



This document is scheduled to be published in the Federal Register on 03/26/2015 and available online at <http://federalregister.gov/a/2015-06928>, and on [FDsys.gov](http://FDsys.gov)

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 902**

**50 CFR Part 680**

**[Docket No. 101214615-5254-02]**

**RIN 0648-BA61**

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

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 31 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). These regulations revise the rules governing the acquisition, use, and retention of quota share established for captains and crew, known as crew quota share or C shares, under the Crab Rationalization Program (CR Program). Regulations implementing Amendment 31 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 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. In addition, this final rule implements a regulatory amendment to the CR Program that: establishes an earlier deadline for filing annual IFQ, individual processing quota (IPQ), and crab harvesting cooperative IFQ applications, which increases the amount of time during which NMFS will suspend the processing of IFQ and IPQ transfer applications; shortens the amount of time in which to appeal an initial administrative determination to withhold issuance of IFQ or IPQ; and provides that an applicant's proof of timely filing for IFQ, IPQ, or cooperative IFQ creates a presumption of timely filing. Finally, this final rule revises the reporting period and due date for CR Program registered crab receiver (RCR) Ex-vessel Volume and Value Reports. This final rule 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 final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the FMP, and other applicable laws.

**DATES:** Effective May 1, 2015.

**ADDRESSES:** Electronic copies of Amendment 31 to the FMP, the Regulatory Impact Review (RIR)/ Initial Regulatory Flexibility Analysis (IRFA), and the Categorical Exclusion prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region website at <http://alaskafisheries.noaa.gov>. The Environmental Impact Statement, RIR, and Social Impact Assessment prepared for the CR Program are available from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS

Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and by e-mail to *OIRA\_Submission@omb.eop.gov* or faxed to 202-395-7285.

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

**SUPPLEMENTARY INFORMATION:** This final rule implements Amendment 31 to the FMP and regulatory amendments to the CR Program. NMFS published a notice of availability (NOA) for Amendment 31 on December 15, 2014 (79 FR 74058). The comment period on the NOA for Amendment 31 ended on February 13, 2015. The Secretary approved Amendment 31 on March 12, 2015, after accounting for information from the public, and determining that Amendment 31 is consistent with the FMP, the MSA, and other applicable law. NMFS published a proposed rule to implement Amendment 31 and the regulatory amendments on December 24, 2014 (79 FR 77427). The comment period on the proposed rule ended on January 23, 2015. NMFS received three comment letters during the comment periods on Amendment 31 and the proposed rule. The letters contained three unique comments. A summary of these comments and NMFS's responses are provided in the Comments and Responses section of this preamble.

## **Background**

### *CR Program*

Below is a brief description of the CR Program and the elements of that Program that apply to Amendment 31 and this final rule. For a more detailed description of the CR Program, please see section 2.3 of the RIR/IRFA (see **ADDRESSES**) and the preamble of the proposed rule (79 FR 77427; December 24, 2014).

Under the CR Program, NMFS issued four types of QS based on qualifying harvest histories in certain BSAI crab fisheries during a specific period of time defined under the CR Program. Two of these types of QS were issued as C share QS to holders of State of Alaska

Commercial Fisheries Entry Commission Interim Use Permits, generally vessel captains who met specific historic and recent participation requirements in CR Program fisheries. Vessel captains who did not meet both the historic and recent participation criteria did not receive initial allocations of C share QS. Three-percent of the QS pool for each CR Program fishery was issued as C share QS. The Council's intent in creating C share QS was to provide both a QS holding opportunity for long-term fishery participants who intended to remain active in the fisheries and an entry level QS acquisition opportunity for new entrants.

The Council intended IFQ derived from C share QS to be harvested by individuals active in the CR Program fisheries. To achieve this goal, CR Program regulations required that individuals wishing to acquire C share QS to demonstrate that they had at least 150 days of sea time in a harvesting capacity in any U.S. commercial fishery and recent participation in one of the CR Program fisheries by making a landing of CR Program crab in the year preceding the application to acquire C share QS.

Implementation of the CR Program resulted in a significant reduction in harvesting vessel fleet size and a commensurate reduction in employment opportunities for vessel crew. Efficiencies gained under the CR Program provide harvesting vessels the option to not participate in each fishing season for each CR Program crab species. These changes in fishing practices have made it difficult for individuals who wish to acquire C share QS to satisfy the participation requirement of making a landing of CR Program crab in the year preceding the application to acquire C share QS.

In addition, holders of C share QS may become members of harvesting cooperatives and, through contractual terms determined by the harvesting cooperative, may have IFQ derived from their C share QS harvested by other fishery participants. This ability to lease C share IFQ within a harvesting cooperative, coupled with the fleet contraction and changes in fishing practices occurring since implementation of the CR Program, rendered the initial

regulations related to acquisition of C share QS ineffective in ensuring that those QS are held by active participants in the CR Program fisheries.

### *Application Deadlines*

The crab fishing year begins on July 1 and ends on June 30. Annually, QS and PQS holders must apply for allocations of IFQ and IPQ, respectively, for the upcoming crab fishing year. QS holders apply for annual IFQ through an individual application. Currently, they must indicate on this application whether or not they are joining a cooperative. If they are joining a cooperative that year, the cooperative's annual IFQ application must include the QS holder's annual IFQ application (or a copy of that application). Because IPQ is not subject to cooperative management, a PQS holder applies for IPQ directly to NMFS, and NMFS issues IPQ directly to the PQS holder. Prior to this final rule, all applications for IFQ, IPQ, and cooperative IFQ had to be filed with the NMFS Restricted Access Management Program (RAM) by August 1. To aid QS and PQS holders in meeting the application deadline, NMFS provides application forms on its website (see **ADDRESSES**), highlights the application deadline on the site, and sends notices to QS and PQS holders near the end of the crab fishing year reminding them to apply for IFQ or IPQ for the next crab fishing year.

Although the crab fishing year begins on July 1, the individual crab fisheries open at different times later in the crab fishing year. The first crab fishery to open is the Aleutian Islands golden king crab fishery and, until recently, this fishery was scheduled to open on August 15. In March 2014, the State of Alaska changed the opening date for the Aleutian Islands golden king crab fishery to August 1, effective with the 2015/2016 crab fishing year, to allow for fishing to occur slightly earlier in the summer months when it is safer for the fishers. The remaining crab fisheries open on October 15 or later in the crab fishing year.

### *The Actions*

Below are brief descriptions of the actions implemented by this final rule. For more detailed descriptions of the actions and the rationale for these actions, please see section 2.4 of the RIR/IRFA (see **ADDRESSES**) and the preamble of the proposed rule (79 FR 77427; December 24, 2014).

The final rule makes several changes to regulations governing the acquisition, use, and retention of C share QS under the CR Program. The final rule temporarily expands the eligibility requirements regarding acquisition of C share QS by permitting 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 received an initial allocation of CVC or CPC QS or 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. The final rule does not remove the current eligibility criteria but adds to it the less restrictive eligibility criteria for a period of four years from the effective date of the final rule.

In order to receive an annual allocation of C share IFQ, the final rule requires a C share QS holder to have either participated in at least one delivery in a CR Program fishery in the three crab fishing years preceding the crab fishing year for which the holder is applying for IFQ, or received an initial allocation of C shares and participated in 30 days of State of Alaska or Alaska federal commercial fisheries in the three crab fishing years preceding the crab fishing year for which the holder is applying for IFQ. The final rule also requires holders of C share QS to meet similar participation requirements over a span of four years in order to retain their C share QS.

If a C share QS holder fails to satisfy the participation requirements and does not divest his or her C share QS, the final rule provides NMFS with the authority to revoke the C

share QS. If a C share QS holder satisfies the participation requirements to receive C share IFQ, the holder also will satisfy the participation requirements for retention of C share QS.

The final rule removes the current prohibition on leasing C share IFQ and C share QS holders will continue to be able to join cooperatives. However, all C share QS holders must meet the participation requirements in order to receive C share IFQ and retain C share QS; those who lease C share IFQ or join a cooperative are not exempt from the participation requirements. Finally, the final rule revises regulations governing the annual calculation of IFQ to ensure that 3 percent of the annual TAC for each crab fishery included in the CR Program is allocated as IFQ to holders of C share QS.

These actions are necessary to fulfill the Council's intent that C share QS are held by individuals who are actively participating in the CR Program fisheries, to provide QS acquisition opportunities to captains and crew who may have been displaced from employment in the CR Program fisheries and were not initial recipients of QS, and to make C share QS available to captains and crew who are new entrants into the CR program fisheries.

Additionally, this final rule implements a regulatory amendment adopted by the Council. The regulatory amendment makes three changes in the annual application process for IFQ, IPQ, and cooperative IFQ in the CR Program. Specifically, this final rule: (1) establishes June 15 as the deadline for filing annual IFQ, IPQ, and cooperative IFQ applications, which also increases the amount of time during which NMFS will suspend the processing of IFQ and IPQ transfer applications; (2) shortens the amount of time in which to appeal an initial administrative determination to withhold issuance of IFQ or IPQ from 60 days to 30 days; and (3) provides in the regulations that an applicant's proof of timely filing an application for IFQ, IPQ, or cooperative IFQ creates a presumption of timely filing. These changes will provide NMFS with adequate time to resolve disputes prior to the issuance of IFQ and IPQ.

Finally, to accommodate the State of Alaska's change to the season opening date for the Aleutian Islands golden king crab fishery, the final rule revises the reporting period for RCR Ex-vessel Volume and Value Reports, from August 15 through April 30 to August 1 through May 31, and revises the date by which the RCR Ex-vessel Volume and Value Report must be received by the Regional Administrator, from May 15 to May 31. These changes align the reporting period with the new season opening date. The new reporting period will start with the 2015/2016 crab fishing year and the first reports using the new reporting period will be due by May 31, 2016.

### **Comments and Responses**

NMFS received three letters of public comment during the public comment periods for Amendment 31 and the proposed rule. A summary of the comments received and NMFS' responses follow.

*Comment 1:* We support the change of the IFQ/IPQ permit application date from August 1 to June 15. This change will reduce the potential for stranding crab because adjudicative proceedings involving IFQ or IPQ permit applications will likely be resolved by the time IFQ and IPQ are issued.

*Response:* NMFS acknowledges this comment and agrees with the commenter that the potential for stranding crab will be reduced with the new application deadline.

*Comment 2:* All quotas should be cut by 25 percent.

*Response:* The purpose of Amendment 31 and the final rule is to modify the regulations governing the acquisition, use, and retention of C share QS and to modify the application process for IFQ and IPQ. The action is not intended to increase or decrease the amount of any type of QS originally issued under the CR Program or to modify the process or methods for establishing annual harvest specifications. The analysis developed for Amendment 31 and the regulatory amendment contains no information indicating that quota



shares or harvest levels should be decreased, and therefore is outside the scope of this rulemaking.

*Comment 3:* I oppose amending Bering Sea and Aleutian Islands Crab Rationalization Program to expand eligibility requirements. I believe in sustainability and this action is just more overfishing.

*Response:* NMFS disagrees that the temporary expansion of eligibility requirements for acquiring C share QS will lead to unsustainability and overfishing of crab stocks. This action does not alter the TAC of any CR Program crab fishery or increase the amount of C share QS originally issued under the CR Program. Therefore, it does not increase any fishing. Instead, this action, which is more administrative in nature, provides an opportunity for those individuals who may have been forced out of the crab fisheries due to fleet contraction at the beginning of the CR Program to obtain C shares to fish crab again. This action also requires captains and crew to be active on a vessel, in order to maintain their QS, which achieves the Council's intent for holders of C shares to actively participate in fishing.

### **Changes from the Proposed Rule**

NMFS has made three changes from the proposed rule.

One adds the phrase "as crew" to § 680.41(c)(1)(vii)(B)(2)(ii) to make the paragraph consistent with other paragraphs requiring participation as crew.

The second change adds language to § 680.40(g)(2)(i) and (ii) and § 680.40(m)(2)(i) and (ii) that explains how NMFS will account for years in which a crab fishery is closed to fishing when determining whether an individual has satisfied the participation requirements for IFQ issuance and C share QS retention. NMFS received an inquiry, not formally submitted as a comment, regarding the participation requirements for individuals who hold C shares in a crab fishery that is closed, or in a crab fishery that closes in the future. NMFS recognizes that there are some individuals who hold C share QS in a single crab fishery and

that some CR Program crab fisheries are closed to fishing periodically or for extended periods of time. It is neither the Council's nor NMFS' intent to penalize a C share QS holder for not participating when the only crab fishery for which the individual holds C share QS is closed to fishing. Therefore, the final rule clarifies that if an individual holds C share QS in a single CR Program crab fishery and that fishery is closed to fishing for an entire crab fishing year, NMFS will exclude that crab fishing year when determining whether the individual has satisfied the participation requirements for IFQ issuance and C share QS retention. NMFS emphasizes that the exclusion of years applies solely to those individuals who hold C share QS in just one CR Program crab fishery and that fishery is closed for an entire crab fishing year. NMFS will not exclude crab fishing years when an individual holds C share QS in more than one CR Program crab fishery, some of which may be closed for the entire crab fishing year and some of which may be open during that same year.

The following examples illustrate this clarification. Individual A holds C share QS in the Pribilof Islands blue crab fishery only, while Individual B holds C share QS in the Pribilof Islands blue king crab fishery and the Bering Sea snow crab fishery. Following implementation of this final rule, the Pribilof Islands blue king crab fishery is closed for three fishing years but the Bering Sea snow crab fishery is open during these years. Because Individual A holds C share QS in a single CR Program crab fishery and that fishery is closed to fishing for the entire year, NMFS would exclude those three crab fishing years in which the Pribilof Islands blue king crab fishery is closed when determining whether Individual A has satisfied the participation requirements. However, NMFS would not exclude the crab fishing years in which the Pribilof Islands blue king crab fishery is closed when determining whether Individual B has satisfied the participation requirements because Individual B can participate in the Bering Sea snow crab fishery and satisfy the participation requirements.

If the Pribilof Islands blue king crab fishery would open to fishing in the fourth crab fishing year but close again for the fifth and sixth fishing years, NMFS would include the fourth crab fishing year but exclude the fifth and sixth crab fishing years when determining whether Individual A has satisfied the participation requirements. Under this example, Individual A would only have one open fishing year that NMFS would use to determine participation. Because the participation requirements use three-year and four-year participation periods, NMFS would not have enough open fishing years to determine whether Individual A satisfied the participation requirements and NMFS would not withhold IFQ or initiate revocation proceedings until the required number of open fishing years have occurred and NMFS has determined that Individual A failed to satisfy the participation requirements. If the Pribilof Islands blue king crab fishery opens again in the seventh and eighth fishing years, NMFS would have enough open fishing years to determine whether Individual A has satisfied the participation requirements for issuance of C share IFQ for the ninth crab fishing year.

The third change adds a limited exemption at § 680.40(g)(2)(iii) and § 680.40(m)(5) to the participation requirements for IFQ issuance and C share QS retention for those individuals who acquire C share QS using the expanded eligibility criteria at § 680.41(c)(1)(vii)(B). NMFS determined that the participation requirements established by this final rule will be immediately applicable to individuals who acquire C share QS using the expanded eligibility criteria at § 680.41(c)(1)(vii)(B) but that those individuals may not be able to satisfy the participation requirements at the time of acquisition. By design, the expanded eligibility requirements do not require an eligible individual to have participated in a CR Program crab fishery in the 365 days prior to acquisition of the C share QS and create the possibility that an individual who is eligible to acquire C share QS under the expanded eligibility criteria would fail to satisfy the participation requirements for issuance of IFQ and

retention of C share QS. Therefore, NMFS has included in the final rule a limited exemption to the participation requirements for individuals acquiring C share QS under the expanded eligibility criteria. The exemption would postpone the withholding of C share IFQ or revocation of C share QS until after these individuals had held the acquired C share QS for four full crab fishing years.

#### **OMB Revisions to Paperwork Reduction Act References in 15 CFR 902.1(b)**

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule revises and adds data elements within a collection-of-information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the sections resulting from this final rule.

#### **Classification**

The Administrator, Alaska Region, determined that Amendment 31 is necessary for the conservation and management of the Bering Sea/Aleutian Island CR Program fisheries and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to

take to comply with a rule or group of rules. The preamble to the proposed rule (79 FR 77427; December 24, 2014) and the preamble to this final rule serve as the small entity compliance guide. This rule does not require any additional compliance from small entities that is not described in the preamble to the proposed rule (79 FR 77427; December 24, 2014) and this final rule. Copies of the proposed rule and this final rule are available from NMFS at the following website: <http://alaskafisheries.noaa.gov>.

*Final Regulatory Flexibility Analysis (FRFA)*

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

Section 604 describes the required contents of a FRFA: 1) a statement of the need for, and objectives of, the rule; 2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; 5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and 6) a description of the steps the agency has taken to minimize the

significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

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

A description of the need for, and objectives of, the rule is contained in the preamble to this final rule and is not repeated here. This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and the summary of the IRFA in the proposed rule (79 FR 77427, December 24, 2014).

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

NMFS published a proposed rule to implement Amendment 31 on December 24, 2014 (79 FR 77427). An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here.

NMFS received three public comments on Amendment 31 and the proposed rule. No comments were received on the IRFA, or on the economic impacts of this action generally. The Chief Counsel for Advocacy of the Small Business Administration (SBA) did not file any comments on the proposed rule.

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

The entities directly regulated by this action are individuals who currently hold C share QS, and individuals who were at one time active in the crab fisheries as captain and crew prior to the implementation of the CR Program but who are no longer active as captain or crew. The SBA has established size standards for all major industry sectors in the U.S., including commercial shellfish harvesters. On June 12, 2014, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several

industries effective July 14, 2014 (79 FR 33647, June 12, 2014). The new size standards were used to prepare the FRFA for this final rule. A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of \$20.5 million, for all its affiliated operations worldwide. For commercial shellfish harvesters, the same qualifiers apply, except the combined annual gross receipts threshold is \$5.5 million.

One hundred and seventy-nine individuals currently hold C shares. Of these individuals, 70 are estimated to have been part of the 239 individuals who received an initial allocation of C shares based on their historical participation record. About 750 individuals, who were active in the crab fisheries as captain and crew prior to the implementation of the CR Program, are no longer active as captain or crew; the final rule allows those 750 individuals to acquire C shares by transfer for a period of four years. Thus, approximately 1100 individuals (750 who were active prior to rationalization, 239 who were initial recipients, and 109 who have since acquired C shares) would be impacted by the change in the regulations regarding the eligible individuals who would be able to acquire C shares by transfer in this rule. Based on the SBA's size standard, the Council and NMFS believe that all holders of C shares are small entities for purposes of the RFA.

The final rule also makes several regulatory amendments that are not contained in Amendment 31 to the FMP. These amendments directly regulate holders of QS, PQS and cooperatives formed under the CR Program. Each of the cooperatives in the CR Program includes as few as several to as many as several hundred of QS holders as members and has revenues in excess of the small entity threshold; however, during the 2010 - 2011 fishing season, 64 QS holders elected not to join cooperatives. These 64 QS holders are all small entities for RFA purposes.

Entities holding PQS with fewer than 500 employees are “small entities” according to the RFA. As of 2011, 21 entities hold PQS. Of these 21 entities, 10 are large entities and 11 are small entities for RFA purposes.

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

The final rule makes several changes to recordkeeping and reporting requirements for C share QS holders, as well as those wishing to acquire C shares. Entities wishing to acquire C shares that are currently ineligible, because of they are not currently participating as captains or crew, but that will be eligible, because of past participation, will be required to submit evidence of past participation in the form of fish tickets or affidavits. Entities holding C share QS will also be required to submit verification of their compliance with participation standards necessary for the receiving C share IFQ and to maintain their C share QS holdings. Since C share QS holders must meet participation standards to receive annual IFQ allocations and retain C share QS, the reporting requirements are structured to determine compliance with those standards.

#### *Description of Significant Alternatives to the Final Action that Minimize Adverse Impacts on Small Entities*

A FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected. “Significant alternatives” are those that achieve the stated objectives for the action, consistent with prevailing law with potentially lesser adverse economic impacts on small entities, as a whole.

Three alternatives, including the no action alternative, were considered to relax the eligibility requirements for the acquisition of C shares by transfer. The first alternative



creates eligibility for entities that received an initial allocation of C shares. The second alternative creates eligibility for entities with historical participation in the CR Program fisheries. The Council decided to select both of the action alternatives to fully expand the eligibility to include all those entities who had historically participated in the crab fisheries prior to rationalization. The Council did not consider further expanding the eligibility to include entities that do not have any type of historical participation in the crab fisheries, because the original intent in establishing C shares was to provide an opportunity for entities with a connection to the crab fisheries, through participation, to own shares.

The final rule contains a provision that no C shares would be revoked until 5 years after implementation of the amendment to the FMP. The Council intended that this provision would mitigate negative effects on individuals whose shares may be revoked by this action. The Council and NMFS considered two other options to delay revocations. Under the first, no revocations would have taken place until 5 years after implementation of the CR Program, which would have been the year 2010. The second option extended the period to 10 years after implementation of the CR Program, which would have been the year 2015. The preferred alternative would begin revocations 5 years after this final rule is effective. This alternative was selected because it provides holders of C shares with certainty about the rules that will govern C shares and with time to consider business plans for their C shares. The preferred alternatives give holders of C shares time to plan whether to meet the new active participation requirements and retain their C shares or whether to divest their share holdings.

For the provision requiring active participation to receive annual IFQ from C shares, the final rule requires active participation over a 3-year period. For the provision requiring active participation requirement to retain C shares, the final rule requires active participation over a 4-year period. Three categories of alternatives were considered for these provisions: the status quo alternative, which essentially had no active participation requirement because

holders of C shares can and do assign their shares to cooperatives; alternatives that would require less or no active participation in the fisheries to maintain C share holdings; and alternatives that would require greater levels of participation as crew.

The Council concluded, and NMFS agrees, that the status quo and the alternatives that require less participation to maintain C share holdings are inconsistent with the Council's intent to ensure that C shares are held by individuals who are active in the fisheries and to create a pool of C shares for use exclusively by individuals who are active in the fisheries. The Council examined alternatives that required higher levels of participation to maintain C share holdings or that required participation exclusively in CR Program fisheries. The Council concluded, and NMFS agrees that these alternatives unduly constrained holders of C shares, given the fleet consolidation and other changes in crab fishing under the CR Program. With fewer vessels active in the fisheries, greater competition for crew jobs is an obstacle to maintaining active participation in the CR Program fisheries. By allowing individuals to meet a minimal landing requirement to maintain their active participation status and by allowing individuals who are initial recipients of C shares to meet the active participation requirements through fishing in non-crab commercial fisheries in Alaska, the preferred alternative would allow individuals to miss some seasons, when crew jobs may be difficult to secure. The Council concluded and NMFS agrees that the preferred alternative reaches a reasonable balance between alternatives that would allow extended absences from active participation in the fisheries and alternatives that would require greater participation in the CR Program fisheries, an approach which fails to recognize the nature of the market for employment in the CR Program fisheries.

The Council did not consider an alternative to the regulatory mechanism to ensure three percent of the TAC for each CR Program fishery is allocated to holders of C share QS. Under the current regulations, approximately three percent of the IFQ pool is allocated as C

share IFQ and 97 percent is allocated as owner share IFQ, as is required by the CR Program. However, with the new active participation provisions, and the potential for IFQ not to be allocated to entities which do not meet these provisions, there is a possibility that the C share IFQ allocation would be reduced. To ensure that the C share IFQ pool remains at its intended levels, the Council requested a mechanism put in place to maintain the C share IFQ pool at three percent of the IFQ pool, regardless of whether some holders of C share receive their annual IFQ allocation.

*Duplicate, Overlapping, or Conflicting Federal Rules*

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

*Collection-of-Information Requirements*

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), which have been approved by the Office of Management and Budget (OMB). Collections are presented below by OMB control number.

*OMB Control No. 0648-0514*

Public reporting burden per response is estimated to average 2 hours for the Application for BSAI Crab Eligibility to Receive QS/PQS or IFQ/IPQ by Transfer; 2.5 hours for Application for Annual Crab Permit IFQ; 2.5 hours for Application for Annual Crab Permit IPQ; 30 minutes for Application for Converted CPO QS and CPO IFQ; 2.5 hours for Application for Crab Harvesting Cooperative IFQ Permit; 4 hours for Appeal for Denial of Application; 2.5 hours for Application for Transfer of Crab IFQ; 2.5 hours for Application for Transfer of Crab IPQ permit; and 2 hours for Application for Transfer of Crab QS or PQS.

*OMB Control No. 0648-0570*

Public reporting burden per response is estimated to average 2 hours for the CR Program Registered Crab Receiver Ex-vessel Volume and Value Report.

Burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Send comments regarding these burden estimates, or any other aspects of the information collections, to NMFS (see **ADDRESSES**) and by e-mail to *OIRA\_Submission@omb.eop.gov* or fax to 202-395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

### **List of Subjects**

#### *15 CFR Part 902*

Reporting and recordkeeping requirements.

#### *50 CFR Part 680*

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 17, 2015

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 680 as follows:

Title 15—Commerce and Foreign Trade

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 et seq.

2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”:
  - a. Remove the entry for “680.4(a) through (p)”
  - b. Add an entry in alphanumeric order for “680.4(a) through (q)”; and
  - c. Revise entries for “680.5(a) and (h) through (l)”; “680.5(f)”; “680.5(g)”; and “680.5(m)”.

The additions and revisions read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR:	
* * * * *	
680.4(a) through (q)	-0514
680.5(a) and (h) through (l)	-0514
* * * * *	
680.5(f)	-0514
680.5(g)	-0570
680.5(m)	-0570
* * * * *	

Title 50—Wildlife and Fisheries

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

3. The authority citation for part 680 continues to read as follows:

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

4. In § 680.4, revise paragraphs (f)(1) and (n)(1)(i), and add paragraph (q) to read as follows:

**§ 680.4 Permits.**

\* \* \* \* \*

(f) \* \* \*

(1) A complete application must be received by NMFS no later than June 15 (or postmarked by this date, if sent via U.S. mail or a commercial carrier) for the upcoming crab fishing year for which a person is applying to receive IFQ or IPQ. If a complete application is not received by NMFS by this date, or postmarked by this date, the person will not receive IFQ or IPQ for the upcoming crab fishing year. In the event that NMFS has not received a complete and timely application by June 15, NMFS will presume that the application was timely filed if the applicant can provide NMFS with proof of timely filing.

\* \* \* \* \*

(n) \* \* \*

(1)(i) A complete application must be received by NMFS no later than June 15 (or postmarked by this date, if sent via U.S. mail or a commercial carrier) for the upcoming crab fishing year for which a person or crab harvesting cooperative is applying to receive converted CPO QS and the IFQ derived from that converted CPO QS. If a complete application is not received by NMFS by this date, or postmarked by this date, the person or crab harvesting cooperative will not receive converted CPO QS and the IFQ derived from that converted CPO QS for the upcoming crab fishing year. In the event that NMFS has not

received a complete and timely application by June 15, NMFS will presume that the application was timely filed if the applicant can provide NMFS with proof of timely filing.

\* \* \* \* \*

(q) *Initial administrative determination (IAD)*. The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to establish that the applicant meets the requirements, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal under the appeals procedures set forth at 15 CFR part 906. If an applicant appeals an IAD denying an Application for Annual Crab IFQ, IPQ, or harvesting Cooperative IFQ Permit because the application was not timely filed, the appeal must be filed within 30 days after the date the IAD is issued. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive crab IFQ or IPQ until after the final resolution of that appeal in the applicant's favor.

5. In § 680.5, revise paragraphs (m)(2) and (3) to read as follows:

**§ 680.5 Recordkeeping and reporting (R&R).**

\* \* \* \* \*

(m) \*\*\*

(2) *Reporting period*. The reporting period of the CR RCR Ex-vessel Volume and Value Report shall extend from August 1 through May 31 of the following year, inclusive.

(3) *Due date.* A complete CR RCR Ex-vessel Volume and Value Report must be received by the Regional Administrator no later than May 31 of the reporting period in which the RCR received CR crab.

\* \* \* \* \*

6. In § 680.21, revise paragraphs (b)(1), (b)(2) introductory text, and (d)(1) to read as follows:

**§ 680.21 Crab harvesting cooperatives.**

\* \* \* \* \*

(b) \* \* \*

(1) *June 15 application deadline.* A complete application must be received together with a signed annual application for crab IFQ/IPQ permit forms of all members of the crab harvesting cooperative, by NMFS no later than June 15 (or postmarked by this date, if sent via U.S. mail or a commercial carrier) for the upcoming crab fishing year for which the crab harvesting cooperative is applying to receive IFQ. If a complete application is not received by NMFS by this date, or postmarked by this date, the crab harvesting cooperative will not receive IFQ for the upcoming crab fishing year. In the event that NMFS has not received a complete and timely application by June 15, NMFS will presume that the application was timely filed if the applicant can provide NMFS with proof of timely filing.

(2) *Contents.* A complete application must contain the following information:

\* \* \* \* \*

(d) \* \* \*

(1) *Transfer of QS.* A member of a crab harvesting cooperative may acquire or divest QS at any time in accordance with the transfer procedures in § 680.41. However, transfers of QS that occur after the June 15 deadline for crab harvesting cooperative IFQ permit



applications will not be reflected in the type or amount of IFQ permit issued to the crab harvesting cooperative for that crab fishing year.

\* \* \* \* \*

7. In § 680.40:

a. Revise paragraphs (g) and (h)(1); and

b. Add paragraph (m) to read as follows:

**§ 680.40 Crab Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) Issuance.**

\* \* \* \* \*

(g) *Annual allocation of IFQ*—(1) *General*. IFQ is assigned based on the underlying QS. Except for CVC and CPC QS permit holders who fail to meet the participation requirements at paragraph (g)(2) of this section, the Regional Administrator shall assign crab IFQs to each person who holds QS and submits a complete annual application for crab IFQ/IPQ permit as described under § 680.4. IFQ will be assigned to a crab QS fishery with the appropriate regional designation, QS sector, and IFQ class. This amount will represent the maximum amount of crab that may be harvested from the specified crab QS fishery by the person to whom it is assigned during the specified crab fishing year, unless the IFQ assignment is changed by the Regional Administrator because of an approved transfer, revoked, suspended, or modified under 15 CFR part 904.

(2) *Eligibility for CVC and CPC IFQ*. For each crab fishing year after June 30, 2018, individuals holding CVC or CPC QS permits must meet the participation requirements set forth in paragraphs (g)(2)(i) or (g)(2)(ii) of this section in order to receive CVC or CPC IFQ unless the CVC or CPC QS permit holder meets the exemption provided in paragraph (g)(2)(iii) of this section.

(i) The individual has participated as crew in at least one delivery of crab in any CR crab fishery during the three crab fishing years preceding the crab fishing year for which the individual is filing an annual crab IFQ permit application. If the individual holds C share QS in a single CR crab fishery and that CR crab fishery is closed to fishing for an entire crab fishing year, NMFS will exclude that crab fishing year when determining whether the individual has satisfied this participation requirement.

(ii) The individual was an initial recipient of CVC or CPC QS and participated as crew in at least 30 days of fishing in a commercial fishery managed by the State of Alaska or in a U.S. commercial fishery in the U.S. Exclusive Economic Zone off Alaska during the three crab fishing years preceding the crab fishing year for which the individual is filing an annual crab IFQ permit application. Individuals may combine participation as crew in State and Federal commercial fisheries to meet this requirement. If the individual holds C share QS in a single CR crab fishery and that CR crab fishery is closed to fishing for an entire crab fishing year, NMFS will exclude that crab fishing year when determining whether the individual has satisfied this participation requirement.

(iii) All of the CVC or CPC QS permits held by the individual were acquired using the eligibility criteria in 50 CFR § 680.41(c)(1)(vii)(B) and the individual has held those CVC or CPC QS permits for less than three full crab fishing years.

(3) *Withholding of CVC or CPC IFQ.* Beginning July 1, 2018, the Regional Administrator will withhold issuance of CVC or CPC IFQ to an individual who has not met the participation requirements set forth in paragraph (g)(2) of this section. The Regional Administrator will withhold an individual's CVC IFQ or CPC IFQ in accordance with the procedures set forth in paragraphs (g)(3)(i) and (ii) of this section.

(i) *Notice of C Share IFQ Withholding.* The Regional Administrator will issue a Notice of C Share IFQ Withholding to an individual holding CVC or CPC QS if, after

reviewing the CVC or CPC QS holder's Application for Annual Crab IFQ Permit, the Regional Administrator determines that the CVC or CPC QS holder has failed to meet the participation requirements in paragraph (g)(2) of this section. A CVC or CPC QS holder who receives a Notice of C Share IFQ Withholding will have 30 days to provide the Regional Administrator with information demonstrating participation as crew that meets the requirements of paragraph (g)(2) of this section.

(ii) *Initial administrative determination (IAD)*. The Regional Administrator will prepare and send an IAD to the CVC or CPC QS holder following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the CVC or CPC QS holder fails to demonstrate participation as crew and is insufficient to rebut the information included in the CVC or CPC QS holder's Applications for Annual Crab IFQ Permit, or if the additional information or evidence is not provided within the time period specified in the Notice of C Share IFQ Withholding. The IAD will explain the basis for the withholding of IFQ. A CVC or CPC QS holder who receives an IAD withholding IFQ may appeal under the appeals procedures set forth at 15 CFR part 906. A CVC or CPC QS holder who avails himself or herself of the opportunity to appeal an IAD withholding IFQ will not receive crab IFQ until after the final resolution of that appeal in the QS holder's favor.

(h) \* \* \*

(1) *General*. (i) The annual allocation of IFQ to any person (p) in any crab QS fishery (f) will be based on the TAC of crab for that crab QS fishery less the allocation to the Western Alaska CDQ Program ("CDQ Reserve") and Western Aleutian Islands golden king crab fishery. Expressed algebraically, the annual IFQ allocation formula is as follows:

(A)  $IFQ\ TAC_f = TAC_f - (CDQ\ Reserve_f + Allocation\ for\ the\ Western\ Aleutian\ Island\ golden\ king\ crab\ fishery)$

$$(B) \text{ IFQ}_{pf} = \text{IFQ TAC}_f \times (\text{QS}_{pf}/\text{QS pool}_f)$$

(ii) *CVO, CPO, CVC, and CPC IFQ*. Each year, 3 percent of the  $\text{IFQ TAC}_f$  will be allocated as CVC IFQ or CPC IFQ and 97 percent of the  $\text{IFQ TAC}_f$  will be allocated as CVO IFQ or CPO IFQ. Expressed algebraically, the formulas for the annual IFQ allocations are as follows:

$$(A) \text{ CVC/CPC IFQ}_f = \text{IFQ TAC}_f \times 0.03$$

$$(B) \text{ CVO/CPO IFQ}_f = \text{IFQ TAC}_f \times 0.97$$

\* \* \* \* \*

(m) *Participation requirements for retention of CVC QS and CPC QS*. (1) Beginning July 1, 2019, and each crab fishing year thereafter, individuals allocated CVC QS or CPC QS must meet the participation requirements set forth in paragraphs (m)(2)(i) or (m)(2)(ii) of this section in order to retain their CVC QS or CPC QS unless the CVC or CPC QS holder meets the exemption provided in paragraph (m)(5) of this section.

(2)(i) The individual has participated as crew in at least one delivery of crab in any CR crab fishery during the previous four consecutive crab fishing years. If the individual holds C share QS in a single CR crab fishery and that CR crab fishery is closed to fishing for an entire crab fishing year, NMFS will exclude that crab fishing year when determining whether the individual has satisfied this participation requirement.

(ii) The individual was an initial recipient of CVC QS or CPC QS and participated as crew in at least 30 days of fishing in a commercial fishery managed by the State of Alaska or in a U.S. commercial fishery in the U.S. Exclusive Economic Zone off Alaska during the previous four consecutive crab fishing years. Individuals may combine participation as crew in State and Federal commercial fisheries to meet this requirement. If the individual holds C share QS in a single CR crab fishery and that CR crab fishery is closed to fishing for an entire

crab fishing year, NMFS will exclude that crab fishing year when determining whether the individual has satisfied this participation requirement.

(3) An individual issued a CVC QS or CPC QS permit may include information demonstrating compliance with the participation requirements in paragraph (m)(2) of this section with the individual's annual Application for Crab IFQ.

(4) If an individual issued a CVC QS or CPC QS permit fails to meet the participation requirements in paragraph (m)(2) of this section or fails to qualify for the exemption in paragraph (m)(5) of this section, NMFS will revoke all of the individual's CVC QS or CPC QS in accordance with § 680.43.

(5) All of the CVC or CPC QS permits held by the individual were acquired using the eligibility criteria in § 680.41(c)(1)(vii)(B) and the individual has held those CVC or CPC QS permits for less than four full crab fishing years.

8. In § 680.41, revise paragraphs (b)(1), (c)(1)(vii) and (viii), (c)(2)(ii)(C), and (e)(3) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) *Application.* An application is required to transfer any amount of QS, PQS, IFQ, or IPQ. A transfer application will not be approved until the necessary eligibility application has been submitted and approved by NMFS in accordance with paragraph (c) of this section. The Regional Administrator will not approve any transfers of QS, PQS, IFQ, or IPQ in any crab QS fishery from June 15 until either the date of the issuance of IFQ or IPQ for that crab QS fishery, or the date on which the State of Alaska announces that a crab QS fishery will not open for that crab fishing year.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

Quota type	Eligible person	Eligibility requirements
* * * * *		
(vii) CVC or CPC QS	An individual	(A) Who is a U.S. citizen with: <u>(1)</u> At least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery, and <u>(2)</u> Recent participation as crew in at least one delivery of crab in a CR crab fishery in the 365 days prior to submission of the application for eligibility, (B) From May 1, 2015, until May 1, 2019, CVC or CPC QS also may be transferred to an individual who is a U.S. citizen with: <u>(1)</u> At least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery, and <u>(2)</u> Who either: <u>(i)</u> Received an initial allocation of CVC or CPC QS; or <u>(ii)</u> Participated 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.
(viii) CVC or CPC IFQ	All eligible individuals for CVC or CPC QS	According to the requirements in paragraph (c)(1)(vii) of this section.

(2) \* \* \*

(ii) \* \* \*

(C) *Eligibility for CVC or CPC QS/IFQ.* Indicate (YES or NO) whether this application is intended for a person who wishes to buy CVC or CPC QS/IFQ. If YES, provide evidence demonstrating that the applicant meets the criteria set forth in paragraph (c)(1)(vii) of this section. Acceptable evidence is limited to an ADF&G fish ticket imprinted with the applicant's State of Alaska permit card and signed by the applicant, an affidavit from the vessel owner, or a signed receipt for an IFQ crab landing on which the applicant was acting as the permit holder's crab IFQ hired master.

\* \* \* \* \*

(e) \* \* \*

(3) *IFQ derived from CVC QS or CPC QS*. IFQ derived from CVC or CPC QS may be transferred by lease on an annual basis.

\* \* \* \* \*

9. Revise § 680.43 to read as follows:

**§ 680.43 Revocation of CVC and CPC QS.**

(a) Beginning July 1, 2019, the Regional Administrator will revoke all CVC QS and CPC QS held by an individual who has not met the participation requirements set forth in § 680.40(m). The Regional Administrator will revoke an individual's CVC QS or CPC QS in accordance with the procedures set forth in this section.

(b) *Notice of C Share QS Inactivity*. The Regional Administrator will issue a Notice of C Share QS Inactivity to an individual holding CVC or CPC QS if, after reviewing the CVC or CPC QS holder's Applications for Annual Crab IFQ Permit, the Regional Administrator determines that the CVC or CPC QS holder has failed to meet the participation requirements in § 680.40(m). A CVC or CPC QS holder who receives such a Notice will have 60 days to provide the Regional Administrator with information demonstrating participation as crew that meets the requirements of § 680.40(m).

(c) *Initial administrative determination (IAD)*. The Regional Administrator will prepare and send an IAD to the CVC or CPC QS holder following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the CVC or CPC QS holder fails to demonstrate participation as crew and is insufficient to rebut the information included in the CVC or CPC QS holder's Applications for Annual Crab IFQ Permit, or if the additional information or evidence is not provided within the time period specified in the Notice of C Share QS Inactivity. The IAD will explain the basis for the revocation determination. A CVC or CPC QS holder who

receives an IAD for revocation may appeal under the appeals procedures set forth at 15 CFR part 906. A CVC or CPC QS holder who avails himself or herself of the opportunity to appeal an IAD for revocation will not receive crab IFQ or IPQ until after the final resolution of that appeal in the QS holder's favor.

[FR Doc. 2015-06928 Filed: 3/25/2015 08:45 am; Publication Date: 3/26/2015]