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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 151020969-6335-02]

RIN 0648-BF46

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

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

ACTION: Final rule.

SUMMARY: NMFS issues a rule that modifies regulations governing the Crab Rationalization (CR) Program. This final rule is comprised of three actions. Under the first action, this final rule modifies regulations to create an exemption for participants in the Western Aleutian Islands golden king crab (WAG) fishery from the prohibition against resuming fishing before all CR Program crab have been fully offloaded from a vessel. The first action is intended to allow participants in the WAG fishery to offload live crab to remote ports near the fishing grounds to supply live crab markets. Under the second action, this final rule amends CR Program regulations to clarify current document submission requirements for persons applying to receive captain and crew crab quota share, called C shares, by transfer. Under the third action, this final rule amends License Limitation Program (LLP) regulations to remove the requirement for endorsements on crab LLP licenses for specific crab fisheries in the Bering Sea and Aleutian Islands (BSAI) that are no longer managed under the LLP. This final rule is intended to promote

the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP), and other applicable laws.

DATES: Effective [*insert date of publication in the **FEDERAL REGISTER***].

ADDRESSES: Electronic copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA), the final Regulatory Impact Review (RIR), and the Categorical Exclusion prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; by e-mail to OIRA_Submission@omb.eop.gov; or by fax to 202-395-5806.

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

SUPPLEMENTARY INFORMATION:

NMFS published a proposed rule to modify regulations governing the Crab Rationalization (CR) Program on February 23, 2016 (81 FR 8886). The comment period on the proposed rule ended on March 24, 2016. NMFS received four comment letters on the proposed rule that contained nine unique comments.

Background

This section includes a brief description of the CR Program and the CR Program regulations that would be modified by this final rule. Additional background information and

detail is provided in the proposed rule and in the final rule to implement the CR Program (70 FR 10174, March 2, 2005).

The CR Program is a catch share program for nine BSAI crab fisheries that allocates those resources among harvesters, processors, and coastal communities. Under the CR Program, NMFS originally issued QS to eligible harvesters as determined by eligibility criteria and participation in the CR Program fisheries during qualifying years. A harvester's allocation of QS for a fishery was based on the landings made by his or her vessel in that fishery. Specifically, each allocation was the harvester's average annual portion of the total qualified catch in a crab fishery during a specific qualifying period. NMFS issued four types of QS: Catcher vessel owner (CVO) QS was assigned to holders of LLP licenses who delivered their catch onshore or to stationary floating crab processors; catcher/processor vessel owner (CPO) QS was assigned to LLP holders that harvested and processed their catch at sea; captains and crew onboard catcher/processor vessels were issued catcher/processor crew (CPC) QS; and captains and crew onboard catcher vessels were issued catcher vessel crew (CVC) QS. CVC and CPC QS are also known as "crew shares" or "C shares." Each year, a person who holds QS may receive individual fishing quota (IFQ), which is an exclusive harvest privilege for a portion of the annual total allowable catch (TAC). Under the CR Program, QS holders can form cooperatives to pool the harvest of the IFQ on fewer vessels to minimize operational costs and to provide additional flexibility in harvesting operations.

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

processing quota (IPQ). A specified portion of IFQ derived from CVO QS must be matched and delivered to a processor with IPQ.

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

WAG Fishery

This section provides a brief description of the WAG fishery. For a more detailed description, please see Section 3.5 of the final RIR (see **ADDRESSES**) and the preamble of the proposed rule (81 FR 8886, February 23, 2016) for this action.

The WAG fishery is a relatively small but lengthy fishery prosecuted in extremely remote waters in the western Aleutian Islands. Historically, the community of Adak, Alaska, has been an active processing port for the WAG fishery. The WAG fishery has a relatively small annual total allowable catch compared to other BSAI crab fisheries, such as the Bristol Bay red king crab or snow crab fisheries. The total allowable catch for the 2015/2016 crab fishing year in the WAG fishery is 2.98 million pounds. The average total tank capacity of the catcher vessels that participate in the WAG fishery is between 120,000 and 150,000 pounds (see Section 3.5.3 of the final RIR). The WAG quota share (QS) holders have formed a harvest cooperative to ensure the efficient harvest of this remote fishery. In recent years the fleet has included two to three catcher vessels and a single catcher/processor. Section 3.5.1 of the final RIR provides additional detail on historical and recent participation in the WAG fishery.

Full Landing (Offload) Requirement

Prior to this final rule, the CR Program regulations prohibited a vessel from resuming fishing for CR Program crab or taking CR Program crab on board a vessel once a landing (offload) had commenced and until all CR Program crab were offloaded (see § 680.7(b)(3)). Under this regulation, a catcher vessel could offload portions of CR Program crab at multiple processors, but the vessel was prohibited from fishing for CR Program crab between these offloads.

NMFS implemented the prohibition against resuming fishing after a CR Program landing had commenced (hereafter called the full offload requirement) to facilitate enforcement of CR Program requirements for catch monitoring and full catch accounting. NMFS intended that this prohibition would prevent persons from, for example, discarding deadloss CR crab at sea prior to debiting this crab from the QS holder's IFQ account and subsequently high grading with CR crab harvested after the partial offload. The prohibition was intended to ensure that all fishery removals are monitored and reported in the CR Program catch accounting system. NMFS and ADF&G estimate total fishery removals through monitoring measures that include collection of data on landed catch weight and crab species composition, bycatch, and deadloss. See the final rule to implement the CR Program for a description of the monitoring and catch accounting provisions in the BSAI crab fisheries (70 FR 10174, March 2, 2005).

Catch Monitoring

The proposed rule and Section 3.6.2 of the final RIR describe that under the Crab FMP, the Alaska Department of Fish and Game (ADF&G) has implemented specific monitoring requirements in the WAG fishery. ADF&G requires catcher/processors in the WAG fishery to carry an observer on board the vessel for 100 percent of the vessel's trips. Catcher vessels in the

WAG fishery are required to carry an observer on board for the harvest of at least 50 percent of their total harvest weight for each 3-month period of the overall 9-month season. The portion of actual observed harvest for catcher vessels in the WAG fishery has ranged from 57 percent to 70 percent annually. Vessel operators in the BSAI crab fisheries must complete a daily fishing log, which is issued by NMFS. Data from the daily fishing log are used, along with observer data, to verify landings and to ensure accurate accounting for all fishery removals.

Need for This Final Rule

The proposed rule preamble provides a description of the need for this final rule, which is briefly summarized here. In 2014, the processing facility in Adak began taking deliveries of WAG from catcher vessels to supply the live crab market. The crab are offloaded from the vessel and held at the processing facility until packed for transport on a commercial airline flight from Adak for delivery to domestic and international markets. The amount of crab offloaded at Adak and delivered to the live market is limited by the amount of aircraft hold space that is available to ship crab on bi-weekly flights from Adak. Aircraft capacity is approximately 8,000 to 14,000 pounds of crab per flight, depending on the type of aircraft. Vessels operating in the WAG fishery make crab deliveries opportunistically to the processing facility when live markets are available. Harvesters receive a higher price per pound for the live market than for crab delivered and processed to supply the traditional market for cooked and frozen crab sections (see Sections 3.5.4 and 3.5.5.1 of the final RIR for more information about deliveries to the live crab market from Adak).

The processing facility in Adak is currently able to receive only limited amounts of deliveries of crab for the live market, approximately 400,000 pounds for the 2015/2016 crab fishing year. As described in the proposed rule and Section 3.5.5 of the final RIR, the processing

facility in Adak has encountered a number of operational challenges since it was established in 1999 and is not currently able to receive and process a full offload of crab, which can be up to 150,000 pounds in the WAG fishery. To comply with the full offload requirement, catcher vessels delivering crab for the live market were required to make partial landings at the Adak processing facility and transit several hundred miles from the fishing grounds to Dutch Harbor or Akutan to deliver the remaining crab on board the vessel to a processor that can accept a larger vessel load of crab from the vessels.

In February 2015, the Council received requests from representatives for WAG fishery participants and representatives of the community of Adak to exempt the WAG fishery from the CR Program prohibition against a person resuming fishing before all crab have been offloaded from a vessel. The Council recommended a regulatory amendment to exempt participants in the WAG fishery from the prohibition at § 680.7(b)(3) against a person resuming fishing before all CR Program crab have been offloaded from the vessel. The Council recommended this regulatory amendment to reduce inefficiencies and costs associated with requiring crab harvesting vessels to travel significant distances to land a partial load of WAG. This rule allows vessels harvesting WAG to make partial landings for delivery to the live market and continue harvesting crab before fully offloading at a processor that can receive a larger vessel load of crab.

This Final Rule

Action 1: Exempt the WAG fishery from full offload requirements

Action 1 creates an exemption for the WAG fishery from the prohibition at § 680.7(b)(3) that precludes a person from resuming fishing before all crab has been offloaded from a vessel.

This rule will not alter current landing, reporting, and enforcement requirements in CR Program regulations.

This rule relieves a restriction on fishing activity in the WAG fishery and could increase operational efficiencies and revenues for participants in the WAG fishery. The Council determined that this rule is necessary for the WAG fishery due to the remote and economically challenging characteristics of the fishery as well as the benefits to harvesters, processors located in the western Aleutians, and any communities that develop a live market opportunity.

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

The Council determined, and NMFS agrees, that this rule is not likely to have negative impacts on the management of the WAG fishery or on the catch monitoring and accounting requirements established by the CR Program. The Council considered the impacts of this rule on Federal management of the WAG fishery. Section 3.7.4 of the final RIR describes that this rule will not change the current CR Program landing and reporting requirements, or catch accounting system. All retained crab catch will continue to be weighed, reported, and debited from the

appropriate IFQ account under which the crab was harvested, and from the IPQ account under which the catch was processed.

The proposed rule and Section 3.7.5 of the final RIR describe the impacts of this rule on the State of Alaska (State) management of the WAG fishery. The Crab FMP establishes a State/Federal cooperative management regime that defers crab management to the State with Federal oversight. State regulations are subject to the provisions of the Crab FMP, including its goals and objectives, the Magnuson-Stevens Act national standards, and other applicable Federal laws. NMFS expects that ADF&G will make minor modifications to its sampling and observer coverage protocols for WAG fishery vessels that deliver crab to Adak for supply to the live market. NMFS anticipates that ADF&G will continue to coordinate with vessels in the WAG fishery to ensure that accurate biological data and catch accounting needs are met with minimal impacts on State management of the WAG fishery consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Crab FMP, and ADF&G regulations.

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

Action 2 corrects regulations governing the approval criteria for an application to receive C shares by transfer. Under the CR Program, individuals must meet specific eligibility requirements to receive C shares by transfer. Amendment 31 to the Crab FMP modified several regulations governing the acquisition, use, and retention of C shares under the CR Program (80 FR 15891, March 26, 2015).

The eligibility requirements to receive C shares by transfer are located at § 680.41(c)(1)(vii). An applicant must meet initial eligibility criteria, which include having U.S. citizenship, at least 150 days of sea time in a U.S. commercial fishery, and recent participation as

crew in at least one delivery of crab in the past year. In addition, § 680.41(c)(1)(vii) specifies that until May 1, 2019, in lieu of participation as crew in one of the CR Program fisheries in the 365 days prior to application submission, an individual may meet the crew participation requirement to receive C shares by transfer if that person 1) received an initial allocation of C shares (CVC or CPC QS), or 2) participated as crew in at least one delivery of crab in a CR Program crab fishery in any 3 of the 5 crab fishing years starting on July 1, 2000, through June 30, 2005.

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

The regulations implementing the CR Program in 2005 included approval criteria for an individual to demonstrate to NMFS that he or she meets the eligibility requirements at § 680.41(c)(1)(vii) at the time of transfer. These approval criteria were inadvertently removed by amendatory language in the final rule that implemented regulations to provide harvesting cooperatives, crab processing quota shareholders, and Western Alaska Community Development Quota groups with the option to make web-based transfers (74 FR 51515, October 7, 2009). These approval criteria clarify for applicants that they must meet the eligibility requirements at § 680.41(c)(1)(vii) at the time of transfer, specifically that they must meet the recent participation requirements within the prior 365 days for their application for transfer to be approved. This final rule adds these approval criteria at § 680.41(i)(11) to ensure that the regulations are consistent with the original intent of the CR Program.

This final rule also adds regulations specifying that acceptable evidence for demonstrating required participation criteria specified at § 680.41(c)(1)(vii) is limited to an

ADF&G fish ticket signed by the applicant or an affidavit from the vessel owner attesting to the applicant's fishery participation.

Action 3: Removing Certain Crab Species from LLP Regulations

Action 3 amends LLP regulations for consistency with the Crab FMP to avoid public confusion about the regulatory requirements that apply to certain crab stocks. This rule modifies the LLP regulations at § 679.4(k)(1)(ii) to remove the following five crab species: Aleutian Islands *C. bairdi* crab, Eastern Aleutian Islands red king crab; scarlet or deep sea king crab; grooved Tanner crab; and triangle Tanner crab. These stocks were removed from the Crab FMP in 2008 through Amendment 24 and are no longer subject to Federal management (73 FR 33925, June 16, 2008). This final rule adds Aleutian Islands *C. bairdi* crab to the list of stocks that NMFS proposed to remove from the LLP regulations. This change is described briefly in this section and in detail in the **Change from the Proposed Rule** section.

The preamble to the proposed rule provided a description of the LLP for crab stocks and Amendment 24 to the Crab FMP. In summary, the LLP limits the number, size, and specific operation of vessels deployed in BSAI crab fisheries managed under the Crab FMP and established several area/species endorsements for crab LLP licenses.

The CR Program removed BSAI crab fisheries that are managed under the CR Program from the LLP. The fisheries not included in the CR Program remained under the Crab FMP and under the governance of the LLP. Fishermen participating in those fisheries are required to have a crab LLP license with the appropriate area/ species endorsement on the vessel. Although the Crab FMP establishes a State/Federal cooperative management regime that delegates crab management to the State with Federal oversight, NMFS manages Crab FMP stocks subject to LLP requirements.

Amendment 24 to the Crab FMP was approved in 2008. Amendment 24 removed 12 BSAI crab stocks not in the CR Program from the Crab FMP and deferred management to the State for these fisheries (73 FR 33925, June 16, 2008). Upon removal of these species from the Crab FMP, NMFS no longer had authority to manage the following species under the LLP program: Aleutian Islands *C. bairdi* crab, Eastern Aleutian Islands red king crab, scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab. The State currently manages these fisheries under State regulations.

Amendment 24 to the Crab FMP did not require implementing regulations. As a result, Aleutian Islands *C. bairdi* crab, Eastern Aleutian Islands red king crab, scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab were not removed from LLP regulations when Amendment 24 was implemented. In order to align LLP regulations with the Crab FMP and avoid confusion about regulatory requirements, this final rule modifies the LLP regulations at § 679.4(k)(1)(ii) to eliminate these species from the LLP regulations. This final rule does not change current management of these crab fisheries.

As described in the preamble to the proposed rule, NMFS will modify and reissue some crab LLP licenses to implement this final rule. Prior to this final rule, the LLP regulations specified that crab LLP licenses may have up to four area/species endorsements:

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

To implement this final rule, NMFS will modify LLP licenses to remove the Aleutian Islands *C. bairdi* crab endorsement from the combined Aleutian Islands *C. opilio* and *C. bairdi* area/species endorsements for LLP licenses. Current LLP license records indicate there are 274 LLP licenses with the Aleutian Islands *C. opilio* and *C. bairdi* area/species endorsement. The endorsement will be modified so that it only includes Aleutian Islands *C. opilio*, and the 274 licenses will be reissued, reflecting the change.

To implement this final rule, NMFS will modify LLP licenses to remove the Eastern Aleutian Islands red king crab endorsement from LLP licenses. Current LLP license records indicate that there are 30 LLP licenses with this endorsement.

NMFS does not need to reissue LLP licenses with a Bering Sea Minor Species endorsement to implement this final rule. Even though scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab fisheries are no longer subject to Federal management, the Bering Sea golden king crab fishery is still included in the Crab FMP and is subject to Federal management under the LLP. Therefore an LLP license with a Bering Sea Minor Species endorsement is still required for participation in this fishery. Because of this, NMFS does not need to remove the endorsement as a whole. The LLP regulations determine the specific area/species endorsements to which the Bering Sea Minor Species endorsement applies, so NMFS has determined that it can implement this change by amending the LLP regulations, rather than reissuing the licenses carrying this endorsement. Current LLP license records indicate that there are 287 LLP licenses with this endorsement.

Many LLP license holders hold more than one area/species endorsement on their LLP license, therefore NMFS will only need to reissue 274 LLP licenses due to the overlap in LLP license holders with the Aleutian Islands *C. opilio* and *C. bairdi* crab endorsement and the

Eastern Aleutian Islands red king crab endorsement. NMFS will incur minor administrative costs to reissue LLP licenses to remove the Aleutian Islands *C. bairdi* crab and Eastern Aleutian Islands red king endorsement. This action will not change current management of the Aleutian Islands *C. bairdi* crab, Eastern Aleutian Islands red king crab, Bering Sea golden king crab, scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab fisheries.

Comments and Responses

NMFS received four comment letters from the public that contained nine unique substantive comments during the public comment period for the proposed rule to implement these three actions. NMFS' responses to these comments are presented below.

Comment 1: All four commenters expressed support for Action 1 in this final rule, to create an exemption for the WAG fishery from the CR Program prohibition against a vessel resuming fishing before the vessel has offloaded all CR Program crab from the vessel.

Response: NMFS acknowledges these comments.

Comment 2: One commenter requested that NMFS implement this final rule as soon as possible so that it is effective before the end of the current WAG fishing season on April 30, 2016.

Response: NMFS acknowledges this comment. This final rule relieves a restriction on fishing activity in the WAG fishery and could increase operational efficiencies and revenues for participants in the WAG fishery. Therefore, for reasons discussed in the **Classification** section, the NMFS Assistant Administrator has waived the 30-day delay in effectiveness of this final rule to allow WAG participants to benefit from this exemption before the end of the 2015/2016 WAG fishing season. This will allow WAG participants to make partial offloads and then resume fishing on the day that this final rule is published in the **Federal Register**.

Comment 3: The proposed revisions to § 679.4(k)(1)(ii)(A) do not appear to remove the LLP requirement for Aleutian Islands *C. bairdi* crab. Aleutian Islands *C. bairdi* crab was removed from the Crab FMP under Amendment 24. Therefore, the final rule should remove this stock from the LLP regulations along with the proposed stocks.

Response: NMFS agrees. NMFS inadvertently omitted Aleutian Islands *C. bairdi* crab from the list of crab stocks to be removed from the LLP regulations in the proposed rule. As described in the **Change from the Proposed Rule** section, this final rule removes Aleutian Islands *C. bairdi* crab from the list of crab stocks to be removed from the LLP regulations as recommended by the commenter.

Comment 4: The proposed rule incorrectly stated that observer or dockside sampling data are used to debit IFQ and IPQ accounts in the CR Program online catch accounting system. The RIR/IRFA correctly states that crab landings data are used to debit IFQ and IPQ accounts under the CR Program.

Response: NMFS agrees. While the preamble to the proposed rule contained an incorrect statement regarding the type of data used to debit IFQ and IPQ accounts, the RIR/IRFA correctly stated that *eLandings* is used for catch accounting purposes to debit crab landings from IFQ and IPQ accounts. The incorrect statement in the preamble to the proposed rule did not change the issues involved in establishing this final rule to exempt the WAG fishery from full offload requirements. No changes are necessary to address this comment in the final rule.

Comment 5: The proposed rule incorrectly states that ADF&G requires operators in the BSAI crab fisheries to complete a daily fishing log. NMFS regulations at § 680.5(a) and § 679.5(c)(1) require operators to complete the daily fishing log.

Response: NMFS agrees that the requirement to complete a daily fishing log is a NMFS requirement, rather than an ADF&G requirement. The RIR/IRFA correctly stated that NMFS regulations at 680.5(a) and 679.5(c)(1) require operators to complete the daily fishing log. No changes are necessary to address the comment in this final rule.

Comment 6: NMFS should consider expanding the exemption for the WAG fishery from the full offload delivery requirements to all CR Program fisheries. Participants in other CR Program fisheries have an interest in exploring the possibilities for partial offloads to supply live crab markets for other CR Program fisheries from other communities. Expanding the exemption could allow other participants to take advantage of the efficiency created by the exemption and the opportunity to access markets with higher prices for crab.

Response: As noted in the proposed rule and the RIR/IRFA and the final RIR, during the Council's initial discussion of the need for this action, it also considered extending the exemption from the prohibition against resuming fishing before all CR Program crab have been landed to all CR Program fisheries. However, the Council rejected this approach because it was too broad for the stated objectives, which were specific to the WAG fishery. Expanding the exemption to CR Program fisheries is outside the scope of this final rule.

Comment 7: The commenter expressed support for the addition of approval criteria at § 680.41(i)(11) under Action 2 of the proposed rule to correct the previous error in the amendatory language of the final rule that implemented regulations to provide entities with the option to make Web-based transfers.

Response: NMFS acknowledges this comment.

Comment 8: The commenter noted ongoing concerns with the implementation of C share provisions under the CR Program, including the time lag between the Council final action on

Amendment 31 to the Crab FMP (April 2008) and the publication of the final rule implementing Amendment 31 (March 26, 2015, 80 FR 15891).

Response: NMFS acknowledges this comment but notes that Action 2 of this final rule only corrects a previous amendatory error. Action 2 of this final rule does not modify the existing C share provisions under the CR Program. Comments about the implementation of Amendment 31 to the Crab FMP are outside of the scope of this final rule.

Comment 9: NMFS should carefully review its regulations prior to the implementation of provisions under Amendment 31 to the Crab FMP that can revoke C shares so that quota shareholders and prospective shareholders have clarity and certainty regarding their eligibility and QS holdings.

Response: NMFS acknowledges this comment but notes that the implementation of Amendment 31 is outside the scope of this final rule.

Change from the Proposed Rule

This final rule includes one change to the proposed regulatory text. This final rule modifies the regulatory text at § 679.4(k)(1)(ii) to eliminate Aleutian Islands *C. bairdi* crab from LLP regulations, in addition to removing the proposed four crab stocks: Eastern Aleutian Islands red king crab; scarlet or deep sea king crab; grooved Tanner crab; and triangle Tanner crab.

NMFS has determined that this change to the final rule is necessary to remove the Aleutian Islands *C. bairdi* crab stock from the LLP regulations in addition to the four species included in the proposed rule because Aleutian Islands *C. bairdi* crab was also eliminated from the Crab FMP with Amendment 24. As described in the response to comment 3 in the **Comments and Responses** section, NMFS did not propose this regulatory change. This change

corrects that error. This change from the proposed to final rule is necessary to ensure the regulations are consistent with the Crab FMP.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the Crab FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

Administrative Procedure Act

The NMFS Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the provisions in this final rule. A delay in the effective date of this rule would unnecessarily delay regulatory revisions that would provide an exemption from the prohibition against resuming fishing before all CR Program crab have been fully offloaded from a vessel. The revised regulations will allow participants in the WAG fishery to conduct partial offloads and resume fishing before all CR Program crab have been fully offloaded. A delay in effectiveness of the revised regulations would prevent participants from conducting partial offloads and resuming fishing before the close of the 2015/2016 WAG fishing season on April 30, 2016, thus undermining the purpose of the rule.

As described in the preamble to the proposed and final rule, NMFS implemented the prohibition against resuming fishing after a CR Program landing had commenced to facilitate enforcement of CR Program requirements for catch monitoring and full catch accounting. NMFS intended that this prohibition would prevent persons from discarding deadloss CR crab at sea prior to debiting this crab from the QS holder's IFQ account and subsequently high grading

with CR crab harvested after the partial offload. The prohibition was intended to ensure that all fishery removals are monitored and reported in the CR Program catch accounting system.

The Assistant Administrator has determined that this prohibition is unnecessary for the WAG fishery because participants in this fishery are unlikely to discard and subsequently high grade Western Aleutian golden king crab. First, crew harvesting Western Aleutian golden king crab only retain healthy crab of legal size and discard all dead, damaged, or diseased crab during the sorting process at the harvesting grounds. Thus, there is little incentive to discard and high grade after landing has commenced. Second, at-sea discards of unreported crab as a result of quota overages are unlikely because the CR Program cooperative structure, online quota transfers, and post-delivery quota transfers gives CR Program participants several options to obtain additional Individual Fishing Quota. Finally, fifty to seventy percent of the WAG fishery is monitored by observers. The presence of observers on board vessels reduces the likelihood of illegal discards and high grading of crab.

This final rule will increase operational efficiencies and revenues for participants in the WAG fishery. Prior to this final rule, vessels could offload portions of CR Program crab at multiple processors but were prohibited from resuming fishing or taking CR Program crab on board the vessel once a landing had commenced and until all CR crab were landed. As noted in the proposed rule and final RIR, the prohibition against resuming fishing before all crab have been offloaded from a vessel created inefficiencies and costs associated with requiring crab harvesting vessels to travel significant distances to land a partial load of WAG. Allowing vessels harvesting WAG to make partial landings for delivery to the live market and continue harvesting crab before fully offloading at a processor that can receive a larger vessel load of crab is expected to increase operational efficiencies and revenues for participants in the WAG fishery.

Waiving the 30-day delay in this final rule's effectiveness will help improve economic opportunities for the WAG fishery, which is remote and economically challenging for participants, as well as create the possibility of mutual benefits to harvesters, processors located in the western Aleutians, and any communities that develop a live market opportunity. There is no administrative need for additional time beyond the publication of this final rule. This is a noncontroversial action that positively affects a small number of fishery participants by relieving a restriction. NMFS is unaware of any participants who would not be in favor of or would be potentially harmed by waiving the 30-day delay in effectiveness. Without waiving the 30-day delay in effectiveness, WAG participants affected by this final rule would not be able to benefit from the exemption before the end of the 2015/2016 fishing season, which would delay the associated economic opportunities being sought through this final rule.

For these reasons, the NMFS Assistant Administrator finds good cause to waive the 30-day delay in effectiveness and this final rule is effective on the day that it is published in the **Federal Register**.

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 (81 FR 8886, February 23, 2016) and the preamble to this final rule serve as the small entity compliance guide. This rule does not require any additional compliance from small entities that is not described in the preamble to the

proposed rule and this final rule. Copies of the proposed rule and this final rule are available from NMFS at the following website: <http://alaskafisheries.noaa.gov>.

Final Regulatory Flexibility Analysis (FRFA)

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

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

significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

Need for and Objectives of the Rule

A description of the need for, and objectives of, the rule is contained in the preamble to the proposed rule and this final rule and is not repeated here. This FRFA incorporates the IRFA and the summary of the IRFA in the proposed rule (81 FR 8886, February 23, 2016).

Summary of Significant Issues Raised during Public Comment

NMFS published a rule that proposed to modify regulations governing the CR Program on February 23, 2016 (81 FR 8886). An IRFA was prepared and summarized in the **Classification** section of the preamble to the proposed rule. The comment period on the proposed rule ended on March 24, 2016. NMFS received 4 letters of public comment containing nine unique substantive comments on the proposed rule. These comment letters did not address the IRFA. The comments did generally address the economic impacts of the rule by requesting that the final rule be implemented as soon as possible to allow the participants in the WAG fishery to conduct partial offloads and resume fishing prior to the close of the WAG fishery season on April 30, 2016. As explained previously, the NMFS Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the provisions in this final rule. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by this Rule

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

Action 1 creates an exemption for the WAG fishery from the prohibition at § 680.7(b)(3) that precludes a person from resuming fishing before all crab has been offloaded from a vessel. Under Action 1, the entities directly regulated by this rule are those entities that participate in the WAG fishery: vessel operators, QS holders, and IFQ holders. This rule does not directly affect PQS holders, IPQ holders, or communities. Three vessels were active in the 2013/2014 WAG fishery. These vessels received the majority of their revenue from shellfish from 2012 through 2014. The entities directly regulated by this rule are members of a cooperative that exceeds the \$5.5 million revenue threshold for a shellfish entity and are not considered small entities (see Section 4.3 of the final RIR). The number of WAG fishery QS holders is listed in Table 3-3 in Section 3.5.2 of the final RIR. Gross revenue information is not available for these QS holders. Of the QS holders listed, at least 3 of the entities holding catcher vessel owner (CVO) QS are known to be large entities as defined by the Small Business Administration. The remaining 11 CVO QS holders and 8 CVC QS holders are assumed to be small entities.

Action 2 adds regulatory text that was inadvertently removed. The effect of Action 2 on directly regulated small entities is described in the FRFA prepared for a final rule implementing regulations to provide harvesting cooperatives, crab PQS holders, and Western Alaska Community Development Quota groups with the option to make web-based transfers (74 FR 51515, October 7, 2009) and for regulations implementing Amendment 31 to the Crab FMP (80 FR 15891, March 26, 2015).

Action 3 removes regulatory requirements for LLP licenses that are no longer applicable under the Crab FMP as described in the analysis for Amendment 24 to the Crab FMP (73 FR 33925, June 16, 2008). Action 3 will not impact directly regulated entities because no entities

(small or otherwise) are currently participating in these crab fisheries, and this rule will not preclude them from doing so under the appropriate State regulations.

Recordkeeping and Reporting Requirements

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

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

An FRFA also requires a description of any significant alternatives to this final rule that would accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of this rule on small entities. Under all actions, NMFS considered two alternatives—the no action alternative and the action alternative. During the Council’s initial discussion of the need for Action 1, it also considered extending the exemption from the prohibition against resuming fishing before all CR Program crab have been landed to all CR Program fisheries. However, the Council rejected this approach because it was too broad for the stated objectives, which were specific to the WAG fishery. Because Actions 2

and 3 are administratively focused and had a narrow purpose and need, there were no alternatives except the action alternative and the no action alternative that were considered.

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

Under Action 2, the no action alternative would not correct the error in regulation. The action alternative reinstates the regulation that was incorrectly removed. This rule will not change the impacts on small entities from the impacts considered in the FRFA prepared for the final rule implementing regulations to provide harvesting cooperatives, crab processing quota share holders, and Western Alaska Community Development Quota groups with the option to make web-based transfers (74 FR 51515, October 7, 2009) and for Amendment 31 to the Crab FMP. The FRFA for the web-based transfers rule described the impacts of the rule as beneficial to small entities because the rule would simplify the process for completing transfers. The FRFA for Amendment 31 described that under Amendment 31, the submission of documentation

demonstrating active participation for C share QS holders was necessary to implement the active participation requirements, but was not expected to have a significant impact on small entities due to the need to submit the information only upon the request to receive C share QS by transfer.

Under Action 3, the no action alternative would retain regulations for LLP license requirements that are no longer applicable under the Crab FMP. The action alternative makes LLP license requirements consistent with the Crab FMP and reduces potential confusion for small entities. Action 3 requires the reissuance of LLP licenses to the 274 license holders with the Aleutian Islands *C. bairdi*/*C. opilio* crab and/or the Eastern Aleutian Islands red king crab endorsement; however, this requires no action taken on the part of any small entities. Action 3 will not impact directly regulated entities because no entities are currently participating in these crab fisheries, and this rule will not preclude them from doing so under the appropriate State regulations.

Collection-of-Information Requirements

This rule references collection-of-information requirements subject to the Paperwork Reduction Act (PRA), which have been approved by OMB and are listed below by OMB control number.

OMB Control Number 0648-0334

The crab LLP is mentioned in this rule, but there will be no change in burden or cost results. NMFS will modify LLP licenses to remove the Aleutian Islands *C. bairdi*/*C. opilio* crab and Eastern Aleutian Islands red king crab endorsement. NMFS does not expect that removal of these area/species endorsements will impact LLP license holders.

OMB Control Number 0648-0514

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

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 202-395-5806.

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.

List of Subjects

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 20, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

2. In § 679.4,

a. Remove paragraph (k)(1)(ii)(A);

b. Redesignate paragraph (k)(1)(ii)(B) as new paragraph (k)(1)(ii)(A);

c. Revise newly redesignated paragraph (k)(1)(ii)(A);

d. Redesignate paragraph (k)(1)(ii)(C) as new paragraph (k)(1)(ii)(B) and paragraph (k)(1)(ii)(D)(I) as new paragraph (k)(1)(ii)(C);

f. Revise newly redesignated paragraph (k)(1)(ii)(C); and

g. Remove paragraph (k)(1)(ii)(D).

The revisions read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(1) * * *

(ii) * * *

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

* * * * *

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

* * * * *

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

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

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

4. In § 680.7, revise paragraph (b)(3) to read as follows:

§ 680.7 Prohibitions.

* * * * *

(b) * * *

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

* * * * *

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

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

* * * * *

(i) * * *

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

Proof of this landing is —

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

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

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