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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 200713-0189]

RIN 0648-BJ64

Fisheries of the Exclusive Economic Zone Off Alaska; Removing the Prohibition on Continuing to Fish after a Partial Offload in the Bering Sea/Aleutian Islands Crab Rationalization Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would remove the regulatory prohibition on continuing to fish after a partial offload in the Bering Sea and Aleutian Islands (BS/AI) Crab Rationalization (CR) Program. This proposed action is needed to provide CR crab fishery participants operational flexibility to conduct their business in an efficient manner, in particular when emergencies or special circumstances arise. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan (FMP) for BS/AI King and Tanner Crabs (Crab FMP), and other applicable laws.

DATES: Submit comments on or before *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2020-0034, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0034, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the draft Regulatory Impact Review (referred to as the “Analysis”) and the draft Categorical Exclusion prepared for this proposed rule may be obtained from www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the king and Tanner crab fisheries in the exclusive economic zone (EEZ) of the BS/AI under the Crab FMP. The North Pacific Fishery Management Council (Council) prepared the Crab FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations implementing most provisions of the Crab FMP, including the CR Program, are located at 50 CFR part 680. Regulations implementing specific provisions of the Crab FMP that pertain to the License Limitation Permit Program are located at 50 CFR part 679.

All relevant comments submitted on this proposed rule and received by the end of the comment period (See **DATES**) will be considered by NMFS and addressed in the response to comments in the final rule.

Background

The CR Program was implemented on April 1, 2005 (70 FR 10174, March 2, 2005). The CR Program established a limited access program (LAP) for nine crab fisheries in the BS/AI and assigned quota share (QS) to persons based on their historic participation in one or more of those nine BS/AI crab fisheries during a specific period. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch (TAC). This annual exclusive harvest privilege is 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 BS/AI CR crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. Each year there is a one-to-one match between the

total pounds of IFQ that must be delivered to a processor with IPQ with and the total pounds of IPQ issued in each CR crab fishery.

Under current regulations, a person may offload a portion of CR crab from a vessel at multiple processors. However, except for the Western Aleutian Islands golden king crab fishery, regulations at 50 CFR 680.7(b)(3) prohibit a person from fishing again or taking CR crab on board the vessel until all of the crab originally on board the vessel have been offloaded. The prohibition against resuming fishing once an offload has commenced and until it is completed applies to CR Program crab, which includes IFQ and Community Development Quota (CDQ) crab landings. In December 2019, the Council recommended removing the regulatory prohibition on resuming fishing for CR crab between partial offloads for all CR crab fisheries. This proposed rule is a regulatory amendment that would remove this prohibition against continuing to fish in the BSAI CR crab fisheries once offloading has commenced and until all CR crab are landed.

Removal of the prohibition would provide IFQ and CDQ participants in CR crab fisheries operational flexibility to conduct their business in an efficient manner, in particular when emergencies or special circumstances arise, such as inclement weather. With adjustments by the State to its data collection protocols, proper catch accounting would be maintained with this proposed action. The following sections of this preamble provide 1) a brief history of the prohibition on crab partial offloads; 2) the expected effects of and need for this action; and 3) a description of the regulatory change made by this proposed rule.

Brief History of the Prohibition on Crab Partial Offloads

The regulatory prohibition on returning to fish after a partial offload of crab was

originally established with the implementation of the CR Program. NMFS published the final rule to implement the CR Program on March 2, 2005 (70 FR 10174). Fishing under the CR Program started with the 2005/2006 crab fishing year. The regulatory prohibition on partial offloads at 50 CFR 680.7(b)(3) was intended to address enforcement concerns associated with a potential change in discarding behavior due to the new management of the fisheries. Specifically, there were concerns that undesirable crab (*e.g.* overages, deadloss, or barnacled crab) would be discarded at sea without being accounted for, and there was a concern that resuming fishing between partial offloads would exacerbate the opportunity to discard crab illegally. The prohibition was intended to ensure that all fishery removals are monitored and reported in the CR Program catch accounting system. The final rule to implement the CR Program has a detailed description of the monitoring and catch accounting provisions in the CR crab fisheries (70 FR 10174, March 2, 2005).

Experience with the CR Program has shown that illegal (unreported) crab discards are unlikely for several reasons. First, there is no prohibition on sorting crab at the rail, and this is where undesirable crab are often discarded. These discards are accounted for by the Alaska Department of Fish and Game (ADF&G) and ADF&G has communicated to industry that high levels of discarding at the rail would be reflected in the stock assessments and ultimate crab TACs. Second, while discarding crab later in the trip is prohibited, dumping crab at sea once it has gone into the tanks would be dangerous and impractical. Third, the risk of quota overages has been greatly reduced due to the cooperative structure of the CR Program, online quota transfers, and post-delivery quota transfers, giving the industry many options to resolve a potential overage. Finally, the structure of the CR Program means more people than just the vessel operators are put at

risk by this sort of illegal activity. Experience with the CR Program also has shown that the prohibition against continuing to fish for CR crab after an offload has begun and until the offload is complete has simplified dockside sampling and catch accounting.

In 2016, the Council recommended, and NMFS implemented an exemption from this prohibition specifically for the Western Aleutian Islands golden king crab (WAG) fishery (81 FR 24511, April 26, 2016). This exemption was developed to accommodate harvesting and processing operations in Adak, Alaska for a live crab market. In order to make this live market opportunity economically viable, processors needed vessels to be able to deliver small amounts of crab opportunistically while commercial aircraft were available. The Council wished to promote the product development and market opportunity, the economic efficiency, and potential community benefits this exemption could foster. Additionally, ADF&G determined that, given the small number of vessels prosecuting this fishery (consistently two to four vessels), ADF&G staff could work with these vessel operators to ensure this change would be minimally disruptive to the monitoring and accounting for catch in the WAG fishery.

In April 2018, the Council received a proposal from the Pacific Northwest Crab Industry Advisory Committee, requesting the same consideration for the rest of the CR crab fisheries. In February 2019, the Council decided to examine the proposal, stating that while the Council was interested in providing operational flexibility, particularly in emergencies or special circumstances, it also wanted to ensure that ADF&G would be able to maintain proper catch monitoring and accounting in the CR crab fisheries.

The Expected Effects of and Need for this Action

While fishing after a partial delivery was fairly common practice by vessels

racing to catch and deliver crab before the CR Program was implemented, the CR Program has increased coordination between harvesters and processors, allowing for an increase in the efficiency of offloads. Under the CR Program, it is more economically efficient for vessels to offload all crab before resuming fishing in order to avoid deadloss of the crab sitting in tanks on the vessel. For this, and other reasons described earlier, the Council and NMFS do not anticipate that the resumption of fishing after a crab partial offload would become a routine operating procedure if the prohibition on fishing between partial offloads is removed. The flexibility resulting from this action would only be expected to be used in emergency situations, such as inclement weather, or special circumstances related to the economics of the operations. Therefore, the impacts of this action are expected to be minimal and only beneficial.

While the prohibition at § 680.7(b)(3) may no longer be needed to address enforcement concerns, the prohibition has greatly simplified dockside sampling and catch accounting. Section 2.7.4 of the Analysis for this action examined the effects of removing this prohibition for all CR fisheries on the State's monitoring and catch accounting procedures and indicated whether modifications would be necessary and if necessary, what modifications would be required. Section 2.7.4 concludes that without modifications by ADF&G to accommodate the proposed change, removal of the prohibition could complicate some aspects of the State's dockside sampling, catch accounting, and Observer Program, and may degrade the spatial quality of some of the data collected in these fisheries.

For example, Section 2.7.4.3 of the Analysis states that ADF&G's protocol for at-sea sampling would likely not have to change under the proposed action, but that the

State's Observer Program may need to define and adjust to a new definition of "trip" for some observer sampling purposes. In addition, NMFS requires operators of vessels in the CR crab fisheries to complete a daily fishing log. ADF&G uses data from the daily fishing log to verify landings and to ensure accurate accounting for all fishery removals. These existing accounting protocols will help to mitigate any complications that may arise if a CR crab fishery participant were to continue fishing between partial offloads. Finally, any level of concern with the complexity the proposed action generates regarding management and accounting issues is tied to frequency of use. Because this proposed action is not anticipated to be used often, any complexity regarding catch accounting is expected to be minimal. ADF&G indicated that it could adjust its monitoring and catch accounting procedures and protocols to accommodate the proposed action and maintain data quality, and that it would make those adjustments upon implementation of the action.

The Council determined, and NMFS agrees, that this proposed action would provide CR Program fishery participants with additional operational flexibility to conduct their business in an efficient manner, in particular when emergencies or special circumstances arise, such as inclement weather. The Council also acknowledged that with adjustments by the State to its data collection protocols, proper catch accounting would be maintained with this proposed action.

Proposed Rule

This proposed rule would remove the prohibition on continuing to fish after a partial offload of crab in the BS/AI CR crab fisheries. To make that change, this proposed

rule would remove the prohibition language in section (b)(3) under 50 CFR § 680.7 and renumber subsequent sections under § 680.7(b).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Council's regulatory amendment, the Crab FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment period.

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

This proposed rule is expected to be an Executive Order 13771 deregulatory action.

Certification under the Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule would remove the prohibition against continuing to fish in the BS/AI CR crab fisheries once offloading has commenced and until all CR Program crab are landed. This will allow CR Program fishery participants operational flexibility to conduct their business in an efficient manner, in particular when emergencies or special circumstances arise, while also ensuring proper catch accounting.

Entities that would be directly regulated by this proposed rule include those that

commercially harvest BS/AI CR crab, including holders of IFQ and CDQ crab. These are the participants currently regulated by the prohibition at 50 CFR 680.7(b)(3). Although potentially impacted, regulatory changes from the proposed rule would not directly include processors, processor quota shareholders, individual processing quota holders, or communities. In 2018, the most recent year with vessel revenue data available, there were 68 vessels participating in CR crab fisheries (including harvesting CDQ crab). All of these vessels fished within cooperatives, and all but 8 of these vessels were part of cooperatives whose gross revenues exceeded \$11.0 million. Thus, due to their affiliations, 60 harvesters are considered large entities for purposes of the Regulatory Flexibility Act (RFA), and 8 are considered small entities. In recent years, vessels unaffiliated with a cooperative harvested a small amount of quota. If unaffiliated with a cooperative, these entities may also be considered small under the RFA definition. Based on the scope of this action, impacts to small, directly regulated entities are expected to be minimal and beneficial if the entities decide to use the flexibility to continue fishing after a partial offload.

This action does not place any new regulatory burden on CR Program participants; it allows increased flexibility for vessels that choose to use the voluntary harvest flexibility. This proposed action, therefore, is not expected to have a significant economic impact on a substantial number of the small entities directly regulated by this proposed action.

As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

Regulatory Impact Review

A Regulatory Impact Review was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended and NMFS proposes these regulations based on those measures that maximize net benefits to the Nation.

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements

Dated: July 14, 2020.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For reasons set out in the preamble, NMFS proposes to amend 50 CFR part 680 as follows:

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

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

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

[§ 680.7 Amended]

2. In § 680.7, remove paragraph (b)(3) and redesignate paragraphs (b)(4) through (7) as (b)(3) through (6), respectively.

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