

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

[Docket No. 151020969–6095–01]

RIN 0648–BF46

**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.

**SUMMARY:** NMFS issues a proposed rule that would modify regulations governing the Crab Rationalization (CR) Program. This proposed rule is comprised of three actions. Under the first action, this proposed rule would modify regulations to create an exemption for participants in the Western Aleutian Islands golden king crab (WAG) fishery from the prohibition against resuming fishing before all CR Program crab have been fully offloaded from a vessel. This action is intended to allow participants in the WAG fishery to offload live crab to remote ports near the fishing grounds to supply live crab markets. Under the second action, this proposed rule would amend CR Program regulations to clarify current document submission requirements for persons applying to receive captain and crew crab quota share, called C shares, by transfer. Under the third action, this proposed rule would amend License Limitation Program (LLP) regulations to remove the requirement for endorsements on crab LLP licenses for specific crab fisheries in the Bering Sea and Aleutian Islands that are no longer managed under the LLP. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, and other applicable laws.

**DATES:** Submit comments on or before March 24, 2016.

**ADDRESSES:** You may submit comments, identified by NOAA–NMFS–2015–0136, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov)#!/docketDetail;D=NOAA-NMFS-2015-0136, 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 personally 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).

Electronic copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) (collectively referred to as the “Analysis”) and the Categorical Exclusion prepared for this proposed rule may be obtained from <http://www.regulations.gov> or 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 proposed rule may be submitted to NMFS (see **ADDRESSES**) and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Keeley Kent, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

**Authority for Action**

The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The Crab FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended by the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). Regulations implementing most provisions of the Crab FMP, including the CR Program, are located at 50 CFR part 680. Regulations implementing specific provisions of the Crab FMP that

pertain to the LLP Program are located at 50 CFR part 679.

**Background**

The Crab FMP was approved by the Secretary of Commerce on June 2, 1989. The Crab FMP establishes a State/Federal cooperative management regime that defers crab management to the State of Alaska with Federal oversight. State regulations are subject to the provisions of the FMP, including its goals and objectives, the Magnuson-Stevens Act national standards, and other applicable Federal laws. The Crab FMP has been amended several times since its implementation.

NMFS published the final rule to implement the CR Program on March 2, 2005 (70 FR 10174). Fishing under the CR Program started with the 2005/2006 crab fishing year. 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 originally issued QS to eligible harvesters as determined by eligibility criteria and participation in the CR Program fisheries during qualifying years. A harvester’s allocation of QS for a fishery was based on the landings made by his or her vessel in that fishery. Specifically, each allocation was the harvester’s average annual portion of the total qualified catch in a crab fishery during a specific qualifying period. NMFS issued four types of QS: Catcher vessel owner (CVO) QS was assigned to holders of LLP licenses who delivered their catch onshore or to stationary floating crab processors; catcher/processor vessel owner (CPO) QS was assigned to LLP holders that harvested and processed their catch at sea; captains and crew onboard catcher/processor vessels were issued catcher/processor crew (CPC) QS; and captains and crew onboard catcher vessels were issued catcher vessel crew (CVC) QS. CVC and CPC QS are also known as “crew shares” or “C shares.” Each year, a person who holds QS may receive IFQ, which is an exclusive harvest privilege for a portion of the annual total allowable catch (TAC). Under the CR Program, QS holders can form cooperatives to pool the harvest of the IFQ on fewer vessels to minimize operational costs and to provide additional flexibility in harvesting operations.

NMFS also issued processor quota share (PQS) under the CR Program. Each year, PQS yields an exclusive privilege to receive (for processing) a portion of the IFQ in each of the nine CR Program crab fisheries. This annual exclusive processing privilege is called IPQ. IFQ

derived from CVO QS is subject to annual designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS for a fishery is designated as Class A IFQ, and the remaining 10 percent of the IFQ is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery and region. Class B IFQ is not required to be delivered to a processor with IPQ.

This proposed rule includes three actions: The first action would exempt the WAG fishery from the CR Program prohibition against a vessel resuming fishing before the vessel has offloaded all CR Program crab from the vessel; the second action would amend CR Program regulations to clarify document submission requirements for individuals submitting an application to receive C shares by transfer; and the third action would amend LLP regulations to remove four BSAI crab species that are no longer managed under the LLP.

#### *Action 1: Exempt the WAG Fishery From Full Offload Requirements*

##### WAG Fishery Delivery Requirements

The WAG fishery is a relatively small but lengthy fishery prosecuted in extremely remote waters in the western Aleutian Islands. Historically, the community of Adak has been an active processing port for the WAG fishery. To recognize this history and to ensure that Adak continues to receive socioeconomic benefits from crab deliveries, the CR Program allocates 10 percent of the WAG fishery TAC to the community of Adak as the Adak Community Allocation (§ 680.40(a)(1)). The CR Program also imposes a regional delivery requirement for the WAG fishery to support processing facilities operating in the remote western Aleutian Islands region. In addition to processor share landing requirements, Class A IFQ (along with IPQ) are subject to regional landing requirements, under which harvests from those shares must be landed in specified geographic regions.

For the WAG fishery, § 680.40(c)(4) specifies that 50 percent of the Class A IFQ and a corresponding amount of IPQ in the WAG fishery are designated for delivery to any processor in the West region, which includes all locations west of 174° W. longitude. The West region includes the communities of Adak and Atka. The other 50 percent of the Class A IFQ and IPQ are not subject to a regional designation and can be delivered to any processor with

corresponding IPQ. Class B, CVC, CPO, CPC IFQ, and the Adak Community Allocation are also not subject to the regional delivery requirements. Crab harvested with West designated Class A IFQ must be delivered to a processor located in the West region with West designated IPQ (§ 680.42(b)(5)). Class A IFQ and IPQ crab without a West region designation is considered undesignated and may be delivered anywhere within the State of Alaska (§ 680.40(b)(2)(ii)(B)).

Regional designations were applied to harvester QS during the initial allocation, based on landings histories, but adjustments were necessary as substantially less than 50 percent of the historical landings were made in the West region. The West designation was intended primarily to aid the development of processing in the community of Adak. Adak had little historical processing prior to the end of the qualifying period, as the community was occupied exclusively by the U.S. military during the development of the AI commercial fisheries. With the departure of the military in the late 1980s, the community has worked to develop civilian industries, including fish processing. Atka is recognized as a second potential beneficiary of the region designation. That community has also begun to develop fish processing capacity in recent years, but has yet to develop significant crab processing capability.

Since implementation of the Program, the only shore-based processing plant in the West region has been located in the community of Adak. However, the crab processing capacity in Adak has been inconsistent or absent in some years since implementation of the CR Program due to a variety of operational challenges (see Section 3.5.5 of the Analysis). If processing capacity is not available in the West region, the West regional delivery requirement is not viable and would result in unutilized TAC in the WAG fishery.

In response to the potential lack of processing capacity in the West region in some years, the Council recommended, and NMFS implemented, Amendment 37 to the Crab FMP on June 20, 2011 (76 FR 35781). Amendment 37 created an annual application process for eligible contract signatories to request that NMFS exempt holders of West-designated IFQ and IPQ in the WAG fishery from the West regional delivery requirement (§ 680.4(o)). The eligible contract signatories are WAG fishery QS holders, PQS holders, and the cities of Adak and Atka.

Upon approval of a completed application, NMFS exempts all West-

designated Class A IFQ and IPQ from the West regional delivery requirement for the remainder of the crab fishing year. This exemption allows all West-designated Class A IFQ and IPQ holders to deliver and receive WAG crab at processing facilities outside the West region (§ 680.7(a)(2) and (a)(4)). The eligible contract signatories have applied for, and NMFS has granted, an exemption for all crab fishing years from 2011/2012 through 2015/2016 (<http://alaskafisheries.noaa.gov/fisheries-data-reports?tid=289>).

##### WAG Fishery

The WAG fishery has a relatively small annual total allowable catch compared to other BSAI crab fisheries, such as the Bristol Bay red king crab or snow crab fisheries. The TAC for the 2015/2016 crab fishing year in the WAG fishery is 2.98 million pounds. The WAG QS holders have formed a harvest cooperative to ensure the efficient harvest of this remote fishery. In recent years the fleet has been comprised of only two to three catcher vessels and a single catcher/processor. Section 3.5.1 of the Analysis provides additional detail on historical and recent participation in the WAG fishery.

Currently, the WAG fishing season starts on August 1 and ends on April 30. Since implementation of the CR program, harvesters have extended their fishing time over most of the crab season; the first deliveries typically occur in September and the last deliveries generally occur during March of the following calendar year. A trip for a vessel in the WAG fishery generally lasts one to four weeks, with an average trip lasting 2.5 weeks. There are relatively few fishing trips in the WAG fisheries compared to other BSAI crab fisheries. In the two most recent crab fishing years (2012/2013 and 2014/2015), vessels made a total of 9 landings of West region IFQ and 10 to 11 landings of undesignated IFQ.

Crab harvesting vessels have several tanks to hold live crab until it is processed. The average tank capacity of the catcher vessels that participate in the WAG fishery is between 120,000 and 150,000 pounds (see Section 3.5.3 of the Analysis). Any crab that arrives at the processor dead are weighed by the processor, reported as deadloss, and debited from the QS holder's IFQ account. Therefore, vessels have an incentive to keep crab alive, regardless of the market opportunities they are pursuing.

##### Full Landing (Offload) Requirement

The CR Program regulations prohibit a vessel from resuming fishing for CR

Program crab or taking CR Program crab on board a vessel once a landing (offload) has commenced and until all CR Program crab are offloaded (see § 680.7(b)(3)). Under the CR Program regulations, a catcher vessel may offload portions of CR Program crab on the vessel at multiple processors, but the vessel is prohibited from fishing for CR Program crab between the offloads.

NMFS implemented the prohibition against resuming fishing after a CR Program landing has commenced (hereafter called the full offload requirement) to facilitate enforcement of CR Program requirements for catch monitoring and full catch accounting. Under the CR Program, harvesting and processing activity is monitored to provide accurate and reliable accounting of the total catch and landings to manage quota share accounts, prevent overages of IFQ and IPQ, and ensure compliance with regional delivery requirements. Total fishery removals are estimated by monitoring measures that include collection of data on landed catch weight and crab species composition, bycatch, and deadloss.

Under current CR Program regulations, vessels may offload portions of CR Program crab at multiple processors but are prohibited from resuming fishing or taking CR Program crab on board the vessel once a landing has commenced and until all CR crab are landed. Under § 680.7(b)(3), NOAA fisheries intended that this prohibition would prevent persons from, for example, discarding barnacled or deadloss CR crab at sea prior to debiting this crab from the QS holder's IFQ account and subsequently high grading with CR crab harvested after the partial offload. The prohibition was intended to ensure that all fishery removals are monitored and reported in the CR Program catch accounting system. See the final rule to implement the CR Program for a description of the monitoring and catch accounting provisions in the BSAI crab fisheries (70 FR 10174, March 2, 2005).

#### *Catch Monitoring*

The CR Program delegates a significant portion of monitoring in the BSAI crab fishery to the State of Alaska. Under the Crab FMP, the Council and Secretary deferred to the Alaska Department of Fish and Game (ADF&G) the authority and responsibility for deploying observers on board any vessel participating in the BSAI crab fisheries under State of Alaska regulations (5 AAC 39.645). ADF&G has implemented specific monitoring requirements in the WAG fishery.

ADF&G requires catcher/processors in the WAG fishery to carry an observer onboard the vessel for 100 percent of the vessel's trips. Catcher vessels in the WAG fishery are required to carry an observer on board for the harvest of at least 50 percent of their total harvest weight for each 3-month period of the overall 9-month season. The portion of actual observed harvest for catcher vessels in the WAG fishery has ranged from 57 percent to 70 percent annually. See Section 3.6.2 of the Analysis for additional information on the ADF&G catch monitoring and observer requirements for the WAG fishery.

ADF&G also utilizes dockside samplers to sample and monitor deliveries of crab from unobserved vessels to shoreside processors in the WAG fishery. At the time of landing, either the observer or dockside sampler collects the average weight of retained crab, conducts biological samples, and summarizes fishing effort data and landing data. The observer or dockside sampling data are used to debit the appropriate IFQ account under which the crab was harvested and the IPQ account under which the crab was received for processing in the CR Program online catch accounting system.

ADF&G observer sampling protocol specifies that a trip commences when an observer boards the vessel and ends when there is a complete offload of all crab from the vessel. If a vessel makes a partial landing, the trip is not considered to have ended until the final landing is made and all crab is offloaded from the vessel. If an observer is not deployed on a vessel in the CR Program crab fisheries, dockside samplers sample and monitor the landing of crab to a shoreside processor.

ADF&G also requires operators of vessels in the BSAI crab fisheries to complete a daily fishing log, which is issued by NMFS. Data from the daily fishing log are used to verify landings and to ensure accurate accounting for all fishery removals. Section 3.6.2 of the Analysis provides additional information on ADF&G's catch sampling and monitoring protocols for the CR Program crab fisheries.

#### *Need for Action*

In 2014, the processing facility in Adak began taking deliveries of WAG crab from catcher vessels to supply the live crab market. The crab are offloaded from the vessel and held at the processing facility until packed for transport on a commercial airline flight from Adak for delivery to domestic and international markets. The amount of crab offloaded at Adak and delivered to

the live market is limited by the amount of aircraft hold space that is available to ship crab on bi-weekly flights from Adak. Aircraft capacity is approximately 8,000 to 14,000 pounds of crab per flight, depending on the type of aircraft. Vessels operating in the WAG fishery make crab deliveries opportunistically to the processing facility when live markets are available. Harvesters receive a higher price per pound for the live market than for crab delivered and processed to supply the traditional market for cooked and frozen crab sections (see Sections 3.5.4 and 3.5.5.1 of the Analysis for more information about deliveries to the live crab market from Adak).

The processing facility in Adak is currently able to receive only limited amounts of deliveries of crab for the live market, approximately 400,000 pounds for the 2015/2016 crab fishing year. As described in Section 3.5.5 of the Analysis, the processing facility in Adak has encountered a number of operational challenges since it was established in 1999 and is not currently able to receive and process a full offload of crab, which can be up to 150,000 pounds in the WAG fishery. Since the 2014/2015 crab fishing year, catcher vessels delivering crab for the live market have made partial landings at the Adak processing facility and transited several hundred miles from the fishing grounds to Dutch Harbor and Akutan to deliver the remaining crab onboard the vessel to a processor that can accept a larger vessel load of crab from the vessels.

In February 2015, the Council received requests from representatives for WAG fishery participants and representatives of the community of Adak to exempt the WAG fishery from the CR Program prohibition against a person's resuming fishing before all crab have been offloaded from a vessel. At its October 2015 meeting, the Council reviewed an analysis of the WAG fishery and the potential effects of the proposed exemption. After reviewing the Analysis and receiving public testimony, the Council recommended a regulatory amendment to exempt participants in the WAG fishery from the prohibition at § 680.7(b)(3) against a person's resuming fishing before all CR Program crab have been offloaded from the vessel.

The Council recommended this proposed regulatory amendment to reduce inefficiencies and costs associated with requiring crab harvesting vessels to travel significant distances to land a partial load of WAG. This proposed rule would allow vessels harvesting WAG to make partial

landings for delivery to the live market and continue harvesting crab before fully offloading at a processor that can receive a larger vessel load of crab.

### **This Proposed Rule and the Anticipated Effects**

#### *Action 1: Exempt the WAG Fishery From Full Offload Requirements*

Under Action 1, this proposed rule would create an exemption for the WAG fishery from the prohibition at § 680.7(b)(3) that precludes a person from resuming fishing before all crab has been offloaded from a vessel. This proposed rule would not alter current landing, reporting, and enforcement requirements in CR Program regulations.

This proposed rule would relieve a restriction on fishing activity in the WAG fishery and could increase operational efficiencies and revenues for participants in the WAG fishery. The Council determined that this proposed rule is necessary for the WAG fishery due to the remote and economically challenging characteristic of the fishery as well as the possibility of mutual benefits to harvesters, processors located in the western Aleutians, and any communities that develop a live market opportunity. As described below, the Council determined, and NMFS agrees, that this proposed rule is not likely to have negative impacts on the management of the WAG fishery or on the catch monitoring and accounting requirements established by the CR Program.

The Council considered whether this proposed rule could increase the amount of unreported discards of crab. After reviewing the Analysis, the Council and NMFS determined that crab discards are appropriately monitored and accounted for under the CR Program and this proposed rule would not likely create additional incentive for participants in the WAG fishery to discard crab. Section 3.6.1 of the Analysis describes that experience with the CR Program has shown that unreported discards of crab are unlikely due to a number of practices that occur at sea and when crab are delivered to a processor.

First, it is common practice in the crab fisheries for vessel crews to sort catches at sea and to discard crab that are less than the legal size or that are damaged or diseased before placing the crab in the vessel's holding tank. The CR Program does not require full retention of legal-sized crab on the fishing grounds because it would require a vessel to keep damaged and diseased crab in a holding tank with healthy crab. Because crab can be

discarded prior to being placed in the vessel tank, crew have an incentive to retain only healthy crab of legal size and to discard all dead, damaged, or diseased crab during sorting rather than retaining the crab onboard and discarding it prior to or after arrival at a processor. The impact of crab that are discarded during sorting on crab stocks is accounted for because observers collect information on at-sea discards in all crab fisheries, and this information is used to estimate discard mortality for all vessels in the fishery and is incorporated into crab stock assessments (see Section 3.6.2 of the Analysis).

Second, vessels are unlikely to discard unreported crab at sea due to quota overages because the CR Program cooperative structure, online quota transfers, and post-delivery quota transfers give fishery participants several options to coordinate harvests and obtain additional IFQ to cover any overages. In addition, the CR Program regulations specify that crab cooperative members are jointly and severally liable for violations, which provides a strong incentive for vessel operators to comply with CR Program regulations.

Third, attempts by vessels to illegally discard crab at sea rather than weighing and deducting them from quota after delivering to a processor would likely be noticed by the vessel observer, port samplers, plant personnel, or local enforcement agents. If a vessel operator were to depart the processor with crab onboard, the crab that was not delivered and accounted for would likely be noticed by one or more of the above personnel who would likely notify an enforcement agent.

Finally, Section 3.6.1 of the Analysis describes that while catcher vessels in the WAG fishery are required to carry an observer on board for 50 percent of their harvest, in practice, between 57 and 70 percent of the WAG fishery harvest had observer coverage in recent years (see Section 3.6.2.1 of the Analysis). The presence of an observer on board further reduces the likelihood of unreported discards.

The Council considered the impacts of this proposed rule on Federal management of the WAG fishery. Section 3.7.4 of the Analysis describes that this proposed rule would not change the current CR Program landing and reporting requirements, or catch accounting system. Under this proposed rule, all retained crab catch must be weighed, reported, and debited from the appropriate IFQ account under which the crab was harvested, and from the IPQ account under which the catch was processed.

Section 3.7.5 of the Analysis describes the impacts of this proposed rule on the State of Alaska management of the WAG fishery. The Crab FMP delegates much of the management of the BSAI crab fisheries to the State of Alaska using the following three categories of management measures: (1) Those that are fixed in the FMP and require an FMP amendment to change; (2) those that are framework-type measures that the State can change following criteria set out in the FMP; and (3) those measures that are neither rigidly specified nor require a framework adjustment in the FMP. State observer and observer sampling requirements are category three management measures under the Crab FMP and may be adopted under State laws subject to the appeals process provided for in the Crab FMP.

NMFS expects that if the proposed rule is approved and implemented, ADF&G would make minor modifications to its sampling and observer coverage protocols for WAG fishery vessels that deliver crab to Adak for supply to the live market. ADF&G will likely request that vessel operators participating in the WAG fishery and intending to make a partial offload before resuming fishing in the WAG fishery do the following: (1) Keep those crab intended for delivery to the live market in a separate tank from crab intended for delivery to the traditional processing market, and (2) record the fishing activity (pot strings) for harvest of these crabs separately in the daily fishing log. This would ensure that ADF&G can continue to collect biological information for all crab harvested prior to and after the partial offload. Under these protocols, ADF&G would be able to link logbook and offload data to ensure that status quo sampling and accurate accounting of effort can occur under this proposed rule. If the proposed rule is implemented, NMFS anticipates ADF&G would continue to coordinate with vessels in the WAG fishery to ensure that accurate biological data and catch accounting needs are met with minimal impacts on State of Alaska management of the WAG fishery consistent with requirements of the Magnuson-Stevens Act, the Crab FMP, and ADF&G regulations.

NMFS does not expect that the anticipated revisions to the ADF&G observer protocols will negatively impact participants in the WAG fishery for reasons described in Section 3.7.5 of the Analysis. First, vessels delivering crab for supply to the live market already keep those crab in separate tanks from crab delivered for supply to

the traditional market. This practice facilitates the offload process for live crab and reduces the likelihood of deadloss. Vessel operators have an incentive to continue this practice under the status quo and under this proposed rule. If all crab were kept in one tank and sorted by market at the time of offload, the vessel operator would have to remove water from the tank in order to offload the crab to supply the live market, refill the tank with water for the remaining crab to supply the traditional market, and transit back to the fishing grounds with these crab onboard before delivery for traditional processing. This process could increase the likelihood of deadloss among the crab remaining on the vessel. Second, the request for vessel operators to record pot strings pulled prior to the partial offload separately from pot strings pulled after the offload does not significantly increase the reporting burden for vessel operators or significantly change data processing or analytical protocols for ADF&G.

Section 3.7.2 of the Analysis describes that this action could result in a reduction in quality for crab destined for the traditional crab market. Crab destined for the live crab market are chosen for survivability, and vessels carefully select large, clean, undamaged crab for delivery to the live market. If the proposed rule results in an increased portion of WAG crab delivered for supply to the live market, processors that do not participate in the live crab market may receive a relatively larger portion of lower quality crab (*e.g.*, smaller or with barnacles) that were not selected for the live market. That Analysis notes that vessels in the WAG fishery currently land crab in Adak destined for the live crab market, and so it is likely that a slight reduction in quality for WAG crab destined for the traditional crab market is occurring under the current CR Program regulations.

If vessels make more deliveries of WAG crab for the live market, there could be an additional reduction in the quality of crab delivered to processors that supply the traditional markets as a larger portion of the WAG fishery TAC is supplied to the live market. However, NMFS determined that the amount of high quality WAG crab supplied to the live market is unlikely to increase significantly in the future. The Adak processing facility is limited by its ability to ship approximately 14,000 pounds of crab out by air freight bi-weekly, and this capacity limitation is unlikely to change under this proposed rule (see the Appendix to the Analysis). Therefore, NMFS does not expect this

action to affect the current quality of WAG crab landings to processors that supply the traditional market.

Section 3.7.2 of the Analysis describes the impacts of this proposed rule on processors and communities that participate in the WAG fishery. This action could have a positive impact on western Aleutian Islands processors because it would allow for increased fishery activity. Increased fishery activity would benefit communities in the western Aleutian Islands by providing benefits through fuel sales and secondary services from vessels landing in a community. Additionally, increased fishery activity would promote increased local labor opportunities. This action, if approved, could also benefit communities in the western Aleutian Islands by providing increased revenue from raw fish taxes and State of Alaska fisheries business tax revenue, which is shared by the State of Alaska with the cities or boroughs where fish are landed (see Section 3.7.2 of the Analysis).

This action may adversely impact processors located in Dutch Harbor and Akutan by redistributing some WAG fishery landings to the western Aleutian Islands to supply the live market. NMFS does not expect these impacts to be significant because partial offloads of WAG crab are currently occurring at the processing facility in Adak to supply the live market. This proposed rule would likely facilitate a small increase in the amount of the WAG fishery TAC delivered for the live crab market relative to the much larger amount of crab that would continue to be delivered and processed to supply the traditional markets.

Sections 3.7.1 and 3.7.2 of the Analysis describe that this action would support the WAG fishery harvesters, processors, and communities that seek to diversify into the live crab market. The vessels currently participating in the WAG fishery could receive additional WAG fishery revenues under this proposed rule due to the increased price they receive for crab in the live market. In addition, these WAG fishery harvesters could potentially reduce operating costs and efficiency by making small offloads of WAG crab to the western Aleutian Islands and resuming fishing to harvest a full vessel load of crab before transiting to offload the crab at a processor that can process all the vessel's crab. This may result in reduced fuel costs and time spent returning to the fishing grounds.

#### *Action 2: Clarify Document Submission Requirements for Transfers of C Shares*

The second action under this proposed rule would correct regulations governing the approval criteria for an application to receive C Shares (CPC and CVC QS) by transfer. Under the CR Program, individuals must meet specific eligibility requirements to receive C shares by transfer. Amendment 31 to the Crab FMP modified several regulations governing the acquisition, use, and retention of C share QS under the CR Program (80 FR 15891, March 26, 2015).

The eligibility requirements to receive C shares by transfer are located at § 680.41(c)(1)(vii). An applicant must meet initial eligibility criteria, which include having U.S. citizenship, at least 150 days of sea time in a U.S. commercial fishery, and recent participation as crew in at least one delivery of crab in the past year. In addition, § 680.41(c)(1)(vii) specifies that until May 1, 2019, in lieu of participation as crew in one of the CR Program fisheries in the 365 days prior to application submission, an individual may meet the crew participation requirement to receive C share QS by transfer if that person 1) received an initial allocation of CVC or CPC QS, or 2) demonstrates participation as crew in at least one delivery of crab in a CR crab fishery in any 3 of the 5 crab fishing years starting on July 1, 2000, through June 30, 2005.

The approval criteria for NMFS to approve an application to receive C shares by transfer are located at § 680.41(i). The regulations state that NMFS will not approve a transfer application unless it has determined that the applicant has met all approval criteria.

The approval criteria regulations previously included criteria for an individual to demonstrate to NMFS that he or she meets the eligibility requirements at § 680.41(c)(1)(vii) at the time of transfer. These approval criteria were removed in error by incorrect amendatory language in the final rule that implemented regulations to provide harvesting cooperatives, crab processing quota shareholders, and Western Alaska Community Development Quota groups with the option to make Web-based transfers (74 FR 51515, October 7, 2009). These approval criteria are necessary to clarify for applicants that they must meet the eligibility requirements at § 680.41(c)(1)(vii) at the time of transfer, specifically that they must meet the participation within the prior 365 days for their application for transfer to be approved. This proposed rule would add these approval criteria at

§ 680.41(i)(11) to correct the error, and to ensure that the regulations are consistent with the original intent of the CR Program.

An applicant must submit the following two applications to NMFS to demonstrate that he or she meets the eligibility requirements at § 680.41(c)(1)(vii) at the time of transfer: (1) An Application for BSAI Crab Eligibility to Receive QS/PQS by Transfer; and (2) Application for Transfer of Crab QS or PQS. The applicant may submit the Application for BSAI Crab Eligibility to Receive QS/PQS by Transfer in advance of, or concurrently with, the Application for Transfer of Crab QS or PQS.

This proposed rule would add § 680.41(i)(11) to correct the regulations and clarify that NMFS will not approve an application to receive C share QS by transfer unless the applicant submits evidence demonstrating required participation criteria specified at § 680.41(c)(1)(vii). Acceptable evidence for demonstrating required participation criteria specified at § 680.41(c)(1)(vii) is limited to an ADF&G fish ticket signed by the applicant or an affidavit from the vessel owner attesting to the applicant's fishery participation.

This proposed change would make minor clarifications to regulations governing NMFS' approval criteria for an application to receive C shares by transfer. This change would clarify document submission requirements for applicants to receive C shares by transfer. The impacts of this proposed change are limited to a minor increase in recordkeeping and reporting requirements for applicants. The impacts are consistent with those analyzed for the final rule to provide harvesting cooperatives, crab processing quota share holders, and Western Alaska Community Development Quota groups with the option to make Web-based transfers (74 FR 51515, October 7, 2009) and for regulations implementing Amendment 31 to the Crab FMP (80 FR 15891, March 26, 2015).

### *Action 3: Removing Certain Crab Species From LLP Regulations*

The third action under this proposed rule would amend LLP regulations for consistency with the Crab FMP to avoid public confusion about the regulatory requirements that apply to certain crab stocks. This proposed rule would modify the LLP regulations at § 679.4(k)(1)(ii) to eliminate the following four crab species: Eastern Aleutian Islands red king crab; scarlet or deep sea king crab; grooved Tanner crab; and triangle Tanner crab. These stocks were removed from the Crab FMP

in 2008 and are no longer subject to Federal management.

The LLP limits access to the directed groundfish, crab, and scallop fisheries in the BSAI and the Gulf of Alaska. The LLP requires each vessel to have an LLP license on board the vessel at all times while directed fishing for license limitation species, with limited exemptions. The LLP limits the number, size, and specific operation of vessels deployed in BSAI crab fisheries managed under the Crab FMP and established several area/species endorsements for crab LLP licenses. The LLP licenses for these fisheries were initially issued in 2000 and are not reissued unless the LLP license is transferred to another person. The preamble to the final rule implementing the LLP provides a detailed explanation of the rationale for specific provisions in the LLP (63 FR 52642, October 1, 1998).

The CR Program was implemented in 2005 and removed BSAI crab fisheries that are managed under the CR Program from the LLP. With the allocation of QS and PQS, management under the LLP was no longer needed to limit fishing effort. The fisheries not included in the CR Program remained under the Crab FMP and under the governance of the LLP. Fishermen participating in those fisheries are required to have a crab LLP license with the appropriate area/species endorsement on the vessel. Although the Crab FMP establishes a State/Federal cooperative management regime that delegates crab management to the State of Alaska with Federal oversight, NMFS manages Crab FMP stocks subject to LLP requirements.

Amendment 24 to the Crab FMP was approved in 2008. Amendment 24 removed 12 BSAI crab stocks not in the CR Program from the Crab FMP and deferred management to the State of Alaska for these fisheries (73 FR 33925, June 16, 2008). These stocks were removed from the Crab FMP because the majority of catch in these fisheries occurs in State of Alaska waters or the State of Alaska had closed the directed fishery or managed only a limited incidental or exploratory fishery. Among the twelve stocks removed from the Crab FMP were Eastern Aleutian Islands red king crab, scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab that had been managed by NMFS under the LLP. Upon removal of these species from the Crab FMP, NMFS no longer had authority to manage those species under the LLP program. The State of Alaska currently manages these fisheries under State regulations.

Amendment 24 to the Crab FMP did not require implementing regulations.

As a result, Eastern Aleutian Islands red king crab, scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab were not removed from LLP regulations when Amendment 24 was implemented. In order to align LLP regulations with the Crab FMP and avoid confusion about regulatory requirements, NMFS proposes to modify the LLP regulations at § 679.4(k)(1)(ii) to eliminate these species from the LLP regulations. The proposed rule would not change current management of these crab fisheries.

Currently, the LLP regulations specify that crab LLP licenses may have four area/species endorsements:

- Aleutian Islands opilio/bairdi crab;
- Eastern Aleutian Islands red king crab;
- Bering Sea Minor Species (includes Bering Sea golden king crab, scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab); and
- Norton Sound red and blue king crab.

Three of these four LLP license endorsements specify one fishery for which the endorsement authorizes participation when the fishery is included in the Crab FMP (*i.e.*, Aleutian Islands opilio/bairdi, Eastern Aleutian Islands red king, and Norton Sound red and blue king). The Bering Sea Minor Species endorsement is an umbrella endorsement that applies to specific area/species endorsements defined in the LLP regulations: The Bering Sea golden king crab, scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab fisheries.

Amendment 24 removed the scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab fisheries from the Crab FMP, but the Bering Sea golden king crab fishery remained in the Crab FMP and subject to Federal management under the LLP.

To implement this proposed rule, NMFS would modify LLP licenses to remove the Eastern Aleutian Islands red king endorsement from LLP licenses because that fishery was removed from the Crab FMP under Amendment 24 and is no longer subject to Federal management. Current LLP license records indicate there are 30 LLP licenses with this endorsement.

NMFS does not need to reissue LLP licenses with a Bering Sea Minor Species endorsement for the removal of the scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab fisheries from the Crab FMP. Even though scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab fisheries are no longer subject to Federal management, the Bering Sea golden king crab fishery

is still included in the FMP and is subject to Federal management under the LLP. Therefore an LLP license with a Bering Sea Minor Species endorsement is still required for participation in this fishery. Because of this, NMFS does not need to remove the endorsement as a whole. The LLP regulations determine the specific area/species endorsements to which the Bering Sea Minor Species endorsement applies, so NMFS has determined that it can implement this proposed change by amending the LLP regulations, rather than reissuing the licenses carrying this endorsement. Current LLP license records indicate there are 287 LLP licenses with this endorsement.

NMFS would incur minor administrative costs to reissue LLP licenses to remove the Eastern Aleutian Islands red king endorsement. As described above, this proposed action would not change current management of the Eastern Aleutian Islands red king, Bering Sea golden king crab, scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab fisheries. This proposed action would not have impacts on crab stocks or on fishery participants beyond those analyzed in the analysis for Amendment 24 to the Crab FMP (73 FR 33925, June 16, 2008).

### Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Crab 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.

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 IRFA are available from NMFS (see ADDRESSES).

The IRFA describes this proposed rule, why this rule is being proposed, the objectives and legal basis for this proposed rule, the type and number of small entities to which this proposed rule would apply, and the projected reporting, recordkeeping, and other compliance requirements of this proposed rule. It also identifies any overlapping, duplicative, or conflicting Federal rules and describes any significant alternatives to this 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 this proposed rule on small entities. The description of this proposed rule, its purpose, and its legal basis are described in the preamble and are not repeated here.

### Number and Description of Small Entities Regulated by This Proposed Rule

The Small Business Administration defines a small commercial shellfish fishing entity as one that has annual gross receipts, from all activities of all affiliates, of less than \$5.5 million (79 FR 33647, June 12, 2014).

Under Action 1, the entities directly regulated by this proposed rule are those entities that participate in the WAG fishery: Vessel operators, QS holders, and IFQ holders. This proposed rule would not directly affect PQS holders, IPQ holders, or communities. Three vessels were active in the 2013/2014 WAG fishery. These vessels received the majority of their revenue from shellfish from 2012 through 2014. The entities directly regulated by this proposed rule are members of a cooperative that exceeds the \$5.5 million revenue threshold for a shellfish entity and are not considered small entities (see Section 4.3 of the Analysis). The number of WAG fishery QS holders is listed in Table 3–3 in Section 3.5.2 of the Analysis. Gross revenue information is not available for these QS holders. Of the QS holders listed, at least 3 of the entities holding CVO QS are known to be large entities as defined by the Small Business Administration. The remaining 11 CVO QS holders and 8 CVC QS holders are assumed to be small entities. This proposed rule, if approved, would exempt these directly regulated small entities from the prohibition against resuming fishing before all CR Program crab have been offloaded. This exemption is intended to provide an opportunity for these entities to benefit from increased economic efficiencies and increased revenues in the WAG fishery. Therefore, no directly regulated small entities are expected to be adversely impacted by this proposed rule.

Under Action 2, this proposed rule would correct an error to add regulatory text that was inadvertently removed. The effect of Action 2 on directly regulated small entities is described in the IRFA prepared for a final rule implementing regulations to provide harvesting cooperatives, crab processing quota share holders, and Western Alaska Community Development Quota groups with the option to make web-based transfers (74 FR 51515, October 7, 2009) and for regulations implementing

Amendment 31 to the Crab FMP (80 FR 15891, March 26, 2015). This proposed rule would not change the impacts on small entities from the impacts considered in the IFRAs prepared for these actions.

Under Action 3, this proposed rule would remove regulatory requirements for LLP licenses that are no longer applicable under the Crab FMP as described in the analysis for Amendment 24 to the Crab FMP (73 FR 33925, June 16, 2008). Action 3 would not have any impact on directly regulated entities because no entities are currently participating in these crab fisheries, and this proposed rule would not preclude them from doing so under the appropriate State of Alaska regulations. Action 3 would require the reissuance of LLP licenses to the 30 license holders with the Eastern Aleutian Islands red king crab endorsement, however, this would not require any action taken on the part of any small entities.

### Recordkeeping and Reporting Requirements

Action 1 of this proposed rule would not require any modifications to the current Federal recordkeeping and reporting requirements for the CR Program. Action 2 of this proposed rule references the collection-of-information requirement for the Application for Transfer of Crab QS or PQS (OMB control number 0648–0514), however, this proposed rule would not require modifications to the application and would not increase the public reporting burden associated with it. Action 3 of this proposed rule, if approved, would not require LLP license holders to take any action relative to their LLP licenses and would not impact any public reporting burden. There was a collection-of-information requirement for the initial issuance of LLPs, OMB Control Number 0648–0334, however after initial issuance, LLPs do not expire.

### Collection-of-Information Requirements

This proposed rule references 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 approved by OMB and are listed below by OMB Control Number.

#### OMB Control Number 0648–0334

The crab LLP is mentioned in this rule, but there would be no change in burden or cost results. NMFS would modify LLP licenses to remove the Eastern Aleutian Islands Red King Crab

endorsement. NMFS does not expect that removal of the Eastern Aleutian Islands Red King Crab endorsement area/species endorsement would impact LLP license holders.

OMB Control Number 0648–0514

The Application for Crab Rationalization (CR) Program Eligibility to Receive QS/PQS or IFQ/IPQ by Transfer and the Application for Transfer of Crab QS/PQS are mentioned in this rule, but there would be no change in burden or cost results. The fishery participation approval criteria for an individual to receive C share QS by transfer were incorrectly deleted from the regulations with a final rule published on October 7, 2009 (74 FR 51515) and would be replaced by this action.

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 these proposed collections of information are 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](mailto: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).

*Federal Rules That May Duplicate, Overlap, or Conflict With This Proposed Rule*

The Analysis did not reveal any Federal rules that duplicate, overlap, or conflict with this proposed rule.

*Description of Significant Alternatives to This Proposed Rule That Minimize Economic Impacts on Small Entities*

An IRFA also requires a description of any significant alternatives to this proposed rule that would accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. Under all actions, NMFS considered two alternatives—the no action alternative and the action alternative. During the Council's initial discussion of the problem, it also considered extending the exemption from the prohibition against resuming fishing before all CR Program crab have been landed to all CR Program fisheries. However, the Council rejected this approach because it was too broad for the stated objectives, which were specific to the WAG fishery.

Under Action 1, the no action alternative is not expected to minimize adverse economic impacts for the small entities directed regulated by this proposed rule. These entities are currently required to make partial landings at the Adak processing facility and transit several hundred miles from the fishing grounds to deliver the remaining crab on board the vessel to a processor that can accept a full offload of crab from the vessels. The no action alternative results in operating inefficiencies and additional costs from requiring vessels to travel significant distances to land a partial load of WAG. The action alternative is expected to provide positive economic impacts for small entities compared to the no action alternative because it would lift a restriction on WAG fishery participants. The action alternative could improve operating efficiencies and increase fishery revenues for WAG fishery participants by supporting the opportunity to supply crab to the live market for a premium price compared to crab delivered to traditional markets.

Under Action 2, the no action alternative would not correct an error in regulation. The action alternative corrects that error by reinstating the regulation that was incorrectly removed. This proposed rule would not change the impacts on small entities from the impacts considered in the FRFA prepared for the final rule implementing regulations to provide harvesting cooperatives, crab processing quota share holders, and Western Alaska Community Development Quota groups with the option to make Web-based transfers (74 FR 51515, October 7, 2009) and for Amendment 31 to the Crab FMP (80 FR 15891, March 26, 2015). The

FRFA for the Web-based transfers rule described the impacts of the rule as beneficial to small entities because the rule would simplify the process for completing transfers. The FRFA for Amendment 31 described that under Amendment 31, the submission of documentation demonstrating active participation for C share QS holders was necessary to implement the active participation requirements, but was not expected to have a significant impact on small entities due to the need to submit the information only upon the request to receive C shares by transfer.

Under Action 3, the no action alternative would retain regulations for LLP license requirements that are no longer applicable under the Crab FMP. The action alternative would make LLP license requirements consistent with the Crab FMP and reduce potential confusion for small entities. Action 3 would require the reissuance of LLP licenses to the 30 license holders with the Eastern Aleutian Islands red king crab endorsement, however, this would require no action taken on the part of any small entities. Action 3 would not have any impact on directly regulated entities because no entities are currently participating in these crab fisheries, and this proposed rule would not preclude them from doing so under the appropriate State of Alaska regulations.

**List of Subjects**

*50 CFR Part 679*

Alaska, Fisheries, Reporting and recordkeeping requirements.

*50 CFR Part 680*

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 12, 2016.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 and part 680 as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.4:

- a. Remove paragraph (k)(1)(ii)(A);
- b. Redesignate paragraph (k)(1)(ii)(B) as new paragraph (k)(1)(ii)(A);
- c. Revise newly redesignated paragraph (k)(1)(ii)(A);



- d. Redesignate paragraph (k)(1)(ii)(C) as new paragraph (k)(1)(ii)(B) and paragraph (k)(1)(ii)(D)(1) as new paragraph (k)(1)(ii)(C);
- f. Revise newly redesignated paragraph (k)(1)(ii)(C); and
- g. Remove paragraph (k)(1)(ii)(D).

The revisions read as follows:

**§ 679.4 Permits.**

\* \* \* \* \*

(k) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(A) Aleutian Islands Area *C. opilio* and *C. bairdi*.

\* \* \* \* \*

(C) Minor Species endorsement for Bering Sea golden king crab (*Lithodes aequispinus*).

\* \* \* \* \*

**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 § 680.7, revise paragraph (b)(3) to read as follows:

**§ 680.7 Prohibitions.**

\* \* \* \* \*

(b) \* \* \*

(3) Resume fishing for CR crab or take CR crab on board a vessel once a landing has commenced and until all CR crab are landed, unless fishing in the Western Aleutian Islands golden king crab fishery.

\* \* \* \* \*

- 5. In § 680.41, add paragraph (i)(11) to read as follows:

**§ 680.41 Transfer of QS, PQS, IFQ and IPQ.**

\* \* \* \* \*

(i) \* \* \*

(11) The person applying to receive the CVC QS or IFQ or CPC QS or IFQ by transfer has submitted proof of at least one delivery of a crab species in any CR crab fishery in the 365 days prior to submission to NMFS of the Application for transfer of crab QS/IFQ or PQS/IPQ, except if eligible under the eligibility requirements in paragraph (c)(1)(vii)(B) of this section. Proof of this landing is—

(i) Signature of the applicant on an ADF&G fish ticket; or

(ii) An affidavit from the vessel owner attesting to that person’s participation as a member of a fish harvesting crew on board a vessel during a landing of a crab QS species within the 365 days prior to submission of an Application for transfer of crab QS/IFQ or PQS/IPQ.

\* \* \* \* \*

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