



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

RIN 0648-BA61

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) submitted Amendment 31 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) to NMFS for review. If approved, Amendment 31 would amend the Bering Sea and Aleutian Islands Crab Rationalization Program (CR Program) within the FMP to: temporarily expand the eligibility requirements for individuals wishing to acquire C share Quota Share (QS) by transfer; establish minimum participation requirements for C share QS holders to be eligible to receive an annual allocation of Individual Fishing Quota (IFQ); establish minimum participation requirements for C share QS holders to be eligible to retain their C share QS and establish an administrative process for revocation of an individual's C share QS, if he or she fails to satisfy the minimum participation requirements; establish a regulatory mechanism to ensure that three percent of the total allowable catch (TAC) for each CR Program crab fishery is allocated as IFQ to holders of C share QS; and remove the prohibition on

leasing C share IFQ. Amendment 31 is necessary to ensure that individuals who hold C shares are active in the CR Program fisheries and to ensure that application deadlines provide adequate time to resolve disputes. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Comments on the amendment must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2010-0265, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2010-0265, 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 without change. All personal identifying information (e.g., name, address, etc.), 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Amendment 31, the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) and the categorical exclusion prepared for this action—as well as the Environmental Impact Statement prepared for the CR Program—may be obtained from <http://www.regulations.gov> or from the Alaska Region website at <http://alaskafisheries.noaa.gov>. NMFS determined that this proposed action was categorically excluded from the need to prepare an environmental assessment under the National Environmental Policy Act.

FOR FURTHER INFORMATION CONTACT: Karen Palmigiano, 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 Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs FMP (FMP). The 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 (Public Law 108-199, section 801). Regulations implementing the FMP, including the CR Program, are primarily located at 50 CFR part 680.

Overview of CR Program and C Shares

The CR Program is a limited access privilege program that allocates the harvest of certain crab fisheries managed under the FMP among harvesters, processors, and coastal communities. Under the CR Program, NMFS issued four types of quota share (QS) to

persons based on their qualifying harvest histories in certain BSAI crab fisheries during a specific period of time defined under the CR Program. The four types of QS are catcher vessel owner (CVO), catcher processor owner (CPO), catcher vessel crew (CVC), and catcher processor crew (CPC). CVC and CPC QS are also known as “crew shares” or “C shares.” At the beginning of the CR Program, NMFS issued 97 percent of the QS as owner QS, either CVO or CPO, and issued the remaining three percent as C shares, either CVC or CPC.

NMFS issued C shares to individuals holding State of Alaska Commercial Fisheries Entry Commission (CFEC) Interim Use Permits, generally vessel captains, who met specific historic and recent participation requirements in CR Program fisheries. NMFS did not issue C shares to individuals who did not meet both the historic and recent participation criteria. After the initial issuance of C shares, individuals may only acquire C shares through transfer.

Each year, a QS holder submits a timely and complete “Application for Annual Crab Individual Fishing Quota (IFQ) Permit” in order to receive an exclusive harvest privilege for a portion of the total allowable catch (TAC) for each CR Program fishery in which the person holds QS. This harvest privilege is conferred as IFQ, and provides the QS holder with an annual allocation of pounds of crab for harvest in a specific CR Program crab fishery during the year in which it was allocated. The size of each annual IFQ allocation is based on the amount of QS held by a person in relation to the total QS pool in a crab fishery. For example, an individual holding C share QS equaling one percent of the C share QS pool in a crab fishery would receive IFQ to harvest one percent of the annual TAC allocated to C share QS in that crab fishery. NMFS issues holders of

CVO QS two types of IFQ: Class A IFQ, which must be delivered to a processor holding a matching amount of IPQ, and Class B IFQ, which may be delivered to any registered crab receiver. Current regulations do not require C share IFQ to be matched with IPQ, and C share IFQ may be delivered to any registered crab receiver, similar to Class B CVO IFQ (see § 680.40(2)(b)(iii)).

When initially establishing C shares, the Council intended that individuals holding C shares be active in CR Program fisheries. To ensure active participation, the CR Program requires C shareholders to be onboard the vessel when their C share IFQ is harvested (the “holder on-board” requirement) and prohibits C shareholders from leasing their C share IFQ except in the case of a hardship. However, the CR Program exempts a C shareholder from these two requirements if the C shareholder has joined a crab harvesting cooperative and the holder’s C share IFQ is converted to cooperative IFQ. The CR Program also includes participation criteria that must be satisfied for an individual to be eligible to receive C share QS by transfer. To receive C share QS by transfer, current regulations require an applicant to meet eligibility requirements at the time of transfer. To meet these eligibility requirements, an individual may submit an Application for BSAI Crab Eligibility to Receive QS/PQS by Transfer in advance of submitting a transfer application, or at the same time as submitting a transfer application. The regulations require that an individual must be a U.S. citizen with 1) at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery; and 2) participation in one of the CR Program fisheries in the 365 days prior to the date the transfer application is submitted to NMFS. If NMFS determines that an individual is eligible to receive C share QS by transfer, that individual would be required to submit

proof of participation in one of the CR Program fisheries in the 365 days prior to the date of their application to transfer QS if more than 365 days has elapsed between NMFS' determination of eligibility and the submission of the transfer application. (See regulations at § 680.41(c)(2)(C).)

Annually, C share IFQ is assigned based on the individual's underlying QS. In a CR Program fishery, the annual allocation of IFQ assigned to any person (p) is based on the TAC for that crab QS fishery (f) less the allocation to the Western Alaska Community Development Quota (CDQ) Program and the Western Aleutian Islands golden king crab fishery. As expressed in regulations at § 680.40(h), the annual IFQ allocation calculation is as follows:

- $IFQ_{TAC_f} = TAC_f - (\text{Western Alaska CDQ Program} + \text{Western Aleutian Islands golden king crab fishery})$
- $IFQ_{p_f} = IFQ_{TAC_f} * (QS_{p_f} / QS_f)$

Based on these calculations, a person holding one percent of the QS in a CR Program fishery (QS_{p_f}) would receive IFQ to harvest one percent of the annual TAC in that CR Program fishery.

Need for Action

At its June 2007 meeting, the Council received public testimony and recommendations from its Advisory Panel advocating for modifications to the participation requirements for acquisition and use of C shares. Participants in the CR Program fisheries raised the following issues:

- At least 750 former crew, who did not receive an initial allocation of C shares but who were active in CR Program fisheries in the five years preceding

implementation of the CR Program, are no longer active in CR Program fisheries due to the significant reduction in the number of vessels participating in CR Program fisheries subsequent to implementation of the CR Program.

- The current eligibility requirement for recent participation in one of the CR program crab fisheries prevents acquisition of C shares by individuals formerly active in CR program fisheries but no longer participating in CR Program fisheries due to the significant fleet contraction and resulting loss of crew positions on crab boats.
- Estimates of available information indicate that approximately 40% (97 individuals) of the individuals who received an initial allocation of C share QS (239 individuals) have remained active in the CR program fisheries, while approximately 60% (142 individuals) have not remained active in CR program fisheries.
- The regulations intended to keep C share QS holders active in the fisheries are not working due to the exemptions from these active participation requirements for C shareholders who join a crab harvesting cooperative.

Given this information, the Council determined that the current eligibility requirements for the acquisition of C shares have the effect of preventing some displaced, long-time captains and crew from acquiring C shares and that temporary modifications are necessary to increase the pool of individuals eligible to acquire C shares by transfer. The Council also determined that revisions to the current active participation requirements are necessary to establish reasonable participation requirements for C shareholders and to ensure that all C shareholders remain active in the fisheries. At its

April 2008 meeting, the Council took final action which forms the basis for Amendment 31 to the FMP

The Proposed Actions

Amendment 31 would make several changes to FMP provisions governing the acquisition, use, and retention of quota share established for captain and crew, known as crew quota share or C shares, under the CR Program. Specifically, Amendment 31 would: 1) Temporarily expand the eligibility requirements for individuals wishing to acquire C share QS by transfer; 2) establish minimum participation requirements for C share QS holders to be eligible to receive an annual allocation of IFQ; 3) establish minimum participation requirements for C share QS holders to be eligible to retain their C share QS and establish an administrative process for revocation of an individual's C share QS if he or she fails to satisfy the minimum participation requirements; 4) establish a regulatory mechanism to ensure that 3 percent of the TAC for each CR Program crab fishery is allocated as IFQ to holders of C share QS; and 5) remove the prohibition on leasing C share IFQ .

Temporary Modifications to Eligibility Criteria for Acquisition of C Share QS by Transfer

Under the status quo, to receive C share QS by transfer a person must be an individual with at least 150 days of sea time in a harvest capacity in a U.S. commercial fishery and have been active as a crewmember in one of the CR Program fisheries in the last 365 days. Under this standard, captains and crew displaced by fleet contraction that have not found a position in one of the CR Program fisheries would not be permitted to acquire C share QS until they participated in a landing. Based on the fleet contraction

that occurred at the inception of the CR Program, it is likely that as many as two-thirds of the persons that would have met this standard prior to the implementation of the CR program would not currently meet this standard.

Amendment 31 would modify the recent participation requirements, for a limited time, to include additional eligibility requirements that would be less restrictive than the current requirements. Specifically, in addition to the existing eligibility criteria, Amendment 31 would permit the transfer of C share QS to an individual who is a U.S. citizen with at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery and who either (1) received an initial allocation of CVC or CPC QS, or (2) participated in at least one delivery of crab from a fishery in the CR program in three of the five crab fishing years prior to the start of the CR Program, starting with the 2000/2001 crab fishing year through the 2004/2005 crab fishing year.

Under Amendment 31, both initial recipients of C share QS, as well as individuals who participated in CR crab fisheries for three of the five years prior to the start of the CR program, would be eligible to acquire C share QS by transfer. The intended effect of the proposed change is to temporarily expand the pool of individuals eligible to acquire C share QS by transfer to include individuals who were active in the crab fishery immediately prior to implementation of the program, but who do not meet the current recent participation requirement for activity in the 365 days preceding the transfer. Amendment 31 would not remove the current eligibility criteria. Therefore, an individual would be eligible to acquire C share QS under the existing eligibility criteria, as well as the eligibility criteria that would be added to the FMP by Amendment 31. The eligibility criteria added by Amendment 31 would exist only for a period of four years from the

effective date of the final rule to implement Amendment 31, if Amendment 31 is approved. After this transitional period, the eligibility criteria added by Amendment 31 would no longer be valid, and the current eligibility criteria would apply to all individuals looking to acquire C share QS by transfer. The proposed changes to the eligibility criteria provide individuals formerly active in CR program fisheries, but who may not have been able to continue active participation in the CR crab fisheries, with an opportunity to acquire C share QS during the period of time under Amendment 31 in which current C share QS holders would be transitioning into compliance with the active participation requirements for C shareholders that also would be imposed by Amendment 31.

The benefit to those receiving eligibility for acquiring C share QS during the transitional period and the effects on the market for C share QS could be influenced by several factors. If C share QS holders are required to be active in the crab fisheries to receive IFQ or if C share QS holders are required to divest after a period of inactivity, which would be required under Amendment 31 as explained in the following sections, the transitional eligibility period could have minimal effects on individuals receiving the eligibility. An individual who becomes eligible to purchase C share QS during the proposed transitional eligibility period would be expected to satisfy participation requirements for C share QS holders and much less likely to purchase C share QS if the individual would not be eligible to receive IFQ or would be required to divest his or her C share QS holdings after a period of inactivity.

Expanded eligibility for C share QS during the transitional period may also have an adverse effect on individuals currently active as captains and crew in the CR Program

fisheries. Competition for C share QS may increase with increased demand and, with limited space for crew and captains, individuals may find more competition for jobs. However, individuals who do not currently have a position on a boat may be less interested in obtaining C share QS, and if there are more individuals interested and able to purchase C share QS, this may provide an opportunity for those individuals no longer wanting to remain active in the fishery to sell their shares for a competitive price.

Active Participation Requirements for C Share IFQ and QS

The FMP currently requires individuals who hold C share IFQ to be onboard the vessel harvesting those IFQ. However, if a C share QS holder joins a cooperative, the IFQ from that C share QS are allocated to the cooperative, and the C shareholder is exempt from the holder onboard requirement with respect to those IFQ shares, as well as the current prohibition on leasing C share IFQ. The disparate treatment of individual holders of C share QS who are members of a cooperative versus holders of C share QS who are not members of a cooperative has had several effects, which were not the intention of the Council when creating the CR Program and C shares. First, the exemptions from the holder onboard requirement and the prohibition on leasing C share IFQ for holders of C shares who are members of a cooperative increase the incentive for a C shareholder to join a cooperative and essentially nullify the requirement for the holders of C shares to be onboard a vessel to harvest their IFQ. Since almost all holders of C share QS annually elect to join a cooperative, they do not have to be onboard the vessel while their C share IFQ are harvested and they are not prohibited from leasing their shares within the cooperative under the current requirements. While the Council intended to encourage the formation of cooperatives and the participation of C

shareholders as members in cooperatives, the Council expected that C shareholders would remain active participants in the CR program fisheries regardless of whether they were members of a cooperative. Additionally, as active C shareholders retire from captain and crew positions, it can be expected that many may elect to continue to remain members of cooperatives and retain their C share holdings, effectively reducing the number of C shareholders who are actively participating in the fisheries. Lastly, the market for C shares could be less fluid under the current active participation requirements because individuals who retire or exit the fisheries are still able to retain their C shares and benefit from them through cooperative membership. If only active captains and crew are permitted to hold and receive benefits from C shares, it is likely that the market for these shares will be more active and fluid, since individuals who retire or exit the fisheries would need to transfer their C shares.

Amendment 31 would require individuals holding C share QS to satisfy certain minimum fishery participation requirements in order to (1) receive annual allocations of C share IFQ and (2) maintain their eligibility to hold C share QS. In order to be eligible to receive an allocation of C share IFQ for the 2018/2019 crab fishing year and annually thereafter, Amendment 31 would require a C shareholder to demonstrate that he or she had either (1) participated as crew in at least one delivery of crab in one of the CR Program fisheries in the three crab fishing years preceding the year for which the individual is applying for C share IFQ or, (2) if the individual C share QS holder received an initial allocation of C share QS, participated as crew in at least 30 days of fishing in State of Alaska or Federal Alaska commercial fisheries in the three crab fishing years preceding the year for which the individual is applying for C share IFQ. If Amendment

31 is approved, the first crab fishing year in which the participation requirements for issuance of C share IFQ could be met would be the 2015/2016 crab fishing year. Holders of C shares would be able to provide proof of participation by including an ADF&G fish ticket with their name and/or an affidavit from the vessel owner with their application for IFQ. Similarly, in order for an individual to be eligible to retain C share QS, Amendment 31 would require a C share QS holder to demonstrate that he or she had either (1) participated in at least one delivery of crab in one of the CR Program fisheries during a rolling period of four crab fishing years that would start with the 2015/2016 crab fishing year, or (2) if the individual C share QS holder received an initial allocation of C share QS, participated in at least 30 days of fishing in State of Alaska or Federal Alaska commercial fisheries during a rolling period of four crab fishing years that would start with the 2015/2016 crab fishing year. A C shareholder who satisfies the participation requirement to receive an annual allocation of IFQ would also satisfy the participation requirement to retain their C share QS.

Amendment 31 would authorize NMFS to revoke C share QS held by individuals who are unable to provide proof of participation as described in the preceding paragraph for four successive crab fishing years. Under Amendment 31, NMFS would initiate C share QS revocation proceedings after 4 successive years of inactivity by a C share QS holder. Because the first year for satisfying the C share QS participation criteria is the 2015/2016 crab fishing, NMFS would not initiate a revocation proceeding until July 1, 2019, the start of the fifth crab fishing year following implementation of Amendment 31 if approved. The proposed rule to implement Amendment 31 describes the proposed administrative process that would be established for revocation of C share QS.

The Council's rationale for recommending revocation of C share QS from holders who are inactive in the CR Program fisheries for an extended period is that those C shareholders effectively withhold these shares from other active captains and crew who might wish to develop or expand their C share holdings. The Council recognized that without revocation, the incentive for inactive C shareholders to divest their QS could be rather minor, particularly for individuals who received their C share QS in the initial allocation. For many of these individuals, their relatively small annual IFQ allocations may not catch their attention, and the value of the underlying QS may be overlooked, as has happened with inactive individuals in the Halibut and Sablefish IFQ program. Without the threat of revocation, it is possible that a portion of the C share QS pool would remain stagnant for extended periods of time, which could reduce the size of and activity in the C share QS market.

Amendment 31 would not exempt C shareholders who join a cooperative from the proposed participation requirements to receive C share IFQ or to retain C share QS. Under Amendment 31, all C shareholders, regardless of whether they have joined a cooperative, would be required to meet the proposed participation requirements for receiving C share IFQ and retaining C share QS.

Amendment 31 also would remove the prohibition on leasing C share IFQ, which has been in effect since July 1, 2008. The Council determined that the prohibition on leasing C share IFQ as a measure to ensure active participation would no longer be necessary because under Amendment 31, C shareholders would be required to satisfy specific participation requirements and these participation requirements would apply to all C shareholders even when they are members of a cooperative.

Maintenance of C share IFQ Allocation at Three Percent of the Annual TAC

Under the CR Program, the Council initially allocated 97 percent of the QS pool to vessel owners as catcher vessel owner (CVO) and catcher processor owner (CPO) QS and the remaining three percent as C share QS. Because the amount of IFQ issued annually is a function of the number of QS units and the annual TAC amount for a given fishery, the annual IFQ allocation should generally reflect the same 97 percent allocation to vessel owners and three percent to vessel crew. For example, if Person Z owns two percent of the 97 percent of vessel owner QS and the TAC is 3,000,000 lbs, then Person Z would receive IFQ for 58,200 lbs, because 97 percent of 3,000,000 lbs is 2,910,000 lbs and two percent of that is 58,200 lbs. This allocation method maintains the intended QS and IFQ percentages originally implemented by the Council. However, the revocation of C share QS proposed by the Council under Amendment 31 could affect the 97 percent/3 percent split, reducing the amount of C share QS to less than 3 percent of the QS pool and consequently the amount of IFQ allocated to C shareholders.

The Council determined that it wanted to ensure that 3 percent of the annual TAC for each crab fishery continues to be allocated to C share QS holders. In order to address this, Amendment 31 would specifically require that 3 percent of the annual TAC for each crab fishery included in the rationalization program be allocated as IFQ to holders of C share QS. This provision would be implemented through a regulation change which is addressed in the proposed rule for Amendment 31. This new provision would maintain the C share IFQ allocation at its intended proportion of the IFQ pool (3 percent).

NMFS is soliciting public comments on proposed Amendment 31 through the end of the comment period (see DATES). Public comments on the proposed FMP

amendment must be received by the close of the comment period on Amendment 31 to be considered in the approval/disapproval decision on Amendment 31. All comments received by the end of the comment period, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 31. Comments received after the end of the public comment period for Amendment 31, even if received within the comment period for the proposed rule, will not be considered in the approval/disapproval decision on the FMP amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

Authority: 16 U.S.C. 1801 et seq.

Dated: December 9, 2014.

Emily H. Menashes,

Acting Director,

Office of Sustainable Fisheries,

National Marine Fisheries Service.

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