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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 170412391-7999-02]

RIN 0648-BG84

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; American Fisheries Act; 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 48 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) and to revise regulations implementing the American Fisheries Act (AFA) Program and the Crab Rationalization (CR) Program. This final rule revises the Crab FMP and regulations that govern how NMFS determines the amount of limited access privileges held and used by groups in the Western Alaska Community Development Quota Program (CDQ Program) for the purposes of monitoring the excessive share limits under the AFA Program and the CR Program. This final rule is necessary to align regulations and the Crab FMP to be consistent with an amendment to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and NMFS' current method of monitoring excessive share limits for CDQ groups in the AFA Program and the CR

Program. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Act, the Crab FMP, and other applicable law.

DATES: Effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Amendment 48 to the Crab FMP, the 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 website at <http://alaskafisheries.noaa.gov>.

The CR Program Environmental Impact Statement (EIS), RIR, and Final Regulatory Flexibility Analysis, as well as the AFA Program EIS and RIR, are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Stephanie Warpinski, 907-586-7228.

SUPPLEMENTARY INFORMATION: This final rule implements Amendment 48 to the Crab FMP and regulatory amendments to the CR Program. NMFS published a notice of availability for Amendment 48 to the Crab FMP in the *Federal Register* on August 3, 2017 (82 FR 36111). Comment on Amendment 48 was invited through October 2, 2017. The Secretary of Commerce approved Amendment 48 on October 31, 2017, after accounting for information from the public, and determining that Amendment 48 is consistent with the Crab FMP, the Magnuson-Stevens Act, and other applicable law. NMFS published the proposed rule to implement Amendment 48 on August 22, 2017 (82 FR 39743). The comment period on the proposed rule ended on September 21, 2017. NMFS received 1 comment on the proposed rule. A summary of the comment and NMFS' responses is provided in the Comments and Responses section of this preamble.

This final rule modifies regulations at 50 CFR 679.2, 679.7, 680.2, and 680.42 that specify how NMFS determines holding and use of limited access privileges (LAPs) for the purposes of monitoring excessive share limits for CDQ groups under the AFA Program and the CR Program. The following section of the preamble provides a brief description of the AFA, CR, and CDQ Programs, and the elements of these programs that apply to Amendment 48 and this final rule. For a more detailed description, please see the preamble of the proposed rule (82 FR 39743; August 22, 2017) and Sections 2.6 through 2.8 of the RIR (see **ADDRESSES**).

Excessive Share Limits

Section 303A(c)(5)(D) of the Magnuson-Stevens Act requires NMFS to establish excessive share limits to prevent excessive consolidation of harvesting and processing LAPs in order to maintain an appropriate distribution of economic and social benefits for fishery participants and communities (16 U.S.C. 1853a(c)(5)(D)). Because determination of excessive shares must consider the specific circumstances of each fishery, the North Pacific Fishery Management Council (Council) and NMFS have implemented different excessive share limits in the LAP programs in Alaska's fisheries, including the AFA and CR Programs.

NMFS implemented use caps for the AFA Program in 2002 (67 FR 79692; December 30, 2002) and holding and use caps for the CR Program in 2005 (70 FR 10174; March 2, 2005). Regulations at 50 CFR 679.2, 679.7, 680.2, and 680.42 prohibit a person from using more than the harvesting and processing limits established in the AFA Program and from holding and using more than a specific portion of the LAPs allocated under the CR Program. Under 50 CFR 679.2, "person" includes individuals,

corporations, partnerships, associations, and other non-individual entities. NMFS determines a person's holding and use of a LAP in the AFA Program and CR Program by summing 1) the amount directly held and used by that person, and 2) the amount held and used by that person indirectly through an ownership interest in or control of another entity that also holds and uses the LAPs. Ownership attribution refers to the method NMFS uses to assess the relationships between different entities that participate in LAP programs.

NMFS uses two ownership attribution methods to determine the holding and use of LAPs. These two methods for attributing holding and use of a LAP are commonly known as the "individual and collective rule" and the "10-percent rule." Under the individual and collective rule, NMFS attributes holding and use of LAPs by one person proportionally to their ownership in or control of another entity that holds and uses LAPs. For example, if Company A has a 15 percent ownership of Company B that holds LAPs, Company A would be attributed 15 percent of Company B's holding and use of the LAPs. In contrast, under the 10-percent rule, a person is attributed 100 percent of an entity's LAPs if that person owns or otherwise controls 10 percent or more of that entity. Thus, if Company A owns or controls 10 percent or more of Company B, then 100 percent of Company B's holdings and use of LAPs are attributed to Company A. When a person owns or controls 10 percent or more of another entity, the individual and collective rule is less restrictive than the 10-percent rule because a person is only attributed holding and use of LAPs in proportion to how much that person owns or controls of other entities, rather than attributing 100 percent of the other entity's LAP holdings once the 10-percent ownership or control threshold is met. Under a holding and

use cap, the individual and collective rule would allow a person to hold and use more LAPs than if the person was evaluated using the 10-percent rule.

AFA Program Use Caps

Section 210(e)(1) of the AFA restricts an individual, corporation, or other entity to harvesting no more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery. Section 210(e)(2) of the AFA directed the Council to recommend for Secretarial approval conservation and management measures to prevent any particular individual or entity from processing an excessive share of pollock available in the directed pollock fishery. The Council and NMFS set this limit at 30 percent of the sum of the directed fishing allowances for pollock (67 FR 79692, 79698; December 30, 2002). Every year, these limits are published in the annual harvest specifications (*see* 81 FR 14773; March 18, 2016 (final 2016-2017 harvest specifications); *see also* 81 FR 52367; August 8, 2016).

Section 210(e)(3) of the AFA also specified that any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for purposes of monitoring the harvesting and processing use caps. This section of the AFA directed NMFS to use the 10-percent rule to determine the use of AFA Program harvesting and processing privileges.

CR Program Use Caps

The CR Program was implemented on April 1, 2005 (70 FR 10174; March 2, 2005). The CR Program established a LAP program for nine crab fisheries in the Bering Sea and Aleutian Islands (BSAI) and assigned quota share (QS) to persons based on their

historic participation in one or more of those nine BSAI crab fisheries during a specific period. Each year, a person who holds QS may receive an exclusive harvest privilege called individual fishing quota (IFQ). NMFS also issued processor quota share (PQS) under the CR Program. Each year, PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries, called individual processor quota (IPQ). The CR Program includes limits on the amount of QS and PQS that a person can hold and the amount of IFQ and IPQ that a person can use (see Section 2.7 of the RIR for more information).

For processing privileges, the CR Program limits a person to holding no more than 30 percent of the PQS initially issued in the fishery, and to using no more than the amount of IPQ resulting from 30 percent of the PQS initially issued in a given fishery, with a limited exemption for persons receiving more than 30 percent of the initially-issued PQS (50 CFR 680.42(b)). 50 CFR 680.42(b)(3) specifies that NMFS uses the 10-percent rule to monitor holding and use caps for PQS and IPQ for all CR Program participants as recommended by the Council and addressed in the preamble to the proposed rule for the CR Program (69 FR 63200, 63219, and 63226; October 29, 2004).

Use Caps for CDQ Groups

The CDQ Program was established by the Council and NMFS in 1992, and authorization for the Program was incorporated into the Magnuson-Stevens Act in 1996. The purpose of the CDQ Program is 1) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the BSAI, 2) to support economic development in western Alaska, 3) to alleviate poverty and provide economic and social benefits for residents of western Alaska, and 4) to achieve sustainable and diversified

local economies in western Alaska (16 U.S.C. 1855(i)(1)(A)) (see Section 2.8 of the RIR).

CDQ groups participate in LAP programs, including the AFA and the CR Programs, by purchasing harvesting and processing privileges and through ownership of vessels and processors that participate in these fisheries. The Magnuson-Stevens Act was amended by the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; the Coast Guard Act) to specify the method that NMFS must use for monitoring excessive share limits as they apply to CDQ groups—the proportional or “individual and collective” rule.

NMFS implemented in practice the method specified in the 2006 amendment to the Magnuson-Stevens Act for CDQ groups to monitor excessive share limits in the AFA Program and the CR Program; however, the Crab FMP and the regulations for the AFA Program and the CR Program were not revised to be consistent with the 2006 amendment to the Magnuson-Stevens Act.

This Final Rule

This section of the preamble provides a brief description of this final rule. For a more detailed description of the rationale for this final rule, see the preamble of the proposed rule (82 FR 39743; August 22, 2017). This final rule revises the AFA Program to specify that NMFS uses the individual and collective rule for CDQ groups to attribute harvesting and processing privileges of AFA pollock proportionally to the CDQ groups’ ownership or control of vessels and processors active in those fisheries. For example, if a CDQ group owns 15 percent of an entity that uses AFA harvesting and processing privileges, the CDQ group will be attributed 15 percent of the harvesting or processing

privileges of that company for purposes of monitoring excessive harvesting and processing use caps under the AFA.

This final rule also implements Amendment 48 to the Crab FMP and revises the CR Program to specify that NMFS uses the individual and collective rule for CDQ groups to attribute holding and use of PQS and IPQ based on the CDQ groups' proportional ownership or control of entities that hold and use PQS and IPQ. For example, if a CDQ group owns 15 percent of a company that holds or uses PQS or IPQ, the CDQ group will be attributed 15 percent of the holding or use of that PQS or IPQ.

NMFS has used the individual and collective rule for CDQ group ownership attribution for the AFA Program and the CR Program since enactment of the Coast Guard Act; however, the regulations and the Crab FMP for the PQS and IPQ holding and use caps have not been updated to reflect this change. This final rule updates the regulations, and Amendment 48 amends the Crab FMP, to be consistent with the Magnuson-Stevens Act and NMFS' current method of ownership attribution for CDQ groups. This final rule and Amendment 48 to the Crab FMP benefit CDQ groups and the public by clarifying the method NMFS uses to attribute holding and use of harvesting and processing privileges by CDQ groups for purposes of monitoring holding and use caps for the AFA and CR Programs.

This final rule does not alter the regulations for the QS and IFQ holding and use caps under the CR Program because current CR Program regulations specify that NMFS uses the individual and collective rule for all program participants, including CDQ groups, to attribute any participants' holding and use of QS and IFQ based on their proportional ownership or control of entities that hold and use QS and IFQ.

This final rule revises 50 CFR 679.2, 679.7(k)(6) and (7), 680.2, and 680.42(b) to specify that NMFS uses the individual and collective rule for CDQ groups for purposes of ownership attribution in the AFA Program and the CR Program. In this final rule, NMFS clarifies the amendatory text from the proposed rule to specify that only the introductory text to the definition of *Affiliation for the purpose of defining AFA and the Rockfish Program* is revised to specify that CDQ groups are not subject to the 10-percent rule for purposes of affiliation. This final rule does not modify the remainder of the definition that describes the specific components of the 10-percent rule for the AFA Program and the Rockfish Program. NMFS did not make any changes to the regulatory text from the proposed rule to the final rule.

Comments and Responses

Comment 1: The commenter states that NMFS should consider rolling over unused quota or total allowable catches (TACs) to the next year to provide additional flexibility for harvesters. The commenter suggests that NMFS should prevent too many fish from being harvested, especially small fish and breeding females.

Response: This comment addresses management issues that are beyond the scope of Amendment 48 and this regulatory action. This final rule does not change the process of allocating quota or establishing TACs under the AFA Program or the CR Program, nor will this final rule change specific management measures that govern the harvest of pollock and crab in the BSAI, such as fishing location, timing, effort, or authorized gear types. This final rule revises regulations describing the method NMFS uses to determine the amount of limited access privileges held and used by CDQ groups for the purposes of monitoring the excessive share limits under the AFA Program and the CR Program.

Classification

The Administrator, Alaska Region, NMFS, has determined that Amendment 48 to the Crab FMP and this final rule are necessary for the conservation and management of the AFA, CR, and CDQ Program fisheries and are consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required, and none was prepared, pursuant to 5 U.S.C. 605.

List of Subjects

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 680

Alaska, Reporting and recordkeeping requirements.

Dated: November 6, 2017.

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 § 679.2, revise the definitions for “AFA entity” and the introductory text to the definition for “Affiliation for the purpose of defining AFA and the Rockfish Program” to read as follows:

§ 679.2 Definitions.

* * * * *

AFA entity means a group of affiliated individuals, corporations, or other business concerns, except for a CDQ group, that harvests or processes pollock in the BS directed pollock fishery.

* * * * *

Affiliation for the purpose of defining AFA and the Rockfish Program means a relationship between two or more individuals, corporations, or other business concerns,

except CDQ groups, in which one concern directly or indirectly owns a 10 percent or greater interest in another, exerts control over another, or has the power to exert control over another; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts control over both, or has the power to exert control over both.

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3. In § 679.7, revise paragraphs (k)(6) and (7) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(k) * * *

(6) *Excessive harvesting shares.* It is unlawful for an AFA entity or a CDQ group to harvest, through a fishery cooperative or otherwise, an amount of BS pollock that exceeds the 17.5 percent excessive share limit specified under § 679.20(a)(5)(i)(A)(6). A CDQ group's harvest of BS pollock will be calculated through its proportional ownership of individuals, corporations, or other business concerns that harvest BS pollock. The owners and operators of the individual vessels comprising the AFA entity or CDQ group that harvest BS pollock will be held jointly and severally liable for exceeding the excessive harvesting share limit.

(7) *Excessive processing shares.* It is unlawful for an AFA entity or a CDQ group to process an amount of BS pollock that exceeds the 30-percent excessive share limit specified under § 679.20(a)(5)(i)(A)(7). The amount of BS pollock processed by a CDQ group will be calculated through its proportional ownership of individuals, corporations, or other business concerns that process BS pollock. The owners and operators of the

individual processors comprising the AFA entity or CDQ group that process BS pollock will be held jointly and severally liable for exceeding the excessive processing share limit.

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

4. 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.

5. In § 680.2, in the definition of “Affiliation”, revise the introductory text and paragraph (1) introductory text to read as follows:

§ 680.2 Definitions.

* * * * *

Affiliation means a relationship between two or more entities, except for CDQ groups, in which one directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, another, or a third entity directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, both. For the purpose of this definition, the following terms are further defined:

(1) *Entity*. An entity may be an individual, corporation, association, partnership, joint-stock company, trust, or any other type of legal entity, except for a CDQ group, any receiver, trustee in bankruptcy or similar official or liquidating agent, or any organized group of persons whether incorporated or not, that holds direct or indirect interest in:

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6. In § 680.42, revise paragraphs (b)(3)(ii) through (iv) to read as follows:

§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

* * * * *

(b) * * *

(3) * * *

(ii) Is not a CDQ group and directly or indirectly owns a 10 percent or greater interest in an entity that holds PQS.

(iii) A person that is not a CDQ group and holds PQS is limited to a PQS use cap that is calculated based on the sum of all PQS held by that PQS holder and all PQS held by any affiliate of the PQS holder. A CDQ group that holds PQS is limited to a PQS use cap that is calculated based on the sum of all PQS held, individually or collectively, by that CDQ group.

(iv) A person that is not a CDQ group and holds IPQ is limited to an IPQ use cap that is calculated based on the sum of all IPQ held by that IPQ holder and all IPQ held by any affiliate of the IPQ holder. A CDQ group that holds IPQ is limited to an IPQ use cap that is calculated based on the sum of all IPQ held, individually or collectively, by that CDQ group.

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[FR Doc. 2017-24403 Filed: 11/8/2017 8:45 am; Publication Date: 11/9/2017]