

environment or the conservation of energy resources.

Decided: February 10, 2011.

By the Board, Chairman Elliott, Vice Chairman Nottinham, and Commissioner Mulvey.

**Jeffrey Herzig,**  
Clearance Clerk.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 680

[Docket No. 100723308-1086-01]

RIN 0648-BA11

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

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

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

**SUMMARY:** NMFS proposes regulations to implement Amendment 37 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). If approved, these regulations would amend the Bering Sea/Aleutian Islands Crab Rationalization Program by establishing a process for eligible contract signatories to request that NMFS exempt holders of West-designated individual fishing quota (IFQ) and individual processor quota (IPQ) in the Western Aleutian Islands golden king crab fishery from the West regional delivery requirements. Federal regulations require West-designated golden king crab IFQ to be delivered to a processor in the West region of the Aleutian Islands with an exact amount of unused West-designated IPQ. However, processing capacity may not be available each season. Amendment 37 is necessary to prevent disruption to the Western Aleutian Islands golden king crab fishery, while providing for the sustained participation of municipalities in the region. This proposed action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

**DATES:** Comments must be received no later than April 1, 2011.

**ADDRESSES:** You may submit comments, identified by "RIN 0648-BA11", by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- *Fax:* (907) 586-7557, Attn: Ellen Sebastian.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of Amendment 37 to the FMP, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Categorical Exclusion prepared for this proposed action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The Environmental Impact Statement, RIR, Final Regulatory Flexibility Analysis, and Social Impact Assessment prepared for the Crab Rationalization 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 proposed rule may be submitted to NMFS at the above address, e-mailed to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or faxed to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Seanbob Kelly, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Consolidated Appropriations Act of 2004 (Pub. L. 108-199, section 801). Amendments 18

and 19 to the FMP implemented the BSAI Crab Rationalization Program (Program) in a final rule published on March 2, 2005 (70 FR 10174). Regulations implementing the FMP and all amendments to the Program are at 50 CFR part 680, and general regulations related to fishery management are at 50 CFR part 600.

#### Background

In 2005, NMFS established the Program as a catch share program for nine crab fisheries in the BSAI. The Individual Fishing Quota (IFQ) portion of the Program assigned quota share (QS) to persons based on their historic participation in one or more of these nine BSAI crab fisheries during a specific time period. Under the Program, NMFS issued four types of QS: catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (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. 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 program, QS holders can form cooperatives to pool the harvest of the IFQ on fewer vessels to minimize operational costs.

NMFS also issued processor quota share (PQS) under the Program. Each year, PQS yields an exclusive privilege to receive (for processing) a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called IPQ. A portion of the QS issued yields IFQ that is required to be delivered to a processor with a like amount of unused 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.

In most crab fisheries, the Program established regional designations for QS and PQS to ensure that municipalities

that were historically active as processing ports continue to receive socioeconomic benefits from crab deliveries or to encourage the development of processing capacity in specific isolated municipalities. To accomplish this, the Program imposes regional delivery requirements to specific geographic regions based on historic geographic delivery and processing patterns. Regulations implementing the Program establish regional delivery requirements at 50 CFR 680.40(b)(2) and (d)(2).

#### **Western Aleutian Islands Golden King Crab Fishery**

The Western Aleutian Islands golden king crab (*Lithodes aequispinus*) (WAG) fishery is subject to regional delivery requirements. For the WAG fishery, 50 percent of the Class A IFQ and a corresponding amount of IPQ are designated for delivery and processing in the West region (west of 174° W. long.). The remaining 50 percent of the Class A IFQ and IPQ, the Class B CVC IFQ, CPO IFQ, and CPC IFQ are not subject to regional delivery requirements. These regional delivery requirements are intended to promote the development of fisheries infrastructure in the cities of Adak and Atka, two isolated municipalities located in the West region. Historically, the City of Adak has been the primary port for deliveries of WAG and the allocation of a portion of the TAC to the City of Adak recognized that historic participation in the fishery. The West regional delivery requirements for the WAG fishery are at 50 CFR 680.40(c)(4) and (e)(2).

WAG harvested with West-designated Class A IFQ must be delivered to a processor located in the West region with West-designated IPQ. The only shore-based processing facility capable of processing WAG in this region has been located in the community of Adak. In recent years, the City of Atka has begun to develop processing capacity; however, the City of Atka currently lacks the capacity to process WAG crab. Therefore, QS and PQS holders have been dependent on the Adak facility for the processing of West-designated WAG. Additionally, the Adak facility, the sole shore-based processing facility in the region, closed in April of 2009 and has not yet reopened. The Adak facility's owners officially filed for Chapter 11 bankruptcy in September 2009, and the proceedings have yet to be resolved. The closure of the Adak facility prevents catcher vessels from delivering WAG harvested with West-designated IFQ in that region. Similarly, holders of IPQ with a West regional designation lack an

economically viable facility at which to receive deliveries or to process WAG.

In October 2009, fishery participants petitioned the Council for approval of an emergency rule to suspend the regional designation for the 2009/2010 WAG fishing season. At the December 2009 meeting, the Council recommended emergency action due in part to public testimony that alternative processing capacity in the West region was not economically feasible in the short term. Specifically, processor representatives testified that operating a floating processor in the West region for this season would not be profitable, due to the short length of the golden king crab fishery, the low TAC, the expected price per pound for golden king crab, and the costs associated with operating in that remote location.

On February 18, 2010, NMFS published an emergency action to exempt West-designated IFQ and West-designated IPQ for the WAG fishery from the West regional designation until August 17, 2010 (75 FR 7205). Removing the West regional designation from this IFQ and IPQ temporarily relaxed the requirements that these shares be used in the West region. NMFS extended the emergency action on August 17, 2010 (75 FR 50716), and the exemption is in effect through February 20, 2011.

#### *Objectives and Rationale for the Proposed Action*

At its April 2010 meeting, the Council adopted Amendment 37 to the FMP. If approved, Amendment 37 would address the lack of processing capacity in the West region by establishing a process for eligible contract signatories, to request that NMFS exempt the WAG fishery from the West regional delivery requirements. The Council and NMFS recognize that the regional delivery requirements would be untenable if processing capacity is not available in the region, potentially resulting in unutilized TAC. Amendment 37 would establish a means to enhance stability in the fishery, while continuing to promote the sustained participation of the municipalities intended to benefit from the West regional delivery requirements.

#### **Description of the Proposed Action**

Amendment 37 would establish regulations for eligible contract signatories in the WAG fishery to apply for an exemption to the West regional delivery requirements that would apply to all West-designated IFQ and IPQ holders. Under this proposed action, eligible contract signatories could contractually agree to complete an application to NMFS requesting an

exemption from the West regional delivery requirements. Eligible participants could submit an application to NMFS at anytime during the crab fishing year. Upon approval of a completed application, NMFS would exempt all West-designated Class A IFQ and IPQ from the West regional delivery requirements for the remainder of the crab fishing year. Such an exemption would enable all West-designated Class A IFQ and IPQ holders to deliver and receive WAG crab at processing facilities outside of the West region, thereby promoting the full utilization of the TAC when processing capacity is not available in the West region.

This action differs from the emergency rules in that it would not remove the regional designation established under 50 CFR 680.40(c)(4) and (e)(2). Instead, NMFS is proposing to preserve the regional delivery requirements in order to promote the reestablishment of processing capacity in the West region. Under this proposed action, NMFS would continue to annually issue WAG Class A IFQ and IPQ with a West regional delivery requirement but would exempt West-designated IFQ holders and IPQ holders from the West regional delivery requirements if the required parties apply for and are granted an exemption. By removing the delivery requirements only if eligible contract signatories, who would be comprised of QS holders, PQS holders, and the cities of Adak and Atka, agree to apply for an exemption, this action maintains the West regional delivery requirements in all years.

In some years, it may not be possible for fishery participants to predict the availability of West region processing capacity. Therefore, this proposed action provides the flexibility necessary for eligible contract signatories to request an exemption at any point during a crab fishing year. In order to fully utilize the TAC in a given year, it may be necessary for fishery participants to respond quickly to unforeseen disruptions in processing capacity. From the date an exemption is approved by NMFS, all West-designated WAG IFQ could be delivered east of 174° W. long. until the end of that crab fishing year.

#### *Eligible Contract Signatories*

Amendment 37 would establish regulations that identify the eligible contract signatories as those QS holders, PQS holders, and municipalities who would be eligible to apply for an exemption from the West regional delivery requirements. The Council's recommendation required the inclusion of QS and PQS holders that are

substantially invested in the fishery and the municipalities intended to benefit from the regional delivery requirements. In selecting the eligible contract signatories, the Council sought to limit the necessary contract parties to participants that best meet the intent of this proposed action and participants able to respond relatively quickly to a lack of in-region processing capacity.

The Council selected application requirements that are necessary for the eligible contract signatories to request an exemption: (1) Any person or company that holds in excess of 20-percent of the West-designated WAG QS; (2) any person or company that holds in excess of 20-percent of the West-designated WAG PQS; and (3) the cities of Adak and Atka. Currently, participants in the WAG fishery that hold QS or PQS are able to verify their portion relative to other QS or PQS holders by accessing the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. For the purposes of this action, NMFS proposes to post the QS and PQS holdings on its website following the end of the transfer application period (August 1) and prior to the start of the WAG fishery (August 15). Participants holding 20-percent or less of either share type would have no direct input into the contract negotiations or applications; however, once granted, an exemption would apply to all West-designated IFQ and IPQ holders. Once granted, the exemption does not obligate an IFQ or IPQ holder who is not a contract signatory to deliver outside of the West region, but does provide that flexibility.

As described in the Classification section of this preamble, the Council considered several thresholds of QS and PQS ownership when considering eligibility criteria. The Council recommended a greater than 20-percent minimum participation threshold for eligibility because the inclusion of share holders with less economic incentive to harvest or process West-designated WAG could impede effective negotiations. Participants with less than or equal to 20-percent ownership could withhold participation in an exemption to extract more favorable terms from larger entities with greater economic incentive to fully harvest and process the IFQ and IPQ. IFQ and IPQ holders that are substantially invested in the fishery are more likely to act quickly to ensure that TAC is fully utilized. By establishing the greater than 20-percent threshold, this proposed action is intended to provide a balance between efficiency and the participation of QS and PQS holders. Additionally, these eligibility criteria are intended to

balance the interests of WAG fishery QS and PQS holders with the municipalities intended to benefit from the West regional delivery requirements.

The Council selected the 20-percent threshold for CVO QS holders in recognition that consolidation in the fleet has led to fewer vessels actively fishing. As the RIR (*see ADDRESSES*) for this proposed action shows, during the 2009/2010 crab fishing year there were eight QS holders that were eligible to receive West-designated IFQ in the WAG fishery; however, only two QS holders were both subject to the regional delivery requirements and met the greater-than-20-percent threshold proposed by this action. The combined holdings of the remaining six CVO QS holders represent only 29 percent of the total West designated IFQ in the WAG fishery. These CVO QS holders have consolidated their IFQ under the cooperative provisions implemented under the Program, at 50 CFR 680.21, and are not actively participating in the fishery.

Similar consolidation has occurred with PQS holders resulting in three of the seven PQS holders controlling 95 percent of the West designated PQS, during the 2009/2010 crab fishing year. Of these, only two PQS holders would have met the 20-percent threshold for West-designated WAG PQS specified in the action. The remaining four CVO PQS holders represent only 12 percent of the total West-designated IFQ in the WAG fishery. Notably, the owner of the Adak processing facility holds nearly 11 percent of the remaining West-designated PQS. The owner of the Adak facility and other minor holders of West-designated PQS would not qualify under the 20-percent eligibility threshold recommended by the Council and proposed under this action. The Council realized the proposed threshold would exclude the Adak facility operator; however, the uncertain status of the PQS held by the Adak facility prevented the Council from designating the Adak facility as a necessary contract signatory under this proposed action.

Similarly, the Council considered, but declined to include, shore-based processors as necessary signatories to an application to request an exemption from the regional delivery requirements. Other processing facilities in the region have not substantially participated in this fishery and were not considered to be substantially invested in the WAG fishery. The Council noted that the interests of the shore-based processing activities and associated revenue for the cities of Adak and Atka should instead be protected by the inclusion of the cities of Adak and Atka as required

signatories. As the intended beneficiaries of the West regional delivery requirements, the proposed action would require the approval of both the City of Adak and the City of Atka to exempt IFQ and IPQ holders from the West regional delivery requirements. This approach is also consistent with the overall goal of the Program to provide stability for municipalities in the West region, not specific processing facilities, through the regional delivery requirement.

This proposed action ensures that the municipalities intended to benefit from the regional delivery requirements participate in any agreement to deliver West-designated WAG east of 174° W. long. If approved, NMFS would require the unanimous consent of all eligible contract signatories, to ensure that the interest of the cities of Adak and Atka are protected. The Council determined that the inclusion of the cities of Adak and Atka as required signatories would continue to promote the development of consistent processing capacity in the West region because these municipalities would likely withhold consent to an exemption to foster local deliveries. In particular, the City of Adak is likely to protect the regional designation because the sole, albeit nonfunctioning, crab processing facility is located in the City of Adak, and the city benefits by receiving and processing WAG. A municipality that typically benefits from taxes levied on the processor for deliveries in the WAG fishery receives little or no revenue when the shore-based processing capacity is unreliable or nonexistent. Presumably, contract negotiations would be facilitated if QS holders and PQS holders provide some economic benefits to the municipalities in return for each community's agreement to an exemption from the delivery requirements. For example, reimbursement of these lost revenues may provide adequate incentive for a community to consent to allow deliveries to occur east of 174° W. long. Alternatively, a community withholding consent to an exemption could attract the development of additional shore-based processing infrastructure to the region. In the short term, the municipalities are likely to agree to an exemption from the delivery requirements; however, annual unanimous consent for an exemption ensures that the long-term interests of these municipalities are considered in any negotiations with the eligible QS and PQS holders.

Although IFQ and IPQ holders are also likely to support an exemption from the West regional delivery

requirements in the short term, the Council concluded that the costs associated with delivering WAG outside of the West region are likely to promote the development of processing capacity inside the West region. Harvesters and processors pursuing processing capacity outside of the region are likely to incur higher costs associated with the increased transit time and fuel cost required to deliver outside of this remote location. IFQ and IPQ holders noted the operational efficiencies if there is reliable processing capacity in the West region.

#### *Approval of Exemption*

NMFS recognizes the importance of the West regional delivery requirements and would require the unanimous agreement of all eligible contract signatories on an annual basis to exempt the WAG Class A IFQ from the West regional delivery requirements. To be approved, all parties meeting the eligibility requirements at the time the application is submitted must signify their agreement of the exemption on the application. NMFS would grant an exemption to the regional delivery requirements, if all eligible contract signatories submit a completed application form, including an affidavit affirming that a master contract has been signed by all eligible contract signatories.

#### **Proposed Changes to the Program**

This proposed rule would modify or add regulations at 50 CFR 680.4, 680.7(a)(2), and 680.7(a)(4). These proposed changes would apply as described in the following sections of this preamble.

#### *Application*

The proposed rule would add regulations at 50 CFR 680.4(o) to establish the process for eligible participants to request an exemption for all West-designated IFQ and IPQ from regulations requiring that WAG be processed west of 174° W. long. The proposed regulations require all eligible contract signatories to submit a completed application before NMFS would approve an exemption for all IFQ and IPQ holders from the West regional delivery requirements in the WAG fishery. For NMFS to consider an application for approval, all eligible signatories, or their authorized representatives, must sign and date an affidavit affirming that all information provided on the application is true, correct, and complete to the best of his or her knowledge and belief.

Due to the complexities associated with responding quickly to unforeseen

disruption of processing capacity and the remote nature of the fishery, it may be necessary for authorized representatives to sign for the person, company, or municipality designated in proposed regulations as an eligible contract signatory at 50 CFR 680.4(o)(2)(i). For the cities of Adak and Atka, it is assumed that the Mayor or City Clerk would sign on behalf of the City; however, another authorized representative of the City could sign on behalf of the City as long as documentation of that authority is demonstrated on the application. All authorized representatives must clearly identify the eligible contract signatories on whose behalf they are signing the application, and attach documentation supporting that authority.

The applicants must provide information describing how eligible contract signatories meet the requirements and that all eligible signatories are included on the application. Eligible contract signatories must provide their name and NMFS person ID, or document the identity and authority of an authorized representative. Additional documents supporting eligibility under the proposed regulations at 50 CFR 680.4(o)(2)(i) may be attached to an application to facilitate approval.

#### *Approval of Application*

If NMFS receives a completed application submitted under one of the approved methods described in the proposed regulations at 50 CFR 680.4(o), then NMFS will process that application as soon as possible. Once received by NMFS, the approval process would include verification that:

- Each eligible contract signatory affirms that a master contract, authorizing the completion of the application to request that NMFS grant an exemption to West-designated IFQ and West-designated IPQ holders in the Western Aleutian Golden king crab fishery from the West regional delivery requirements, has been completed;
- Each eligible contract signatory has signed the application to NMFS requesting an exemption from the West regional delivery requirements proposed at 50 CFR 680.4(o)(2)(i); and,
- Each eligible contract signatory has signed an affidavit affirming that (1) a master contract has been signed and (2) all applicable information provided in the application is true, correct, and complete to the best of his or her knowledge and belief.

Based on experience with similar actions, NMFS would likely complete the review of an application within 10 calendar days. Contract signatories

should consider the potential time lag between submission of a completed application and the effective date of NMFS approval in master contract negotiations. NMFS approval of an annual exemption from the Western Aleutian Islands golden king crab West regional delivery requirements will be made publicly available at the NMFS Web site at <http://alaskafisheries.noaa.gov>.

The evaluation of an application for an annual exemption would require a decision-making process that would be subject to administrative appeal. Applications not meeting the requirements will not be approved, and NMFS would issue an initial administrative determination (IAD) to indicate the deficiencies and discrepancies in the information (or the evidence submitted in support of the application) and provide information on how an applicant could appeal an IAD. The appeals process is described under 50 CFR 679.43. However, if an application is denied, eligible contract signatories could reapply at any time during a crab fishing year. This program is designed to be flexible and includes no deadlines for submission or limits on the number of times applications could be submitted to NMFS.

#### *Duration of Exemption*

To expedite an exemption from the delivery requirements, the proposed regulations at 50 CFR 680.4(o)(3) would establish the effective date of the exemption as the date the completed application was approved by NMFS. To avoid potential uncertainty about whether an application was received, the proposed regulations would require an application to retain objective written evidence that the NMFS Alaska Region received an application. For example, if the application is sent via U.S. Postal Service, the applicants would need to retain the delivery confirmation receipt, or other appropriate documentation issued by the U.S. Postal Service.

This proposed rule would also establish the duration of an exemption. Consistent with the Council's intent to retain the West regional delivery requirements unless NMFS annually approves an application for an exemption, exemptions would commence on the effective date and expire at the end of that crab fishing year (June 30). Therefore, an exemption must be agreed upon by all eligible contract signatories annually. IPQ or IFQ processed outside of the West region prior to the effective date would not be exempt from the West regional delivery requirements. Proposed

regulations at 50 CFR 680.4(o)(3) and (o)(4), and prohibitions at 50 CFR 680.7(a)(2) and (a)(4), would provide for a contractually defined exemption while retaining the regional delivery requirements, at 50 CFR 680.40(c)(4) and 50 CFR 680.40(e)(2), as the default for the WAG fishery.

### Classification

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

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

### Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis (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. A description of the proposed action, why it is being considered, and the legal basis for this proposed action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble and are not repeated here. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (*see ADDRESSES*).

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

The preferred alternative directly regulates certain QS holders, IFQ holders, PQS holders, IPQ holders, the cities of Adak and Atka, and possibly certain shore-based processors in those two municipalities. The fishery has 15 QS holders, of which 14 are estimated to be small entities. One of these entities is a community development quota (CDQ) group; one is a wholly owned subsidiary of a CDQ group; and the others do not exceed the \$4.0 million threshold.

In the 2009/2010 season, the fishery had three holders of West region QS, two of which are estimated to be small entities. One of these is a wholly owned subsidiary of a CDQ group, and the other is estimated to have annual receipts below the \$4.0 million threshold. The fishery had seven holders of West region PQS, of which four are estimated to be small entities. One entity is a CDQ group; another is a wholly owned subsidiary of a CDQ

group, and two have fewer than 500 employees. One entity is a CDQ group; another is a wholly owned subsidiary of a CDQ group, and the third has fewer than 500 employees. Both the City of Adak and the City of Atka qualify as small entities, as neither has more than 50,000 residents.

### Duplicate, Overlapping, or Conflicting Federal Rules

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

### Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

In addition to the preferred alternative, the Council considered alternatives that would have required the consent of holders of less than 20-percent of the pools of QS and PQS and the consent of shore-based processors in Adak or Atka that processed over a threshold (i.e., 5-percent, 10-percent, or 20-percent) of the West-designated shares in the year preceding the exemption. The Council elected not to select these options, as the large share holders could more efficiently process the exemption, and the small share holders would be adequately represented by the required parties to the exemption (including the cities of Adak and Atka). The inclusion of share holders with less economic incentive to harvest or process West-designated WAG could impede effective negotiations by withholding participation in an exemption to extract more favorable terms from larger entities with greater economic incentive to fully harvest and process the IFQ and IPQ. IFQ and IPQ holders that are substantially invested in the fishery are more likely to act quickly to ensure that TAC is fully utilized. Similarly, holders of significant amounts of PQS are only likely to support an exemption in years when processing capacity is unavailable in the West region, thereby facilitating the processing needs of all IPQ holders.

The Council also considered a variety of other approaches to address the problem identified in the purpose and need statement. One approach considered was an exemption that would be available only after a factual finding of the absence of processing capacity. This provision could be administered either directly by NMFS or by an arbitrator selected by the interested parties. The Council elected not to advance this alternative, as factual findings of the absence of processing capacity may be administratively unworkable. With

mobile processing platforms, capacity availability can change in a relatively short time period. Determinations of the availability of capacity may not be possible, given the potential for short-term changes in capacity. Small entities that are IFQ or IPQ holders would be disadvantaged by this alternative, since the exemption may be unavailable during unforeseen interruptions in processing capacity.

The Council also considered a provision under the preferred alternative that would have prohibited any party required to consent to the exemption from unreasonably withholding consent to the exemption. The proposed provision would have been administered by an arbitrator jointly selected by the required parties. Although such a condition might be desirable, NMFS would likely not be able to administer this provision. Even with an arbitrator, NMFS would be required to provide the interested parties with the opportunity to appeal any arbitrator's decision. Under the appeal, NMFS would be required to make a *de novo* finding (i.e., an original finding without deference to the arbitrator's decision). As a result, the use of an arbitrator may delay the granting of the exemption. In addition, NMFS may be unable to expeditiously process any claim, if factual matters are disputed. To accommodate time constraints associated with contesting a party's withholding consent to an exemption, a timeline for application for the exemption would need to be developed. This timeline would limit flexibility and could prevent the exemption from achieving its intended purpose.

The Council also elected not to advance an alternative to remove the West regional delivery requirements altogether. Since the West regional delivery requirements are intended to facilitate the development of processing in the region, when such development is feasible, removal of the exemption would be inappropriate. Although this alternative would have removed the burden of the West regional delivery requirements from small entities holding QS, PQS, IFQ, and IPQ, the alternative would have removed any regulatory inducement to process in the West region. The potential future benefit of those requirements would therefore be denied to the cities of Adak and Atka, which are also defined as small entities. Although the exemption created by the preferred alternative could reduce the potential for the development of processing capacity in the cities of Adak and Atka, it also would provide these two small entities

with the ability to withhold consent, as a means of inducing PQS and IPQ holders to develop processing capacity in the West region.

#### *Recordkeeping and Reporting Requirements*

The reporting, recordkeeping, and other compliance requirements could be increased under the proposed action, if parties agree to pursue an exemption. This proposed rule would add recordkeeping and reporting requirements needed to implement the preferred alternative. This includes the application to NMFS for an exemption from the West regional delivery requirements proposed at 50 CFR 680.4(o).

The recordkeeping, reporting, and compliance requirements necessary to implement the preferred alternative would apply to the QS holders, PQS holders, and the municipalities meeting the requirements for eligible signatories, proposed at 50 CFR 680.4(o).

Participation in any application to exempt IFQ and IPQ from the West regional delivery requirements is voluntary, but may be necessary to fully utilize the TAC in seasons when in-region processing facilities cannot meet the capacity requirements of the fishery. Each designated signatory to the application must meet the requirements of the application process proposed at 50 CFR 680.4(o). To request an annual exemption, all designated signatories must contractually agree to submit to NMFS one completed application form, including a signed affidavit. The proposed recordkeeping and reporting requirements are expected to be minimal because all eligible signatories must work together to apply, thereby sharing the cost of developing and submitting an application. The time and cost involved in developing and submitting an application would be less per eligible signatory than it would be if each signatory developed an application individually.

The professional skills necessary to prepare the reporting and recordkeeping requirements that would apply to small entities under this proposed rule include the ability to read, write, and understand English; the ability to use a computer and the Internet; and the authority to take actions on behalf of the designated signatory. Each of the small entities must be capable of complying with the requirements of this proposed rule and have the financial resources to obtain any additional legal or technical expertise that they require to advise them.

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

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB Control No. 0648-0514.

Public reporting burden per response is estimated to average 2 hours for the proposed Application for Annual Exemption from the Western Aleutian Islands Golden King Crab West regional delivery requirements and 4 hours for the appeal letter if the application is denied, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the 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 e-mail to *OIRA\_Submission@omb.eop.gov* or fax to 202-395-7285.

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

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 9, 2011.

**Samuel D. Rauch III,**

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

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

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

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

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

2. In § 680.4, add paragraph (o) to read as follows:

#### **§ 680.4 Permits.**

\* \* \* \* \*

(o) *Exemption from Western Aleutian Islands golden king crab West regional delivery requirements*—(1) *Request for an Annual Exemption from Western Aleutian Islands golden king crab West regional delivery requirements.* The eligible contract signatories (see qualifications at § 680.4(o)(2)(i)) may submit an application to NMFS to request that NMFS exempt West designated IFQ and West designated IPQ for the Western Aleutian Islands golden king crab (WAG) fishery from the West regional delivery requirements at § 680.7(a)(2) and (a)(4). All eligible contract signatories must submit one completed copy of the application form. The application must be submitted to NMFS using one of the following methods:

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

(ii) *Fax:* 907-586-7354; or

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

(2) *Application form.* The application form is available on the NMFS Alaska region Web site (<http://alaskafisheries.noaa.gov>) or from NMFS at the address in paragraph (o)(1)(i) of this section. All information fields on the application form must be accurately completed, including—

(i) *Identification of Eligible Contract Signatories.* Full name of each eligible contract signatory; NMFS person ID; and appropriate information that documents the signatories meet the requirements. If the application is completed by an individual who is the authorized representative, then documentation demonstrating the authorization must accompany the application. Eligible contract signatories are—

(A) *QS holders.* Any person that holds in excess of 20-percent of the West designated WAG QS at the time the contract was signed, or their authorized representative.

(B) *PQS holders.* Any person that holds in excess of 20-percent of the West designated WAG PQS at the time the contract was signed, or their authorized representative.

(C) *Municipalities.* designated officials from both the City of Adak and the City of Atka or an authorized representative.

(ii) *Affidavit affirming master contract has been signed.* Each eligible contract signatory, as described in paragraph (o)(2)(i) of this section, must sign and date an Affidavit affirming that a master contract has been signed to authorize the completion of the application to request that NMFS exempt West designated IFQ and West designated IPQ for the WAG fishery from the West regional delivery requirements. The eligible contract signatories must affirm on the Affidavit that all information is true, correct, and complete to the best of his or her knowledge and belief.

(3) *Effective Date.* A completed application must be approved by NMFS before any person may use WAG IFQ or IPQ with a West regional designation outside of the West region during a crab fishing year. If approved, the effective date of the exemption is the date the application was approved by NMFS. Any delivery of WAG IFQ or IPQ with a West regional designation outside of the West region prior to the effective

date of the exemption is prohibited under § 680.7(a)(2) and (a)(4).

(4) *Duration.* An exemption from West regional delivery requirements is only valid for the remainder of the crab fishing year during which the application was approved by NMFS. The exemption expires at the end of the crab fishing year (June 30).

(5) *Approval*—(i) NMFS will approve a completed application for the exemption from Western Aleutian Islands golden king crab West regional delivery requirements if all eligible contract signatories meet the requirements specified in paragraph (o)(2)(i) of this section.

(ii) The Regional Administrator will not consider an application to have been received if the applicant cannot provide objective written evidence that NMFS Alaska Region received it.

(iii) NMFS approval of an annual exemption from the Western Aleutian Islands golden king crab West regional delivery requirements will be made publicly available at the NMFS Web site at <http://alaskafisheries.noaa.gov>.

2. In § 680.7, revise paragraphs (a)(2) and (a)(4) to read as follows:

**§ 680.7 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(2) Receive CR crab harvested under an IFQ permit in any region other than the region for which the IFQ permit is designated, unless deliveries of West designated WAG IFQ are received pursuant to a NMFS approved exemption from the regional delivery requirements, as described under § 680.4(o).

\* \* \* \* \*

(4) Use IPQ in any region other than the region for which the IPQ is designated, unless West designated WAG IPQ is used pursuant to a NMFS approved exemption from the regional delivery requirements, as described under § 680.4(o).

\* \* \* \* \*

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