:**

Gretchen Harrington, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** This final rule implements Amendment 41 to the FMP. NMFS published a notice of availability for Amendment 41 on December 13, 2012 (77 FR 74161). The comment period on Amendment 41 ended on February 11, 2013. NMFS published a proposed rule to implement Amendment 41 on January 30, 2013 (78 FR 6279). The comment period on the proposed rule ended on March 1, 2013. NMFS approved Amendment 41 on March 13, 2013. Additional detail on the effects of this action is provided in the notice of availability for Amendment 41 (December 13, 2012, 77 FR 74161) and the proposed rule (January 30, 2013, 78 FR 6279). NMFS received eight letters containing nine unique comments on Amendment 41 and the proposed rule.

Amendment 41 and this final rule apply to quota share (QS) and processor quota share (PQS) that have a regional designation for either the North Region or South Region. NMFS assigned a North Region designation or a South Region designation to the QS and PQS issued in six CR Program fisheries: Bristol Bay red king crab, Bering Sea snow crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, Saint Matthew Island blue king crab, and Pribilof Islands red and blue king crab. The North Region is north of 56°20'N. latitude. The South Region is south of 56°20'N. latitude.

A QS holder's annual allocation, called IFQ, is expressed in pounds and is based on the amount of QS held in relation to the total QS pool for that fishery. NMFS issues IFQ in three classes: Class A IFQ, Class B IFQ, and Class C IFQ. Three percent of IFQ is issued as Class C IFQ for captains and crew. Of the remaining IFQ, 90 percent is issued as Class A IFQ and 10 percent is issued as Class B IFQ. For the CR fisheries subject to this rule, NMFS

issues Class A IFQ with a North Region or South Region designation, and that Class A IFQ must be delivered within its designated geographic region. For PQS holders, NMFS issues an annual allocation of individual processing quota (IPQ) with a North Region or South Region designation. NMFS issues Class A IFQ and IPQ for each region at a one-to-one correlation for each of the six CR Program fisheries subject to this rule. Holders of Class A IFQ designated for a specific region must deliver to a processor holding a matching amount of IPQ for that region. Holders of regionally designated Class A IFQ and IPQ may not use that IFQ and IPQ outside of the designated region, except as provided for in this rule.

In recommending Amendment 41, the Council recognized that weather conditions or other natural or man-made circumstances can hinder harvesting activities and restrict access to processing facilities in the North or South Regions. Environmental or man-made conditions have created obstacles to regional deliveries in every year since implementation of the CR Program. Each year, icing conditions have been an obstacle to delivering crab harvested with North Region IFQ in the North Region. For an entire season, deliveries to a floating processor that served most of the North Region were prevented by a fire that disabled the processor.

Natural or man-made catastrophes could result in lost revenue to harvesters, processors, and communities. Safety risks increase when harvesters attempt to meet regional delivery requirements in inclement weather (e.g., icing conditions) and other potentially unsafe situations. Unforeseen delays in delivering crab could result in deadloss (crab that die before being processed). Harvesters may avoid or delay the harvest of regionally designated IFQ, thereby increasing the potential for unharvested crab or crab harvested later in the fishing season. Such changes in fishing behavior could result in unused IPQ, increased processing cost, loss of market share, and loss of revenue to remote communities dependent on revenues from crab deliveries and processing.

Amendment 41 and this final rule promote the safety of human life at sea and mitigate economic harm by allowing participants to receive an exemption from regional delivery requirements in situations where events prevent participants from delivering crab harvested with North Region IFQ in the North Region or South Region IFQ

in the South Region. This final rule implements an exemption process to allow fishery participants to respond to an emergency situation during the crab fishing year in accord with provisions that they established before the season. The preamble to the proposed rule (78 FR 6279, January 30, 2013) provides detailed information on the implementing regulations for Amendment 41.

In summary, this final rule establishes a process by which IFQ holders, IPQ holders, and affected communities could jointly apply for and receive an exemption from regional delivery requirements. This final rule implements a two-step process for an exemption from regional delivery requirements: A preseason application and an inseason notice of exemption. Both parts of the application are on one form: The Application for Exemption from CR Crab North or South Region Delivery Requirements. This application process allows the parties to apply for an exemption from the regional delivery requirements without extensive administrative review by NMFS.

Under this rule, both the preseason application and the inseason notice of exemption must be signed by one or more members of the following three groups: (1) Holders of Class A IFQ in a CR Program fishery subject to this rule; (2) holders of the IPQ in a CR Program fishery subject to this rule; and (3) a representative of each of the affected communities. Additional description of these groups is provided in the preamble to the proposed rule (78 FR 6279, January 30, 2013).

The preseason application process allows the affected parties to enter the crab fishing season knowing the steps that the parties would take to avoid an exemption, the circumstances that would trigger an exemption, the steps they would need to take to obtain an exemption, and any mutually-agreed upon compensatory actions that the parties would take as a result of exercising the exemption. The preseason application process itself has two parts: (1) The development of a framework agreement by the parties; and (2) the submission of a preseason application to NMFS. If the parties to a NMFS-approved preseason application conclude during the crab fishing year that circumstances have occurred that justify an inseason exemption under the framework agreement, those applicants must do two things to obtain an exemption. First, they must enter into an exemption contract with each other and, second, they must jointly submit an inseason notice of the exemption to NMFS.

Amendment 41 and this final rule do not prescribe specific conditions or terms of agreement for the framework agreement or exemption contract. However, the North Pacific Fishery Management Council's (Council's) Statement of Council Intent should guide the parties in establishing the required contracts. The preamble to the proposed rule contains the Statement of Council Intent and the range of private arrangements that the Council considered and that the parties could put in the framework agreement and the exemption contract (78 FR 6279, January 30, 2013).

This final rule also includes a reporting requirement for IFQ holders to provide NMFS and the Council with the means to assess the exemption in terms of the Council's Statement of Council Intent for Amendment 41. In a crab fishing year when an IFQ holder submits a preseason application for an exemption from the regional delivery requirements, the IFQ holder must also submit an annual Regional Delivery Exemption Report to NMFS.

#### Response to Comments

NMFS received eight letters of public comment during the public comment periods for Amendment 41 and the proposed rule. NMFS received letters from crab fishery participants and organizations, the City of Saint Paul, and a Community Development Quota (CDQ) entity. NMFS summarized these letters into nine separate comments, and responds to them below.

*Comment 1:* The proposed rule is consistent with Amendment 41 as adopted by the Council. We encourage NMFS to move forward expeditiously in implementation of the regulations so that they can be in effect for the 2013/2014 crab fishing year.

*Response:* NMFS acknowledges the comment.

*Comment 2:* In the preamble to the proposed rule, NMFS used incorrect coordinates to describe the line between the North Region and the South Region. The correct line is defined at § 680.40(b)(2)(i)(A).

*Response:* NMFS acknowledges that the coordinates in the preamble to the proposed rule were incorrect and includes the correct coordinates in this preamble to the final rule.

*Comment 3:* The Council intended that the regional delivery exemption apply to compensatory deliveries (e.g., allowing Class A IFQ and IPQ designated for one region to be used in another region to compensate for deliveries made earlier under an inseason notice of exemption). The proposed rule could be interpreted to

render the parties ineligible to make compensatory deliveries in the crab fishing year following the year that they were stipulated in the exemption contract. Under the proposed rule, parties entitled to compensatory deliveries could potentially be denied the benefit of their bargain without their agreements and through no fault of their own. This result would be contrary to the fundamental premises of the contract-based approach to regional delivery exemptions adopted by the Council under Amendment 41.

*Response:* The Council intended that the regional delivery exemption apply to compensatory deliveries. Compensatory deliveries can occur in the crab fishing year that they were stipulated in the exemption contract or in the crab fishing year following the year that they were stipulated in the exemption contract. Under the proposed rule, compensatory deliveries would be possible. However, the proposed rule did not include any regulations specifically addressing the use of compensatory deliveries, either in the crab fishing year or in the following crab fishing year, and, as proposed, did not provide the most efficient process for exempting compensatory deliveries in the following crab fishing year from regional delivery requirements. To address this public comment, NMFS has modified the final rule to more clearly address compensatory deliveries and the process to be followed for exempting compensatory deliveries in the following crab fishing year.

The Council considered compensatory deliveries as one possible form of compensation that the parties could put in the framework agreement and the exemption contract, as discussed in Sections 2.4.2 and 2.4.3 of the RIR (see **ADDRESSES**). Compensatory deliveries could be used to address the loss of economic activity under the exemption and the loss of revenue to both IPQ holders and communities. Compensatory deliveries could be used to address both an IPQ holder's potential losses (if the exemption was used to send deliveries to a different processor) and a community's potential losses (for any deliveries to a different region under the exemption).

A compensatory delivery would occur when the parties to the framework agreement and the exemption contract agree that a certain amount of regionally-designated IFQ crab may be landed outside of the region on the condition that some amount of IFQ crab is later delivered to that region. For example, the parties could agree to a compensatory delivery of IFQ crab not subject to regional delivery

requirements (Class B or Class C IFQ) to the region that lost deliveries under the exemption. Alternatively, compensatory deliveries could come from a different CR fishery or from Class A IFQ designated for another region. The amount of a compensatory delivery would be negotiated and may differ from the amount redirected, particularly if made from a different fishery.

The RIR discusses how compensating the community for losses with a compensatory delivery of IFQ crab designated for another region may be a more agreeable resolution to all parties than a payment to the regional entity or its designee. The RIR specifies that, in the framework agreement, the parties would commit to subsequent compensatory delivery in a region. The RIR notes that compensating a community or region with deliveries of IFQ crab designated for another region would require that the IFQ and IPQ holders have agreements with the community representative for the IFQ and IPQ used for compensation. Because the Council clearly analyzed and considered compensatory deliveries (including compensatory deliveries that may occur in the year following the approval of an exemption) during the development of Amendment 41, and the public has requested additional specificity in the regulatory text concerning the use of and process for compensatory deliveries in the year following an exemption under the proposed rule, NMFS determined that modifications to the proposed rule text are needed to more closely align the final rule with Amendment 41 and clarify the exemption process.

NMFS has made three changes in the final rule to address and facilitate the use of compensatory deliveries in both the crab fishing year they were stipulated in the exemption contract and in the following crab fishing year. These changes do not require parties to the framework agreement to establish agreements for compensatory deliveries, but if the parties establish such agreements, the changes require that provisions for compensatory deliveries are clearly described in the framework agreement and exemption contract, and that the required forms are signed by all of the affected parties.

Administratively, compensatory deliveries among regions are subject to the same procedure established by this action to exempt deliveries from regional delivery requirements. Consequently, representatives from both regions must sign the framework agreement, exemption contract, and corresponding forms to allow for compensatory deliveries among regions.

For example, if a Class A IFQ holder, IPQ holder, and the representative of the affected community in the North Region want to have a specific amount of South Region Class A IFQ delivered in the North Region as compensation for a delivery of North Region Class A IFQ in the South Region, then the Class A IFQ holder(s), IPQ holder(s), and representatives of affected communities from both the North and South Regions must sign the framework agreement, preseason application, exemption contract, and inseason notice of exemption.

NMFS would treat the compensatory delivery the same as an original exempted delivery in that it would be made using IFQ and IPQ that were exempt from the regional delivery requirement. Therefore, the IFQ holder(s), IPQ holder(s), and the community representative(s) for the IFQ and IPQ used to make the compensatory delivery in either that crab fishing year or in the following crab fishing year must sign the framework agreement, preseason application, notice of inseason exemption, and exemption contract. If any party to a framework agreement or exemption contract believes that any other party did not comply with their contractual obligation, that party could seek redress as a private civil matter.

First, NMFS changed the regulations for the preseason application at § 680.4(p)(4)(ii)(B) to add a new paragraph (6) that requires the framework agreement to specify any arrangements for compensatory deliveries in the crab fishing year or the following crab fishing year. This new provision ensures that the IFQ and IPQ that would be used to make the compensatory deliveries are subject to the framework agreement and are available for the exemption contract.

Second, NMFS changed the regulations for the inseason notice of exemption at § 680.4(p)(4)(iii)(B) to add a new paragraph (5) that requires the exemption contract to specify any arrangements for compensatory deliveries in that crab fishing year or the following crab fishing year. This new provision ensures that the compensatory deliveries are covered in the exemption contract.

Third, NMFS changed the regulations at § 680.4(p)(4)(iii)(F) to extend the effective period for the exemption to cover any specified compensatory deliveries in the following crab fishing year. Under the proposed rule, the exemption would have been effective for the remainder of the crab fishing year in which NMFS receives the notice of exemption. This change will clarify

that, if the inseason notice of exemption specifies that compensatory deliveries will occur in the following crab fishing year, the exemption will remain in effect for the specified IFQ and IPQ in the following crab fishing year.

The final rule does not permit compensatory deliveries for more than one crab fishing year after the year that NMFS receives the notice of exemption because allowing compensatory deliveries to occur at some indeterminate time in the future would be administratively burdensome to track, was not specifically analyzed in the RIR prepared for this action, and public comments generally requested that compensatory deliveries be allowed in the crab fishing year following the notice of exemption.

*Comment 4:* There is no logical basis for requiring that parties enter into a framework agreement for a subsequent year as a condition of being eligible to make compensatory deliveries required under a framework agreement and exemption contract from a prior year. We respectfully suggest two changes to address this issue.

First, revise § 680.4(p)(4)(ii)(E) to provide that applicants who do not submit a timely preseason application will not be eligible to receive an exemption for the relevant crab fishing year, other than an exemption to make compensatory landings in fulfillment of their obligations under an existing exemption contract.

Second, add language to § 680.4(p)(4)(ii)(F) so that it would read as follows: "If a preseason application is timely and complete, NMFS will approve the application. If NMFS approves a preseason application for an exemption, the applicants will be able to receive an exemption during the crab fishing year in which the preseason application was filed if the applicants comply with the requirements for a preseason application specified below at (p)(4)(iii). In addition, if NMFS approves a preseason application for an exemption and receives a related complete notice of exemption that is based on an exemption contract that includes an agreement for compensatory deliveries, the exemption necessary to make such compensatory deliveries will be effective the day after it is filed with NMFS in accordance with Section 680.4(p)(4)(iii), below, by the party authorized to file it under the terms of the related inseason exemption contract."

*Response:* NMFS agrees that it is not necessary for the parties to enter into a new framework agreement in order to make compensatory deliveries specified in an exemption contract in the

following crab fishing year. As explained in the response to Comment 3, NMFS has modified the proposed regulatory text in this final rule to address and facilitate compensatory deliveries in the crab fishing year following the inseason notice of exemption. Compensatory deliveries in the following crab fishing year would be made under the framework agreement and preseason application (and exemption contract and notice of exemption) submitted in the crab fishing year in which the emergency occurred. When applicants receive an exemption, the exemption would cover the compensatory deliveries in the following crab fishing year that are specified in the exemption contract. NMFS determined that the modifications described in the response to Comment 3 and contained in this final rule are the most efficient and effective way to implement the changes recommended by public comment. Therefore, the specific regulatory changes suggested by the comment are not necessary.

In response to the first suggested change, § 680.4(p)(4)(ii)(E) does not require a new preseason application to fulfill compensatory deliveries that are specified in an existing exemption contract. This regulation states that, if NMFS does not receive a timely and complete preseason application on or before October 15 of a crab fishing year, NMFS will deny the preseason application; those applicants will not be able to receive an exemption for that crab fishing year. This remains true; NMFS will not grant an exemption without a timely and complete preseason application. However, with the changes to the regulations described in the response to Comment 3, once applicants receive an exemption, the exemption would cover the compensatory deliveries in the following crab fishing year that are specified in the exemption contract.

The second suggested change to § 680.4(p)(4)(ii)(F) is also not necessary to allow compensatory deliveries in the following crab fishing year. This paragraph explains that NMFS will approve a timely and complete preseason application. If NMFS approves a preseason application for an exemption, the applicants will be able to receive an exemption during the crab fishing year if the applicants comply with the requirements for an inseason notice of exemption. With the changes to the regulations described in the response to Comment 3, once applicants receive an exemption, the exemption would cover the compensatory deliveries in the following crab fishing

year that are specified in the exemption contract.

*Comment 5:* We respectfully suggest that § 680.4(p)(4)(iii)(A)(3) be revised to read as follows: "Be signed by the required applicants specified in paragraph (p)(3) that also signed the preseason application, or, if filed to make compensatory landings, be signed by the party authorized to submit the notice of exemption under the terms of the related inseason exemption contract."

*Response:* NMFS determined that this suggested regulatory change is not necessary to allow compensatory deliveries in the following crab fishing year. With the regulation changes explained in response to Comment 3, when applicants receive an exemption, the exemption would cover any compensatory deliveries in the following crab fishing year that are specified in the exemption contract. Parties would not need to submit a new inseason notice of exemption to make compensatory deliveries in the following crab fishing year.

However, it is important to note that the framework agreement, the preseason application, the exemption contract, and the inseason notice of exemption all must be signed by the holders of the IFQ and IPQ that are subject to the exemption, including the compensatory deliveries, and by the community representative for the community or communities where the specified IFQ, including compensatory deliveries, would have been landed. For compensatory deliveries, this means that the community representative that would have received the delivery used to compensate an exempted delivery must sign the required documents.

As explained in the RIR, a compensatory delivery of Class A IFQ designated for another region could only occur with the consent of the Class A IFQ holder, IPQ holder, and the representative of the affected community in the region from which the compensatory delivery originates. The RIR notes that to compensate a community or region with deliveries of IFQ crab designated for another region would require that the IFQ and IPQ holders have agreements with the regional representative for the IFQ and IPQ used for compensation. Administratively, these compensatory deliveries are part of the same procedure as the original exempt delivery. Consequently, representatives from both regions in a fishery would need to sign the framework agreement, exemption contract, and corresponding forms to allow for compensatory deliveries.

*Comment 6:* We respectfully request that § 680.4(p)(5) be revised to require that each Regional Delivery Exemption Report identify all compensatory deliveries made during the crab fishing year that is the subject of the Report, all outstanding compensatory delivery obligations to be fulfilled in a future crab fishing year or years, and the party or parties who are authorized to file the related compensatory delivery exemption request(s) under the terms of the related exemption contract(s). We believe this information would assist NMFS with identifying compensatory landings as a subcomponent of regional landing relief, and in determining who has the authority to file compensatory landing exemption requests.

*Response:* NMFS agrees that the Regional Delivery Exemption Report should include information on compensatory deliveries and has added a requirement to the Regional Delivery Exemption Report at § 680.4(p)(5)(i)(D). This final rule requires that the report include an explanation of the arrangements for any compensatory deliveries, including all compensatory deliveries made during the crab fishing year and any outstanding compensatory delivery obligations for the following crab fishing year. Note that NMFS is not requiring any of the parties to file compensatory delivery exemption requests as suggested by the comment. Compensatory deliveries would be made under the inseason notice of exemption in which the compensatory deliveries were specified, regardless of whether they occur in the same crab fishing year or the following crab fishing year. Also, as explained in the response to Comment 3, the final rule does not permit compensatory deliveries for more than one crab fishing year after the year that NMFS receives the notice of exemption.

*Comment 7:* The proposed rule, at § 680.4(p)(5)(ii), requires IFQ holders to submit a Regional Delivery Exemption Report to IPQ holders and community representatives on or before June 15, and to submit the Regional Delivery Exemption Report to NMFS on or before June 30. We note that the crab fishing year currently extends through June 30, and it is conceivable that IFQ crab delivered under an exemption may not be landed until then. Therefore, we respectfully request that the deadlines for submitting a Regional Exemption Delivery Report to IPQ holders and community representatives be extended to July 15, and the deadline for submitting the Report to NMFS be extended to July 30. These extensions should provide IFQ holders with adequate time after the crab fishing year

ends to prepare and submit the required Regional Delivery Exemption Reports.

*Response:* NMFS agrees and has changed the deadline at § 680.4(p)(5)(ii) to July 15 and the deadline at § 680.4(p)(5)(iii) to July 30.

*Comment 8:* One comment expressed a general concern with Federal fisheries management.

*Response:* NMFS acknowledges that comment but determined that it does not relate to the scope of this action.

*Comment 9:* One comment generally supported the Crab Rationalization Program.

*Response:* NMFS acknowledges the comment.

### Summary of the Changes from Proposed to Final Rule

NMFS made changes from the proposed to final rule in response to public comments. NMFS made four changes to allow for compensatory deliveries in the following crab fishing year that are discussed in the responses to Comments 3 and 6.

- NMFS changed the proposed regulations for the preseason application at § 680.4(p)(4)(ii)(B) to add a new paragraph (6) that requires the framework agreement to specify any arrangements for compensatory deliveries in the crab fishing year or the following crab fishing year.

- NMFS changed the proposed regulations for the inseason notice of exemption at § 680.4(p)(4)(iii)(B) to add a new paragraph (5) that requires the exemption contract to specify any arrangements for compensatory deliveries in the crab fishing year or the following crab fishing year.

- NMFS changed the proposed regulations at § 680.4(p)(4)(iii)(F) to extend the effective period for the exemption to cover any specified compensatory deliveries in the following crab fishing year.

- NMFS changed the proposed regulations for the Regional Delivery Exemption Report at § 680.4(p)(5)(i) to add a new paragraph (D) that requires the Regional Delivery Exemption Report to include an explanation of the arrangements for any compensatory deliveries, including all compensatory deliveries made during the crab fishing year and any outstanding compensatory delivery obligations for the following crab fishing year.

Additionally, NMFS changed the deadline at § 680.4(p)(5)(i) to July 15 and the deadline at § 680.4(p)(5)(iii) to July 30, as discussed in Comment 7.

### OMB Revisions to Paperwork Reduction Act References in 15 CFR 902.1(b)

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule revises and adds data elements within a collection-of information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the sections resulting from this final rule.

### Classification

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the Administrator, Alaska Region, NMFS, has determined that Amendment 41 and this final rule are necessary for the conservation and management of the BSAI crab fisheries and that they are consistent with the FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

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

### Final Regulatory Flexibility Analysis (FRFA)

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action.

NMFS published a proposed rule to implement Amendment 41 on January 30, 2013 (78 FR 6279). An IRFA was prepared and summarized in the "Classification" section of the preamble to the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here.

NMFS received eight letters of public comment containing nine unique comments on Amendment 41 and the proposed rule. None of these comments addressed the IRFA or the economic impacts of the rule generally.

### Number and Description of Small Entities Regulated by the Action

This action creates a process whereby IFQ holders and IPQ holders who enter an agreement with a community representative may apply for and receive an exemption from regional

delivery requirements. Estimates of the number of small entities holding IFQ are based on estimates of gross revenues. During the 2009–2010 fishing season, nine entities held IFQ subject to regional delivery requirements; three of these IFQ holders were small entities. In that same season, 14 of the 22 entities that held IPQ subject to regional delivery requirements were small entities. Six small community entities, including two CDQ entities, are directly regulated by this action.

### Description of Significant Alternatives to the Final Action That Minimize Adverse Impacts on Small Entities

A FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency, which affect the impact on small entities, was rejected. "Significant alternatives" are those that achieve the stated objectives for the action, consistent with prevailing law, with potentially lesser adverse economic impacts on small entities, as a whole.

No significant alternatives were developed for this action. The Council considered two alternatives; status quo and the proposed action. The status quo is no exemption from the regional delivery requirements. The proposed action is an exemption from the regional delivery requirements. For the proposed action alternative, the Council considered a number of options to improve the functioning of the exemption and minimize adverse impacts on small entities. The Council also considered and eliminated from further considerations several alternatives that the Council determined would have limited the effectiveness of the exemption in achieving its intended purpose.

The analysis shows that this action minimizes the economic impacts of status quo on small entities by allowing participants to receive an exemption from regional delivery requirements in situations where events prevent participants from delivering crab harvested with North Region IFQ in the North Region or South Region IFQ in the South Region. Overall, this exemption process allows participants to receive an exemption from regional delivery requirements in situations where events prevent participants from delivering crab harvested with North

Region IFQ in the North Region or South Region IFQ in the South Region.

The Council considered a number of options to improve the functioning of the exemption and minimize adverse impacts on small entities. The Council considered options that would allow communities benefiting from a ROFR to select a regional representative to act on their behalf rather than the ECC entity. The Council did not choose that option because of the potential difficulties that communities could encounter in selecting the regional representative and because of the additional administrative costs and burdens associated with this option. In addition to providing an expedited administrative process, the approach selected by the Council maintains the original intent of CR Program community protection measures in that it preserves community interests by providing not only a regional linkage for certain PQS, but also a close linkage between certain PQS and the community of origin for that PQS.

The Council also considered and eliminated from further consideration several alternatives during the development of Amendment 41. These alternatives are described in detail in Section 2.2.1 of the analysis for this action (see **ADDRESSES**). Generally, the Council perceived these alternatives as limiting the effectiveness of the exemption in achieving its intended purpose.

The Council considered and rejected alternatives in which NMFS would fully administer regional exemptions by determining whether specific conditions existed to qualify for an exemption from the regional delivery requirement. The Council did not advance these alternatives because the Council viewed them as overly expensive to administer and likely to prevent the exemption process from fulfilling its purpose as described in the Council's purpose and need statement for this action. The Council and NMFS recognized that the necessary fact finding to make such a determination (e.g., that a specific amount of ice was prohibiting harvesting or delivery of crab in a specific location) would not only delay decision making, but could also be costly. Verification of conditions could be difficult or impracticable due to the remoteness of the location and poor quality of data available.

A factual finding would require NMFS to not only complete an assessment of the event that arguably prevents a delivery, but also of the potential availability of other processing facilities in the region to overcome the barrier to the delivery. These findings

would require factual assessments of circumstances in remote areas. Such findings typically require time, which may jeopardize safety in emergencies, and information, which may not be available to NMFS. In addition, the need for administrative review of these findings could result in additional delays. Consequently, the Council elected to pursue alternatives that would not rely on agency administrative discretion. Instead, the affected parties would define the terms under which they would apply for and receive an exemption. This approach also allows the parties flexibility to develop mitigation and compensation requirements that would, in turn, minimize the need for the exemption and, if an exemption is necessary, ensure that the parties potentially harmed by the exemption receive reasonable compensation.

The Council also considered an alternative that would have defined specific exemption criteria in regulation; however, the Council eliminated this alternative because NMFS and the Council recognized that this approach might be overly restrictive and could not be adapted as circumstances might require. The Council also elected not to recommend an alternative that specifically defined compensation because the Council deemed this alternative too prescriptive to effectively balance the competing interests of parties, which are likely to change with the circumstances surrounding the granting of an exemption. Similarly, the Council chose not to advance alternatives that would redesignate IFQ and IPQ to compensate for landings redirected under the exemption because they would be administratively complex given the inability to rollover IFQ from one year to the next.

#### Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this action and existing Federal rules has been identified.

#### Recordkeeping and Reporting Requirements

The reporting, recordkeeping, and other compliance requirements will be increased if parties enter into the agreements and contracts required as part of a completed Application for Exemption from CR Crab North or South Region Delivery Requirements. This action adds recordkeeping and reporting requirements necessary to implement Amendment 41, namely submission, prior to the start of the fishing season, of an application and affidavit affirming

that IFQ holders, IPQ holders, and community representatives have entered into a framework agreement. A second notice and affidavit affirming that those parties have entered into an exemption contract is required if the parties subject to the framework agreement wish to seek an exemption during the fishing season.

Participation in an Application for Exemption from CR Crab North or South Region Delivery Requirements is voluntary, but necessary to deliver crab outside of a designated region when circumstances necessitate an exemption from the regional delivery requirements.

The professional skills necessary to comply with reporting and recordkeeping requirements for small entities impacted by this rule include the ability to read, write, and understand English; the ability to use a personal computer and the Internet; and the authority to take actions on behalf of the designated signatory. Each of the small entities must be capable of complying with the requirements of this rule. Each small entity should have financial resources to obtain additional legal or technical expertise that they might require to advise them concerning the framework agreement or the exemption contract.

IFQ holders that sign a preseason application must also prepare and submit an annual Regional Delivery Exemption Report to NMFS by July 30. By July 15, IFQ holders must submit a copy of the Regional Delivery Exemption Report to IPQ holders and community representatives that also signed the preseason application. In response to the Regional Delivery Exemption Report, community representatives may voluntarily submit a Community Impact Report and IPQ holders may voluntarily submit an IPQ Holder Report.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS has posted a small entity compliance guide on the NMFS Alaska Region Web site (<http://www.alaskafisheries.noaa.gov/sustainablefisheries/crab/rat/>)

*profaq.htm*. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

*Collection-of-Information Requirements*

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), which have been approved by the Office of Management and Budget (OMB) under OMB Control No. 0648–0514.

Public reporting burden per response is estimated to average 20 hours for the Application for Exemption from CR Crab North or South Region Delivery Requirements; 5 hours for CDQ Notification of Representative; 20 hours to prepare the Regional Delivery Exemption Report; and 2 hours to complete the Community Impact Report or IPQ Holder Report.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA\_Submission@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

**List of Subjects**

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 8, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 680 as follows:

**Title 15—Commerce and Foreign Trade**

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”;

■ a. Remove entries for “680.4(a), (b)(2), and (c) through (m)”;

■ b. Add entries in alphanumeric order for “680.4(a) through (p)”;

The additions read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

CFR Part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
50 CFR	
680.4(a) through (p) .....	–0514
680.5(f) .....	–570
680.42(a) and (b) .....	–0514

**Title 50—Wildlife and Fisheries**

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

■ 3. 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.

■ 4. In § 680.4, add paragraph (p) to read as follows:

**§ 680.4 Permits.**

(p) *Exemption from regional delivery requirements for the Bristol Bay red king crab, Bering Sea snow crab, St. Matthew blue king crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, and Pribilof red king and blue king crab fisheries—(1) Apply for an Exemption.* Eligible applicants may submit an application to

exempt North Region IFQ and IPQ or South Region IFQ and IPQ from the prohibitions at §§ 680.7(a)(2) and (a)(4).

(2) *Identification of eligible applicants.* Eligible applicants are:

(i) *IFQ holders.* Any person holding regionally designated IFQ for Bristol Bay red king crab, Bering Sea snow crab, St. Matthew blue king crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, or Pribilof red king and blue king crab, or their authorized representative.

(ii) *IPQ holders.* Any person holding regionally designated IPQ for Bristol Bay red king crab, Bering Sea snow crab, St. Matthew blue king crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, or Pribilof red king and blue king crab, or their authorized representative.

(iii) *Community representatives.* (A) For communities that hold or formerly held the ROFR pursuant to § 679.41(l), the community representative that signs the preseason application, the framework agreement, the inseason notice, and the exemption contract is the ECC entity, as defined at § 680.2.

(B) For North Region St. Matthew blue king crab PQS and North Region Bering Sea snow crab PQS that was issued without a ROFR, the community representative that signs the preseason application, the framework agreement, the inseason notice, and the exemption contract for Saint Paul and Saint George shall be either:

(1) Both Aleutian Pribilof Islands Community Development Association (APICDA) and the Central Bering Sea Fishermen’s Association (CBSFA), or

(2) the community representative that APICDA and CBSFA designate in writing to NMFS by December 9, 2013.

(i) Either APICDA or CBSFA may revoke the designated community representative by providing written notice to the other entity and to NMFS.

(ii) If either APICDA or CBSFA revokes its designation of a community representative after October 15 of a crab fishing year, the revocation will not affect the validity of any action taken by the designated community representative pursuant to paragraph (p) for that crab fishing year, including signing the preseason application, the framework agreement, the inseason notice, and the exemption contract.

(3) *Required Applicants.* Multiple parties may apply for an exemption; however, a complete preseason application and a complete inseason notice must be submitted by a minimum of one Class A IFQ holder, one IPQ holder, and one community representative.



(4) *Application for an Exemption from the CR Program Regional Delivery Requirements*—(i) *Application Form*. The application form consists of two parts: a preseason application for exemption and an inseason notice of exemption. The application form is available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>) or from NMFS at the address below. NMFS must receive both parts of the application form by one of the following methods:

(A) Mail: NMFS Regional Administrator, c/o Restricted Access Management Program, P.O. Box 21668, Juneau, AK 99802-1668; or

(B) Fax: 907-586-7354; or

(C) Hand delivery or carrier: NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(ii) *Part I: Preseason Application*. (A) A complete preseason application must be signed by the required applicants specified in paragraph (p)(3), contain the information specified on the form, have all applicable fields accurately completed, and have all required documentation attached.

(B) Each applicant must certify, through an affidavit, that the applicant has entered into a framework agreement that—

(1) Specifies the CR crab fisheries that are the subject of the framework agreement;

(2) Specifies the actions that the parties will take to reduce the need for, and amount of, an exemption;

(3) Specifies the circumstances that could be an obstacle to delivery or processing under which the parties would execute an exemption contract and receive an exemption;

(4) Specifies the actions that the parties would take to mitigate the effects of an exemption;

(5) Specifies the compensation, if any, that any party would provide to any other party;

(6) Specifies any arrangements for compensatory deliveries in that crab fishing year or the following crab fishing year and;

(7) Is signed by the holders of the IFQ and IPQ that are the subject of the framework agreement and by the community representative that is authorized to sign the framework agreement.

(C) Each applicant must sign and date the affidavit and affirm that, under penalty of perjury, the information and the claims provided on the application are true, correct, and complete.

(D) NMFS must receive the preseason application on or before October 15 of the crab fishing year for which the

applicants are applying for an exemption.

(1) If a preseason application is submitted by mail, the date of receipt of the preseason application by NMFS will be the postmark date of the application;

(2) If an applicant disputes whether NMFS received a preseason application on or before October 15, the applicant must provide written documentation that was contemporaneous with NMFS' receipt of the application demonstrating that NMFS received the application by October 15.

(E) If NMFS does not receive a timely and complete preseason application on or before October 15 of a crab fishing year, NMFS will deny the preseason application; those applicants will not be able to receive an exemption for that crab fishing year.

(F) If a preseason application is timely and complete, NMFS will approve the application. If NMFS approves a preseason application for an exemption, the applicants will be able to receive an exemption during the crab fishing year if the applicants comply with the requirements for an inseason notice of exemption specified below at paragraph (p)(4)(iii).

(G) If NMFS denies a preseason application for any reason, the applicants may appeal the denial pursuant to 50 CFR 679.43.

(H) NMFS will notify all of the applicants whether NMFS has approved or denied the preseason application.

(iii) *Part II: Inseason Notice of Exemption*. (A) A complete inseason notice must:

(1) Identify the IFQ amount and IPQ amount, by CR crab fishery, subject to the exemption;

(2) Contain the information specified on the form, have all applicable fields accurately completed, and have all required documentation attached; and

(3) Be signed by the required applicants specified in paragraph (p)(3) of this section that also signed the preseason application.

(B) Each applicant must certify, through an affidavit, that the applicants have entered into an exemption contract that—

(1) Identifies the IFQ amount and IPQ amount, by CR crab fishery, that is subject to the exemption contract;

(2) Describes the circumstances under which the exemption is being exercised;

(3) Specifies the action that the parties must take to mitigate the effects of the exemption;

(4) Specifies the compensation, if any, that any party must make to any other party;

(5) Specifies any arrangements for compensatory deliveries in that crab

fishing year or the following crab fishing year; and

(6) Is signed by the holders of the IFQ and IPQ that are the subject of the exemption contract and by the community representative that is authorized to sign the exemption contract.

(C) Each applicant must sign and date the affidavit and affirm that, under penalty of perjury, the information and the claims provided on the notice are true, correct, and complete.

(D) NMFS must receive the inseason notice at least one day prior to the day on which the applicants want the exemption to take effect. If an inseason notice is submitted by mail, the date that NMFS receives the inseason notice is not the postmark date of the notice.

(E) The effective date of the exemption is the day after NMFS receives a complete inseason notice. Any delivery of North Region IFQ or South Region IFQ outside the designated region prior to the effective date of the exemption is prohibited under § 680.7(a)(2) and (4). Any processing of North Region IPQ or South Region IPQ outside the designated region prior to the effective date of the exemption is prohibited under § 680.7(a)(2) and (4).

(F) An exemption is effective for the remainder of the crab fishing year, unless the inseason notice of exemption specifies that compensatory deliveries will occur in the following crab fishing year and then the exemption will remain in effect for the IFQ and IPQ specified for compensatory delivery in the following crab fishing year.

(5) *Regional Delivery Exemption Report*. (i) Each IFQ holder that signs a preseason application, described in paragraph (p)(4)(ii) of this section, must submit a Regional Delivery Exemption Report to NMFS that includes an explanation of—

(A) The amount of IFQ, if any, set aside to reduce the need for, and the amount of, an exemption;

(B) The mitigation measures employed before submitting an inseason notice;

(C) The number of times an exemption was requested and used;

(D) The arrangements for any compensatory deliveries, including all compensatory deliveries made during the crab fishing year and any outstanding compensatory delivery obligations for the following crab fishing year;

(E) Whether the exemption was necessary; and

(F) Any impacts resulting from the exemption on the fishery participants



and communities that signed the preseason application.

(ii) On or before July 15, IFQ holders must submit a copy of the Regional Delivery Exemption Report to the IPQ holders and community representatives that also signed the preseason application.

(iii) On or before July 30, IFQ holders must submit the Regional Delivery Exemption Report to NMFS at the address in paragraph (p)(4)(i) of this section.

(6) *Public Notice of the Exemption.* NMFS will post the effective date of an exemption and the Regional Delivery Exemption Reports on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>).

■ 5. In § 680.7, revise paragraphs (a)(2), (a)(4), (a)(7), (a)(8), and (a)(9) to read as follows:

**§ 680.7 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(2) Receive CR crab harvested under an IFQ permit in any region other than the region for which the IFQ permit is designated, unless:

(i) Western Aleutian Islands golden king crab are received following the effective date of a NMFS-approved exemption pursuant to § 680.4(o), or

(ii) The IFQ permit and IFQ amount are subject to an exemption pursuant to § 680.4(p).

\* \* \* \* \*

(4) Use IPQ in any region other than the region for which the IPQ permit is designated, unless:

(i) Western Aleutian Islands golden king crab IPQ is used following the effective date of a NMFS-approved exemption pursuant to § 680.4(o), or

(ii) The IPQ permit and IPQ amount are subject to an exemption pursuant to § 680.4(p).

\* \* \* \* \*

(7) For an IPQ holder to use more IPQ than the maximum amount of IPQ that may be held by that person. Use of IPQ includes all IPQ held by that person, and all IPQ crab that are received by any RCR at any shoreside crab processor or stationary floating crab processor in which that IPQ holder has a 10 percent or greater direct or indirect ownership interest, unless that IPQ crab meets the requirements in § 680.42(b)(7) or § 680.42(b)(8).

(8) For a shoreside crab processor or stationary floating crab processor, that does not have at least one owner with a 10 percent or greater direct or indirect ownership interest who also holds IPQ in that crab QS fishery, to receive in excess of 30 percent of the IPQ issued for that crab fishery, unless that IPQ meets the requirements described in § 680.42(b)(7) or § 680.42(b)(8).

(9) For any shoreside crab processor or stationary floating crab processor east of 174 degrees west longitude to use more than 60 percent of the IPQ issued

in the EAG or WAI crab QS fisheries, unless that IPQ meets the requirements described in § 680.42(b)(8).

\* \* \* \* \*

■ 6. In § 680.42, revise paragraph (b)(1)(ii) and add paragraph (b)(8) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) Use IPQ in excess of the amount of IPQ that results from the PQS caps in paragraph (b)(1)(i) of this section, unless that IPQ is:

(A) Derived from PQS that was received by that person in the initial allocation of PQS for that crab QS fishery, or

(B) Subject to an exemption for that IPQ pursuant to § 680.4(p).

\* \* \* \* \*

(8) Any IPQ crab that is received by an RCR will not be considered use of IPQ by an IPQ holder for the purposes of paragraphs (b)(1) and (b)(2) of this section, if the IPQ is subject to an exemption pursuant to § 680.4(p).

\* \* \* \* \*

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