

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

[Docket No. 150313268–6008–02]

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:** Final rule.

**SUMMARY:** NMFS issues this final 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 modifies regulations governing the Crab Rationalization (CR) Program. This rule revises 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 to 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 final rule revises the CR Program regulations to separate the annual individual fishing quota (IFQ)/IPQ application into two separate applications and to require that each crab harvesting cooperative lists 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. This final rule is 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. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Effective February 12, 2016.

**ADDRESSES:** 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>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, 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 by fax to 202–395–5806.

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

**SUPPLEMENTARY INFORMATION:** This final rule implements Amendment 44 to the FMP and regulatory amendments to the CR Program. NMFS published a notice of availability (NOA) for Amendment 44 on October 9, 2015 (80 FR 61150). The comment period on the NOA for Amendment 44 ended on December 8, 2015. The Secretary approved Amendment 44 on January 4, 2016, after accounting for information from the public, and determining that Amendment 44 is consistent with the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law. NMFS published a proposed rule to implement Amendment 44 and the regulatory amendments on October 22, 2015 (80 FR 63950). The comment period on the proposed rule ended on November 23, 2015. NMFS received no comments on proposed Amendment 44 or the proposed rule.

**Background***CR Program*

Below is a brief description of the CR Program and the elements of the CR Program that apply to Amendment 44 and this final rule. Section 3.1 of the RIR/IRFA (see **ADDRESSES**) and the preamble of the proposed rule (80 FR 63950; October 22, 2015) provide a more detailed description of the CR Program and this action.

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. Quota share 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 nine 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. These communities are referred to as “eligible crab communities” for purposes of the CR Program's community protection measures.

With the exception of one eligible crab community (Adak, Alaska) the CR Program provides the other eight eligible crab communities, or ECCs, with a ROFR on certain PQS and IPQ transfers. A ROFR provides an ECC 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 ECC to identify an entity to represent it for purposes of ROFR. These provisions are described in the final rule implementing the CR Program (March 2, 2005, 70 FR 10174). Section 3.1.3 of the RIR/IRFA describes the specific amounts of PQS that were, and are, subject to ROFR.

Under the ROFR, an ECC 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 ECC entity can meet the terms and conditions of a proposed sale, then the ECC entity receives by transfer the PQS, IPQ, and any other goods instead of the proposed buyer.

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. Section 3.1.3 of the RIR/IRFA provides a more detailed summary of the ROFR.

#### *ROFR Contract Terms*

The ROFR is administered under the CR Program through contractual arrangements between ECC entities and PQS/IPQ holders. Persons who hold PQS/IPQ that are subject to a ROFR must enter into a contract with the ECC entity eligible to exercise a ROFR for those PQS/IPQ shares. The terms required in a ROFR contract between an ECC entity and a PQS/IPQ holder were established with implementation of the CR Program and are set forth in the FMP. ROFR applies to any proposed sale of PQS and any sale of IPQ if more than 20 percent of the PQS holders' community based IPQ in the fishery was 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 ECC 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 (see **ADDRESSES**), and the final rule implementing the CR Program (March 2, 2005, 70 FR 10174).

An ECC entity must meet two important requirements to complete a ROFR and receive PQS, IPQ, or other goods associated with a proposed sale. The ECC entity must do the following: (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 ECC 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 ECC entity must meet the terms and conditions of the proposed sale (*i.e.*, complete the sale) within 120 days from receipt of the sales contract, or within the time specified in the proposed sales contract, whichever is longer. If an ECC entity does not exercise its ROFR, or it cannot perform under the ROFR contract, then the open market sale may proceed.

#### **Summary of Amendment 44**

Amendment 44 to the FMP revises several of the existing ROFR contract terms and adds two additional contract terms. These ROFR contract terms are described in detail in the NOA for Amendment 44 (80 FR 61150; October 9, 2015). 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 final rule do not change the civil enforcement of the terms in a ROFR contract. This final rule only revises regulations to implement Amendment 44 and to amend the CR Program. Therefore, the regulations implemented by this final rule are subject to enforcement by NMFS.

The following briefly summarizes the provisions of Amendment 44 that do not require implementing regulations. Amendment 44 increases the time allowed for an ECC entity to exercise a ROFR from 60 days to 90 days from receipt of the sales contract. This modification also increases the time allowed for an ECC 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 ECC entity and run concurrently.

Amendment 44 removes 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. Under this amendment, a ROFR remains in effect for PQS subject to a ROFR regardless of the location in which the IPQ associated with that PQS was processed.

Amendment 44 does not reinstate a ROFR that lapsed prior to the date that Amendment 44 was approved, January 4, 2016.

Amendment 44 removes the ROFR contract term stating that a ROFR will lapse if an ECC entity fails to exercise its ROFR after it is triggered by a transfer of PQS and replaces it with a ROFR contract term that requires the recipient of a PQS transfer to enter into a new ROFR contract with an ECC entity of its choosing in the designated region of the PQS.

Prior to Amendment 44, ROFR contract terms required 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 revised this ROFR contract term to specify that, "Any ROFR contract must be on the same terms and conditions of the underlying agreement and will include all processing shares and other goods included in that agreement, or to any subset of those assets, as otherwise agreed to by the PQS holder and the community entity."

Amendment 44 establishes two new ROFR contract terms. First, Amendment 44 adds a ROFR contract term that requires a PQS holder to notify the ECC 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 adds a ROFR contract term that requires a PQS holder to annually notify the ECC 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.

With the approval of Amendment 44, all ROFR contracts must contain the newly revised ROFR contract terms. PQS/IPQ holders and ECC entities must establish a new or revised ROFR contract to contain all of these terms.

#### **The Final Rule**

This final rule contains three actions. The first action implements those aspects of Amendment 44 that require implementing regulations. The second action implements the regulatory amendment adopted by the Council. The third action implements minor administrative changes to the CR Program regulations to improve the application and reporting practices for participants in the CR Program. The following paragraphs briefly described these actions. Additional detail is provided in the preamble to the proposed rule (80 FR 63950; October 22, 2015) and is not repeated here.

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

This final rule modifies regulations governing transfers of PQS subject to ROFR. This final rule modifies regulations at § 680.41(i)(8) to require the seller of PQS to certify that the ECC entity did not exercise its ROFR within the time provided and to require the buyer of PQS to certify that the buyer has entered into a ROFR contract with an ECC entity in the designated region of the PQS. These changes to § 680.41(i)(8) do 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*

This final rule modifies two regulations to implement the regulatory amendment. First, this final rule modifies regulations at § 680.4(f)(2) to require an applicant for IPQ, 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 the FMP exists between the applicant and the ECC entity that holds the ROFR for that PQS/IPQ. Because Amendment 44 modifies the FMP and the terms required to be included in a ROFR contract, a PQS/IPQ holder and an ECC entity must establish a new or revised ROFR contract to contain all of these terms and the PQS/IPQ holder must certify annually that a ROFR contract is in place. If an applicant for IPQ is unable to establish a revised ROFR contract with an ECC entity and provide that confirmation to NMFS in the Application for Annual Crab IPQ Permit prior to the date that application is due, then NMFS will consider the application to be incomplete. NMFS will withhold issuance of IPQ until this requirement is met.

Second, this final rule modifies 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) require the seller to certify, as part of the application to transfer PQS, that the PQS holder notified the ECC 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 ECC 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) have been modified to

require the buyer and the ECC entity to certify, as part of the application to transfer PQS, either that the ECC entity wishes to permanently waive ROFR for the PQS or that the buyer and the ECC entity completed a ROFR contract that includes the ROFR contract terms specified in the FMP. NMFS will not complete a transfer of PQS until these requirements are met. Section 3.2.5 of the RIR/IRFA provides additional detail on these notice requirements.

*Action 3: Administrative Changes*

This final rule makes two minor administrative changes to CR Program regulations. First, this final rule revises regulations at § 680.4(d) to separate the application for IFQ/IPQ into two separate applications, an application for IFQ and an application for IPQ. This revision allows applicants for IFQ to use an application form specific to IFQ and allows 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 section *Action 2: Regulatory Revisions Needed to Implement the Regulatory Amendment*, this revision does not modify the specific information currently required of IFQ or IPQ applicants.

Second, this final rule revises 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. This final rule revises the regulations at § 680.21(b)(1) so that a crab harvesting cooperative will be responsible only for submitting a list of the names of each cooperative member with the cooperative's annual IFQ application. This final rule does not modify the requirements at § 680.4(f). Therefore, each cooperative member continues to be responsible for submitting to NMFS a complete annual IFQ permit application by the deadline of June 15.

**Comments and Responses**

NMFS received no public comments on proposed Amendment 44 or this proposed rule.

**Changes From the Proposed Rule**

NMFS did not make any changes from the proposed rule.

**Classification**

The Administrator, Alaska Region, determined that Amendment 44 and this final rule are necessary for the conservation and management of the BSAI CR Program fisheries and that they are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

*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 final regulatory flexibility analysis, 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. The preamble to the proposed rule (80 FR 63950; October 22, 2015) and the preamble to this final rule serve as the small entity compliance guide. This rule does not require any additional compliance from small entities that is not described in the preamble to the proposed rule and this final rule. Copies of the proposed rule and this final rule are available from NMFS at the following Web site: <http://alaskafisheries.noaa.gov>.

*Final Regulatory Flexibility Analysis (FRFA)*

Section 604 of the Regulatory Flexibility Act requires an agency to prepare a FRFA after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code. The following paragraphs constitute the FRFA for this action.

Section 604 describes the required contents of a FRFA: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the

proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of 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.

#### *Need for and Objectives of the Rule*

A description of the need for, and objectives of, the rule is contained in the preamble to the proposed rule and this final rule and is not repeated here. This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and the summary of the IRFA in the proposed rule (80 FR 63950; October 22, 2015).

#### *Summary of Significant Issues Raised During Public Comment*

NMFS published a proposed rule to implement Amendment 44 on October 22, 2015 (80 FR 63950). An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. NMFS received no comments on proposed Amendment 44, this proposed rule, the IRFA, or the economic impacts of this action generally. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule.

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

This final rule includes three separate actions described in the section The Final Rule. Action 1 makes regulatory revisions needed to implement Amendment 44; Action 2 makes regulatory revisions needed to implement the regulatory amendment; and Action 3 makes other administrative changes.

The small entities 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 will be directly regulated because the entity will be required to certify to NMFS that it has entered into a ROFR contract. It is not possible to estimate whether these new PQS holders will be small entities for purposes of this proposed rule.

Action 3 makes 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 reduce the reporting burden for all crab harvesting cooperatives, Action 3 will not have an adverse impact on directly regulated small entities.

#### *Recordkeeping, Reporting, and Other Compliance Requirements*

The recordkeeping and reporting requirements increase slightly under this final rule. This final rule includes new reporting requirements for PQS/IPQ holders. The PQS/IPQ holders are 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 are relatively straightforward and simple, and NMFS will include these certification requirements in the Application for Annual Crab IPQ Permit 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. To fulfill the certification requirements when completing the applications, PQS/IPQ holders will have to respond by checking "Yes" or "No" to a maximum of two questions about the status of the ROFR in addition to providing NMFS with the name of the community entity that holds the ROFR. Therefore, the additional recordkeeping and reporting requirements associated with this final rule are minimal.

#### *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 that 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.

The Council and NMFS considered a range of alternatives and options to the preferred alternative that is implemented by this final rule. These alternatives and options are described in Section 2.2 of the RIR/IRFA and are not repeated here. The Council and NMFS did not identify alternatives to the preferred alternative that would minimize the impact on small entities better than the preferred alternative and still meet the objectives for this final rule—to improve available information concerning transfer and use of PQS and IPQ subject to a ROFR and to improve the administration of the CR Program.

The preferred alternative implemented by this final rule makes modifications to existing regulations necessary that are necessary to meet the objectives of this final rule. The preferred alternative is not anticipated to have adverse impacts on small entities. The regulatory modifications made under this final rule are straightforward and simple, and require PQS holders to provide information at the time of application for an annual IPQ permit or application for approval of transfer of PQS. While the new notification requirements add administrative reporting requirements for 11 PQS holders that are small entities, the administrative burden associated with the notification requirements is minimal and does not negatively impact these entities.

The Council and NMFS considered and analyzed additional alternatives that would have required regulatory changes. The Council and NMFS did not select these alternatives because they required specific ROFR contract provisions that could have resulted in adverse economic impacts accruing to directly regulated small entities. One of these alternatives applied the ROFR

only to PQS, or to PQS and specific assets, within an ECC. The Council and NMFS did not select this alternative because it would impose additional costs on directly regulated small entities, would be difficult to administer, and would not provide ECCs and PQS holders with the flexibility to define the assets subject to a ROFR. The Council and NMFS also considered an alternative that would have required a PQS holder to obtain written approval from the ECC entity prior to processing IPQ subject to a ROFR (or formerly subject to a ROFR), at a facility outside the subject community. The Council and NMFS did not select this alternative because it would have imposed additional costs on directly regulated small entities. Section 3.2 of the Analysis provides additional information on these alternatives that were considered but not selected.

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

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under 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. 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 202-395-5806.

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. All currently approved NOAA collections of information may be viewed at [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 7, 2016.

**Samuel D. Rauch III,**

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

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

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

■ 1. The authority citation for 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) introductory text, (e)(3), (f) heading, and (f)(2)(ii);

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

■ c. Add a new paragraph (f)(2)(iv).

The revisions and addition 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 Transfer of QS, PQS, IFQ and 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 ECC 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.

\* \* \* \* \*

[FR Doc. 2016-00387 Filed 1-12-16; 8:45 am]

BILLING CODE 3510-22-P