

Dated: August 27, 2015.

**Andrew M. Slavitt,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Dated: October 9, 2015.

**Sylvia Burwell,**

*Secretary, Department of Health and Human Services.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 680

[Docket No. 150313268-5268-01]

RIN 0648-BE98

#### 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:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule to implement Amendment 44 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) and a regulatory amendment that would modify regulations governing the Crab Rationalization (CR) Program. The proposed rule would modify regulations to reflect that a Right of First Refusal (ROFR) may continue with the current ROFR holder or a new ROFR holder when processor quota share (PQS) is transferred and would require PQS holders to make specific certifications regarding ROFR contracts when annually applying for individual processor quota (IPQ) and when transferring PQS that are subject to a ROFR. In addition, this proposed rule would amend CR Program regulations to separate the annual individual fishing quota (IFQ)/IPQ application into two separate applications, and would require that crab harvesting cooperatives list the name of each member of the cooperative in its application for IFQ rather than provide NMFS with copies of each member's IFQ application. These actions are necessary to improve available information concerning transfer and use of PQS and IPQ subject to a ROFR, thereby enhancing the ability of eligible crab communities to retain their historical processing interests in

the Bering Sea and Aleutian Islands (BSAI) crab fisheries, and to improve the administration of the CR Program. These actions are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Submit comments on or before November 23, 2015.

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2013-0057, by any one of the following methods.

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0057](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0057), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

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 at the above address; emailed to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or faxed to 202-395-7285.

Electronic copies of Amendment 44 to the FMP, the Regulatory Impact Review (RIR), the 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 (EIS), RIR, and Social Impact Assessment prepared for the CR Program are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rachel Baker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR part 680.

NMFS published the final rule to implement the Crab Rationalization (CR) Program on March 2, 2005 (70 FR 10174). Fishing under the CR Program started with the 2005/2006 crab fishing year.

The Council submitted Amendment 44 for review by the Secretary of Commerce. A notice of availability of Amendment 44 was published in the **Federal Register** on October 9, 2015 (80 FR 61150), with comments invited through December 8, 2015. All relevant written comments received by that time, whether specifically directed to Amendment 44, or to the proposed rule, will be considered in the approval/disapproval decision on Amendment 44.

The CR Program is a catch share program for nine BSAI crab fisheries that allocates those resources among harvesters, processors, and coastal communities. Under the CR Program, NMFS issued quota share (QS) to eligible harvesters based on their historical participation during a set of qualifying years in one or more of the nine CR Program fisheries. QS is an exclusive, revocable privilege allowing the holder to harvest a specific percentage of the annual total allowable catch (TAC) in a CR Program fishery.

A QS holder's annual allocation, called individual fishing quota (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.

NMFS issued processor quota share (PQS) to qualified individuals and entities based on processing activities in CR Program fisheries during a period of qualifying years. PQS is an exclusive, revocable privilege to receive deliveries of a fixed percentage of the annual TAC from a CR Program fishery. A PQS holder's annual allocation is known as individual processing quota (IPQ). NMFS issues IPQ at a one-to-one correlation with the amount of Class A

IFQ issued for each CR Program fishery. Class A IFQ must be delivered to a processor holding a matching amount of IPQ; Class C IFQ and Class B IFQ may be delivered to any registered crab receiver.

### Right of First Refusal

The CR Program includes several provisions intended to protect specific communities that had historically been active in the processing of king and Tanner crab from adverse impacts that could result from the CR Program. The CR Program established eligibility criteria and regulations at 50 CFR 680.2 identified the nine communities that satisfy the eligibility criteria: Adak, Akutan, Dutch Harbor, Kodiak, King Cove, False Pass, St. George, St. Paul, and Port Moller. These communities are referred to as “eligible crab communities” for purposes of the CR Program’s community protection measures. Additional detail on the rationale and criteria used to establish the eligible crab communities can be found in the final rule implementing the CR Program (March 2, 2005, 70 FR 10174). Additional information on the eligible crab communities is provided in Section 3.1.4 of the RIR/IRFA prepared for this action.

With the exception of Adak, the CR Program provides eligible crab communities, or ECCs, with a right of first refusal (ROFR) on certain PQS and IPQ transfers. A ROFR provides an eligible crab community with the right to intervene in the sale (*i.e.*, transfer) of PQS, IPQ, and “other goods” (*i.e.*, assets) associated with that community under specific conditions. The regulations at § 680.41(l) require an eligible crab community to identify an entity to represent it for purposes of ROFR. The eight eligible crab communities that have a ROFR, and their representative entities are listed in Table 9 of the RIR/IRFA. The eligible crab community of Adak is not provided a ROFR for PQS or IPQ associated with that community because the CR Program incorporates other provisions to protect Adak. These provisions are described in the final rule implementing the CR Program (March 2, 2005, 70 FR 10174).

Of the eight eligible crab communities, four are community development quota (CDQ) communities, and four are non-CDQ communities. In the case of eligible crab communities that are also CDQ communities, the local CDQ group is the entity that can exercise the ROFR on behalf of the community (see § 680.41(l)(2)(i)). For the other four non-CDQ eligible crab communities, regulations authorize the governing bodies of these eligible crab

communities to identify the entity that can exercise the ROFR on behalf of the community (see § 680.41(l)(2)(ii)).

PQS and IPQ from the Bristol Bay red king crab, Bering Sea snow crab, Eastern Aleutian Islands golden king crab, St. Matthew Island blue king crab, and Pribilof red and blue king crab fisheries are subject to a ROFR. Section 3.1.3 of the RIR/IRFA describes the specific amounts of PQS and IPQ that were, and are, subject to ROFR.

Under the ROFR, an eligible crab community entity is provided an opportunity to meet the same terms and conditions being offered to a proposed buyer of a proposed sale of PQS or IPQ. If an eligible crab community entity can meet the terms and conditions of a proposed sale, then the eligible crab community entity receives by transfer the PQS, IPQ, and any other goods instead of the proposed buyer. For a more detailed summary of ROFR, see section 3.1.3 of the RIR/IRFA.

The CR Program included a ROFR to provide eligible crab communities an opportunity to retain crab PQS, IPQ, and other goods before they are transferred to another buyer who could then choose to use that PQS, IPQ, and other goods outside of the community. Such a transfer could adversely affect the economic stability of the community. The ROFR is intended to strike a balance between the interest of communities historically reliant on crab processing to retain that processing capacity within their communities, and the interest of PQS or IPQ holders to be able to engage in open market transfers of PQS, IPQ, and other goods.

### ROFR Contract Terms

The ROFR is administered under the CR Program through contractual arrangements between eligible crab community entities and PQS/IPQ holders. Persons who hold PQS/IPQ that is subject to a ROFR must enter into a contract with the eligible crab community entity eligible to exercise a ROFR for those PQS/IPQ shares. The terms required in a ROFR contract between an eligible crab community entity and PQS/IPQ holder were established with implementation of the CR Program and are set forth in Chapter 11 of the FMP. ROFR applies to any proposed sale of PQS, and sales of IPQ, if more than 20 percent of the PQS holders’ community based IPQ in the fishery were processed outside of the community by another company (intra-company transfers within a region are excluded) in three of the preceding five years. Intra-company transfers within a region and transfers of PQS for continued use in the community are

exempt from (*i.e.*, do not trigger) the ROFR. The ROFR contract terms require that in order to complete a transfer under a ROFR, an eligible crab community entity must meet “the same terms and conditions of the underlying [proposed sale] agreement and will include all processing shares and other goods included in that agreement.”

The ROFR contract terms also state that all terms of any ROFR and contract entered into related to ROFR will be enforced through civil law. Additional details on the rationale for the civil enforcement of the terms in a ROFR contract are provided in the EIS, RIR, and Social Impact Assessment prepared for the CR Program, and the final rule implementing the CR Program (March 2, 2005, 70 FR 10174).

An eligible crab community entity must meet two important requirements to complete a ROFR and receive PQS, IPQ, or other goods associated with a proposed sale. The eligible crab community entity must: (1) Exercise its ROFR, that is, provide a clear commitment to complete a purchase agreement within a specific time frame; and (2) perform under the ROFR, that is, meet all of the terms and conditions of the underlying agreement for the proposed sale within a specific time frame.

To exercise the ROFR, an eligible crab community entity must provide the seller of PQS or IPQ subject to a ROFR with notice of its intent to exercise the ROFR and earnest money in the amount of 10 percent of the contract amount or \$500,000, whichever is less, within 60 days of notice of a sale and receipt of the contract defining the sale’s terms. To perform the ROFR, the eligible crab community entity must meet the terms and conditions of the proposed sale (*i.e.*, complete the sale) within 120 days, or within the time specified in the proposed sales contract, whichever is longer. If an eligible crab community entity does not exercise its ROFR, or it cannot perform under the ROFR contract, then the open market sale may proceed.

### Revising ROFR Contract Terms

The CR Program, including the ROFR contract terms, was implemented under authority provided at section 313(j)(1) of the Magnuson-Stevens Act. Section 313(j)(3) states that after initial implementation of the CR Program, the Council may submit and the Secretary may implement changes to conservation and management measures for crab fisheries of the Bering Sea and Aleutian Islands to achieve on a continuing basis the purposes identified by the Council. This provision allows the Council to

recommend, and NMFS to adopt, revisions to the required terms of a ROFR contract. Proposed Amendment 44 to the FMP would modify several of the existing ROFR contract terms and add two additional contract terms. For reasons provided in the notice of availability for Amendment 44 (80 FR 61150, October 9, 2015) and this proposed rule, the Council and NMFS have determined that the modifications to the ROFR contract terms and regulations governing ROFR that would be made by proposed Amendment 44 and this proposed rule improve the achievement of the purposes of ROFR that were identified by the Council when it adopted the CR Program.

As noted earlier, the terms in a ROFR contract are enforced through civil contract law rather than through regulations implemented by NMFS. Amendment 44 to the FMP and this proposed rule would not change the civil enforcement of the terms in a ROFR contract. The proposed rule would revise regulations to implement Amendment 44 and to amend the CR Program. Regulations implemented by NMFS are enforced by NMFS. Therefore, the regulatory changes in this proposed rule (*i.e.*, measures that are more than solely amendments to the FMP modifying the terms in a ROFR contract) would be subject to enforcement by NMFS.

#### Need for Action

In developing the CR Program, the Council and NMFS recognized the unique historical relationship between eligible crab communities and processors associated with those communities, and established ROFR provisions to provide opportunities for eligible crab communities to be notified and intervene in sales of crab processing assets important to those communities. However, with experience gained from implementation, the Council has determined that some of the ROFR contract terms and the lack of regulatory requirements to ensure adequate notification and tracking of PQS and IPQ transfers are limiting the effectiveness of the ROFR provisions.

Stakeholders, including representatives from the eight eligible crab community entities that can exercise a ROFR, noted several concerns with ROFR contract terms that could hinder an eligible crab community entity from effectively exercising and performing under a ROFR. Eligible crab community entities also supported additional regulatory provisions to ensure proper notification of proposed sales. Holders of PQS/IPQ subject to a ROFR concurred that several changes to

the ROFR contract terms and notification requirements could improve the ability of eligible crab community entities to exercise and perform under a ROFR without unduly limiting open market transfers of PQS, IPQ, and other goods. The Council reviewed and analyzed these concerns in a series of documents that have been consolidated under the RIR/IRFA prepared for Amendment 44 and this proposed rule (see **ADDRESSES**). The Council recommended the provisions comprising Amendment 44 and this proposed rule at its February 2013 and its October 2014 meetings.

Proposed Amendment 44 and this proposed rule are intended to address four categories of concern that stakeholders have for the existing ROFR contract terms and regulations implementing ROFR. These are: (1) Inadequate time for an eligible crab community entity to exercise and perform under a ROFR; (2) ROFR contract terms that allow a ROFR to lapse; (3) ROFR contract terms that do not allow an eligible crab community entity and a PQS/IPQ holder to mutually agree to the specific assets subject to a ROFR and to exclude "other goods" if desired; and (4) the lack of verification that proper notification and reporting of proposed sales between PQS/IPQ holders and eligible crab community entities has occurred.

#### Summary of Proposed Amendment 44

The specific provisions of proposed Amendment 44 are described in detail in the Notice of Availability published by NMFS on October 9, 2015 (80 FR 61150). The following briefly summarizes the provisions of proposed Amendment 44.

If approved by NMFS, Amendment 44 would modify the ROFR contract term specifying the amount of time to exercise and perform under a ROFR. Amendment 44 would increase the time allowed for an eligible crab community entity to exercise a ROFR from 60 days to 90 days from receipt of the sales contract. This modification would also increase the time allowed for an eligible crab community entity to perform under the ROFR from 120 days to 150 days. The time period to exercise and the time period to perform under a ROFR begin on the date of receipt of the sales contract by the eligible crab community entity and run concurrently. The extension of both time periods is intended to help accommodate eligible crab community entities when deciding whether to exercise their ROFR, but also continue to recognize that time may be of the essence for a PQS holder or buyer under a contract.

Amendment 44 would remove the ROFR contract term that allows a ROFR to lapse if the IPQ derived from the PQS subject to ROFR was processed outside the community of origin for a period of three consecutive years. This amendment would allow a ROFR to remain in effect for PQS subject to a ROFR regardless of the location in which the IPQ associated with that PQS was processed. However, if approved, Amendment 44 would not reinstate a ROFR that lapsed prior to implementation of Amendment 44. The Council determined, and NMFS agrees, that this amendment would strengthen the connection between PQS and the community from which it originated, by maintaining the right regardless of whether the yielded IPQ is used outside the community for extended periods. By maintaining the right despite use of IPQ outside of the community, the eligible crab community entity and the community of origin that it represents would maintain an interest in the PQS into the future.

Amendment 44 also would remove the ROFR contract term stating that a ROFR will lapse if an eligible crab community entity fails to exercise its ROFR after it is triggered by a transfer of PQS and replace it with a ROFR contract term that would require the recipient of a PQS transfer to enter into a new ROFR contract with an eligible crab community entity of its choosing in the designated region of the PQS. This amendment would ensure that eligible crab community entities within the designated region of the PQS retain a ROFR on that PQS even if the original eligible crab community entity chooses not to exercise a ROFR.

ROFR contract terms currently require that the ROFR apply to all terms and conditions of the underlying sale agreement, including all processing shares and other goods included in the agreement. Amendment 44 would revise this ROFR contract term to specify that, "Any right of first refusal must be on the same terms and conditions of the underlying agreement and will include all processing shares and other goods included in this agreement, or to any subset of those assets, as otherwise agreed to by the PQS holder and the community entity." The proposed addition of the last clause in this ROFR contract term would allow a PQS holder and an eligible crab community entity to negotiate what assets may be subject to a ROFR. This would provide PQS holders and eligible crab community entities with more flexibility compared to the status quo. For example, it would allow an eligible crab community entity to reach an agreement with the PQS

holder that the ROFR would only apply to the PQS, and not to any other goods associated with a proposed sale.

Amendment 44 also would establish two new ROFR contract terms. First, Amendment 44 would add a ROFR contract term that requires a PQS holder to notify the eligible crab community entity of any proposed transfer of IPQ or PQS subject to ROFR, regardless of whether the PQS holder believes the proposed transfer triggers the right. Second, Amendment 44 would add a ROFR contract term that requires a PQS holder to annually notify the eligible crab community entity of the location at which IPQ derived from PQS subject to a ROFR was processed and whether that IPQ was processed by the PQS holder. Both of these proposed notifications would provide the eligible crab community entities with more information on what is occurring with the PQS for which they hold a ROFR.

If Amendment 44 is approved, all ROFR contracts would be required to contain the newly revised ROFR contract terms. Because Amendment 44 would modify the terms required to be included in a ROFR contract, a PQS/IPQ holder and an eligible crab community entity would need to establish a new or revised ROFR contract to contain all of these terms.

### The Proposed Rule

This proposed rule contains three actions. The first action would implement those aspects of Amendment 44 that require implementing regulations. The second action would implement the regulatory amendment adopted by the Council. The third action would implement minor administrative changes to the CR Program regulations to improve the application and reporting practices for participants in the CR Program. The following paragraphs provide additional detail on these proposed actions.

#### *Action 1: Regulatory Revisions Needed To Implement Amendment 44*

Most of the provisions of Amendment 44 only modify the ROFR contract terms contained in the FMP and do not require adjustments or additions to regulations implementing ROFR at 50 CFR part 680. However, one provision of proposed Amendment 44 requires modification to regulations at § 680.41(i)(8) governing transfers of PQS subject to ROFR.

As explained above, a ROFR would no longer lapse if an eligible crab community entity fails to exercise its ROFR after the ROFR is triggered by a transfer of PQS under proposed Amendment 44. Instead, proposed

Amendment 44 would require the recipient of a PQS transfer, or buyer, to enter into a new ROFR contract with an eligible crab community entity of its choosing in the designated region of the PQS. The buyer could enter into a new ROFR contract with the eligible crab community entity that held the ROFR with the seller, or the buyer could enter into a new ROFR contract with an eligible crab community entity that represents an eligible crab community within the region for which the PQS is designated. This provision of Amendment 44 would ensure that one eligible crab community entity within the designated region of the PQS retains a ROFR on that PQS even if the original eligible crab community entity does not exercise its ROFR. This provision is intended to strengthen the ROFR program by maintaining a link between PQS and eligible crab communities in perpetuity. In addition, the proposed provision may provide the original eligible crab community entity that is not able to exercise a ROFR with another opportunity to use ROFR at some point in the future, should it be triggered again through a proposed sale of the PQS.

Because the buyer's choice of an eligible crab community entity would occur at the time of transfer of the PQS, regulations at § 680.41(i)(8) governing transfer of PQS would need to be modified to require the seller to certify that the eligible crab community entity did not exercise its ROFR within the time provided and to require the buyer to certify that the buyer has entered into a ROFR contract with an eligible crab community entity in the designated region of the PQS. These proposed changes to § 680.41(i)(8) would not alter the current requirement that NMFS wait 10 days before approving a transfer of PQS subject to ROFR when such transfer triggers the ROFR.

#### *Action 2: Regulatory Revisions Needed To Implement the Regulatory Amendment*

At the time it took action on Amendment 44, the Council also recommended that holders of PQS/IPQ subject to ROFR provide NMFS with specific certifications regarding notice to ROFR holders and the existence of ROFR contracts when submitting an application to transfer PQS or when annually applying for IPQ. The Council's recommendations for certifications to NMFS do not require modifications to the FMP but require modifications to the regulations implementing ROFR in 50 CFR part 680.

First, this proposed rule would modify regulations at § 680.4(f)(2) to

require an applicant, as part of the Application for Annual Crab IPQ Permit, to certify to NMFS that a ROFR contract that includes the required ROFR contract terms specified in Chapter 11 of the FMP exists between the applicant and the eligible crab community entity that holds the ROFR for that PQS/IPQ. If Amendment 44 is approved, all ROFR contracts would be required to contain the newly revised ROFR contract terms. Because Amendment 44 would modify the terms required to be included in a ROFR contract, a PQS/IPQ holder and an eligible crab community entity would need to establish a new or revised ROFR contract to contain all of these terms and the PQS/IPQ holder would need to certify annually that a ROFR contract was in place. By including this certification as part of the annual application for IPQ, NMFS realizes that if an applicant for IPQ is unable to establish a revised ROFR contract with an eligible crab community entity and provide that confirmation to NMFS in the annual application for crab IPQ permit prior to the date that application is due, then NMFS would consider the application to be incomplete. In that case, NMFS would withhold issuance of IPQ until this requirement is met.

Second, this proposed rule would modify regulations at § 680.41(i)(8) and (9) to require specific certifications by the seller or the buyer when transferring PQS subject to ROFR. If a transfer of PQS triggers a ROFR, regulations at § 680.41(i)(8) would require the seller to certify, as part of the application to transfer PQS, that the PQS holder notified the eligible crab community entity holding the ROFR for that PQS of the proposed transfer at least 90 days prior to the date of the transfer application, and that the eligible crab community entity did not exercise its ROFR during that period. If a transfer of PQS does not trigger a ROFR, regulations at § 680.41(i)(9) would be modified to require the buyer and the eligible crab community entity to certify, as part of the application to transfer PQS, either that the eligible crab community entity wishes to permanently waive ROFR for the PQS or that the buyer and the eligible crab community entity completed a ROFR contract that includes the ROFR contract terms specified in Chapter 11 of the FMP. NMFS would not complete a transfer of PQS until these requirements are met.

The Council determined and NMFS agrees that these additional notice requirements would directly address the concerns of eligible crab community entities and PQS/IPQ holders that there

may not be adequate information sharing between the parties subject to a ROFR contract. These notices would ensure that all parties have accurate and up-to-date information concerning the use of PQS and IPQ, as well as any sales of PQS. For additional detail on these proposed notice requirements, see section 3.2.5 of the RIR/IRFA.

#### *Action 3: Administrative Changes*

NMFS proposes two minor administrative changes to CR Program regulations. First, NMFS proposes revising regulations at § 680.4(d) to separate the current combined application for IFQ/IPQ into two separate applications, an application for IFQ and an application for IPQ. This proposed revision is intended to reduce confusion among applicants who sometimes misunderstand the requirements for the combined IFQ/IPQ application and would improve the ability of applicants to correctly provide the necessary information. This revision would allow applicants for IFQ to use an application form specific to IFQ, and applicants for IPQ to use an application form specific to IPQ. Except for the proposed modification to the annual IPQ application described above in the “Action 2: Regulatory Revisions Needed To Implement the Regulatory Amendment” section, the proposed changes would not modify the specific information currently required of IFQ or IPQ applicants, but would change the application form required to be submitted and the format of the application form.

Second, NMFS proposes revisions to reporting requirements for crab harvesting cooperatives at § 680.21(b)(1). Currently, regulations at § 680.4(f) require each member of a crab harvesting cooperative to submit to NMFS an Application for Annual Crab IFQ Permit, and regulations at § 680.21(b) require a crab harvesting cooperative to submit to NMFS a copy of each member’s Application for Annual Crab IFQ Permit along with the cooperative’s Application for Annual Crab Harvesting Cooperative IFQ Permit. NMFS has determined that while the identification of cooperative members is critical to the cooperative application process, NMFS can obtain this information through less burdensome means. Therefore, NMFS proposes revising the regulations at § 680.21(b)(1) so that a crab harvesting cooperative would be responsible only for submitting a list of the names of each cooperative member with the cooperative’s annual IFQ application. Under the proposed rule, crab harvesting cooperatives would no longer

be required to submit copies of each member’s annual IFQ application. NMFS notes that the proposed rule does not modify the requirements at § 680.4(f) and each cooperative member would continue to be responsible for submitting to NMFS a complete annual IFQ permit application by the deadline of June 15. This proposed change would provide NMFS with necessary information while reducing duplicative reporting requirements for crab harvesting cooperatives.

#### **Classification**

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

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

#### *Initial Regulatory Flexibility Analysis (IRFA)*

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. Copies of the RIR/IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**).

The IRFA for this proposed action describes the action, why this action is being proposed, the objectives and legal basis for the proposed rule, the type and number of small entities to which the proposed rule would apply, and the projected reporting, recordkeeping, and other compliance requirements of the proposed rule. It also identifies any overlapping, duplicative, or conflicting Federal rules and describes any significant alternatives to the proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize any significant adverse economic impact of the proposed rule on small entities. The description of the proposed action, its purpose, and its legal basis are described in the preamble and are not repeated here. The IRFA prepared for this proposed rule incorporates by reference an extensive RIR/FRFA prepared for Amendments 18 and 19 to the FMP that detail the impacts of the CR Program on small entities.

The proposed rule includes three separate actions. Action 1 includes regulatory revisions to implement

Amendment 44. The proposed revisions would require the buyer of PQS to certify to NMFS that the buyer has entered into a ROFR contract with an eligible crab community entity in the designated region of the PQS.

Action 2 would require PQS holders to provide two notifications to NMFS regarding the status of their ROFR. The first certification would require PQS holders applying to receive IPQ to attest that a ROFR contract that includes the required ROFR contract terms exists between the applicant and the eligible crab community entity that holds the ROFR for that PQS/IPQ. The second certification would require the seller of PQS to certify to NMFS that the seller provided the eligible crab community entity with notice of the proposed sale at least 90 days prior to the date of the transfer application and that the entity did not exercise ROFR during that time period. These notifications would be incorporated into the Application for Annual Crab IPQ and the Application for Transfer of Crab QS or PQS, respectively.

The small entities that would be directly regulated by Action 1 and Action 2 are persons that hold PQS or IPQ under the CR Program. Currently, 21 entities hold PQS or IPQ subject (now or previously) to ROFR. Estimates of the number of large entities were made, based on available records of revenue, employment information, and known affiliations among these entities. Of these 21 entities, 10 are estimated to be large entities and 11 are deemed to be small entities. It is possible that additional entities could be directly regulated under the proposed rule if an entity that does not already hold PQS receives PQS by transfer. The new PQS holder would be directly regulated because the entity would be required to certify to NMFS that they have entered into a ROFR contract. It is not possible to estimate whether these new PQS holders would be small entities for purposes of this proposed rule.

Action 3 would make minor administrative changes to clarify permit application procedures for IFQ holders and IPQ holders, and reduce reporting requirements for crab cooperatives that are directly regulated under the CR Program. Currently, there are 10 crab harvesting cooperative entities. Based on available records of revenue, and known affiliations among these entities, 4 of the entities are estimated to be large entities and 6 are deemed to be small entities. Because these changes would reduce the reporting burden for all crab harvesting cooperatives, Action 3 would not have an adverse impact on directly regulated small entities.

The certifications in the proposed rule are straightforward, simple and are provided annually or at the time of a transfer of shares as part of applications. While the new notification requirements would add administrative reporting requirements for 11 PQS/IPQ holders that are small entities, the Council determined that the administrative burden associated with the notification requirements would be minimal and would not negatively impact these entities.

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

NMFS has not identified any duplication, overlap, or conflict between this proposed action and existing Federal rules.

#### *Recordkeeping and Reporting Requirements*

The recordkeeping and reporting requirements would be increased slightly under this proposed rule. This proposed rule would include new reporting requirements for PQS/IPQ holders. The PQS/IPQ holders would be required to certify to NMFS that a current ROFR contract is in place when applying for IPQ and notify NMFS of the status of the ROFR when transferring PQS or IPQ. These additional reporting requirements would be relatively straightforward and simple, and NMFS proposes including these certifications requirements into the Application for Annual Crab IPQ and the Application for Transfer of Crab PQS that are already required for directly regulated entities to receive IPQ or to transfer PQS or IPQ. Therefore, the additional recordkeeping and reporting requirements associated with the proposed rule would be minimal.

#### *Collection-of-Information Requirements*

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval under OMB Control Number 0648-0514. Public reporting burden is estimated to average per response: 1.5 hours for the Annual Application for Crab IFQ Permit; 1.5 hours for the Annual Application for Crab IPQ Permit; 1 hour for the Application for an Annual Crab Harvesting Cooperative IFQ permit; and 2 hours for Application to Transfer Crab QS or PQS. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data

needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden statement; ways to enhance quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information, 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 penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number.

#### **List of Subjects in 50 CFR Part 680**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 15, 2015.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, 50 CFR part 680 is proposed to be 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 § 680.4,

■ a. Revise paragraphs (d)(3), (e)(1),

(e)(3), (f) heading, and (f)(2)(ii);

■ b. Redesignate paragraphs (f)(2)(iv) and (f)(2)(v) as (f)(2)(v) and (f)(2)(vi), respectively;

■ c. Add paragraph (f)(2)(iv);

The revisions and additions to read as follows:

#### **§ 680.4 Permits.**

\* \* \* \* \*

(d) \* \* \*

(3) On an annual basis, the Regional Administrator will issue a crab IFQ permit to a person who submits a complete Application for Annual Crab Individual Fishing Quota (IFQ) Permit,

described at paragraph (f) of this section, that is subsequently approved by the Regional Administrator.

\* \* \* \* \*

(e) \* \* \*

(1) A crab IPQ permit authorizes the person identified on the permit to receive/process the IPQ crab identified on the permit during the crab fishing year for which the permit is issued, subject to conditions of the permit. A crab IPQ permit is valid under the following circumstances:

\* \* \* \* \*

(3) On an annual basis, the Regional Administrator will issue a crab IPQ permit to a person who submits a complete Application for Annual Crab Individual Processing Quota (IPQ) Permit, described at paragraph (f) of this section, that is subsequently approved by the Regional Administrator.

\* \* \* \* \*

(f) *Contents of annual applications for crab IFQ and IPQ permits.*

\* \* \* \* \*

(2) \* \* \*

(ii) *Crab IFQ or IPQ permit identification.* Indicate the type of crab IFQ or IPQ permit for which applicant is applying by QS fishery(ies) and indicate (YES or NO) whether applicant has joined a crab harvesting cooperative. If YES, enter the name of the crab harvesting cooperative(s) the applicant has joined for each crab fishery.

\* \* \* \* \*

(iv) *Certification of ROFR contract for crab IPQ permit.* Indicate (YES or NO) whether any of the IPQ for which the applicant is applying to receive is subject to right of first refusal (ROFR). If YES certify (YES or NO) whether there is a ROFR contract currently in place between the applicant and the ECC entity holding the ROFR for the IPQ that includes the required ROFR contract terms specified in Chapter 11 section 3.4.4.1.2 of the Fishery Management Plan for Bering Sea/ Aleutian Islands King and Tanner Crabs.

\* \* \* \* \*

■ 3. In § 680.21, revise paragraph (b)(1) to read as follows:

#### **§ 680.21 Crab harvesting cooperatives.**

\* \* \* \* \*

(b) \* \* \*

(1) *June 15 application deadline.* A completed Application for Annual Crab Harvesting Cooperative Individual Fishing Quota (IFQ) Permit listing the name of each member of the crab harvesting cooperative must be submitted annually by each crab harvesting cooperative and received by NMFS no later than June 15 (or postmarked by this date, if sent via U.S.

mail or a commercial carrier) for the upcoming crab fishing year for which the crab harvesting cooperative is applying to receive IFQ. If a complete application is not received by NMFS by this date, or postmarked by this date, the crab harvesting cooperative will not receive IFQ for the upcoming crab fishing year. In the event that NMFS has not received a complete and timely application by June 15, NMFS will presume that the application was timely filed if the applicant can provide NMFS with proof of timely filing. Each crab harvesting cooperative member is responsible for submitting a completed Application for Annual Crab Individual Fishing Quota Permit to NMFS by June 15 pursuant to § 680.4.

\* \* \* \* \*

■ 4. In § 680.41, revise paragraphs (i)(8) and (9) to read as follows:

**§ 680.41 Transfers of QS, PQS, IFQ or IPQ.**

\* \* \* \* \*

(i) \* \* \*

(8) In the case of an application for transfer of PQS or IPQ for use outside an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (l) of this section:

(i) The Regional Administrator will not act upon the application for a period of 10 days. At the end of that time period, the application will be approved pending meeting the criteria set forth in paragraph (i) of this section.

(ii) The person applying to transfer PQS subject to ROFR must include an affidavit certifying that the ECC entity was provided with notice of the proposed transfer at least 90 days prior to the date of the transfer application and that the ECC entity did not exercise its ROFR during that period.

(iii) The person applying to receive the PQS must include an affidavit certifying that a ROFR contract that includes the ROFR contract terms specified in Chapter 11 section 3.4.4.1.2 of the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs has been completed with

an ECC entity eligible to hold a ROFR under paragraph (l) of this section and that represents an EEC within the region for which the PQS is designated.

(9) In the case of an application for transfer of PQS for use within an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (l) of this section, the Regional Administrator will not approve the application unless the proposed recipient of the PQS and the ECC entity provide an affidavit to the Regional Administrator certifying that either the ECC wishes to permanently waive ROFR for the PQS or that a ROFR contract that includes the ROFR contract terms specified in Chapter 11 section 3.4.4.1.2 of the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs has been completed by the proposed recipient of the PQS and the ECC entity.

\* \* \* \* \*

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