



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

RIN 0648-BM81

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

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

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

SUMMARY: The North Pacific Fishery Management Council (Council) submitted Amendments 54 and 55 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) to NMFS for review. If approved, Amendments 54 and 55 would revise two provisions of the Crab Rationalization Program (CR Program) to complete the following: change active participation requirements for crab quota share (crab QS) established for vessel operators and crew; and expand the exemptions for CR Program custom processing from processor use caps and remove the CR Program processor facility use cap. These actions are intended to provide operators and crew greater flexibility in meeting CR Program participation requirements and to improve CR Program processor efficiency. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Crab FMP, and other applicable laws.

DATES: Submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2023-0159, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-0159 in the Search box (note: copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. 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 <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendments 54 and 55 to the Crab FMP, the Regulatory Impact Reviews (RIRs) prepared for Amendment 54 and Amendment 55, and the Categorical Exclusion prepared for this action may be obtained from <https://www.regulations.gov> or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>. NMFS determined that this proposed action amending the Crab FMP and implementing the amendments are categorically

excluded from requirements to otherwise prepare an environmental assessment under the National Environmental Policy Act.

The Environmental Impact Statement (Program EIS), RIR (Program RIR), Final Regulatory Flexibility Analysis (Program FRFA), and Social Impact Assessment previously prepared for the CR Program are available from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

FOR FURTHER INFORMATION CONTACT: Andrew Olson, 907-586-7228, andrew.olson@noaa.gov.

SUPPLEMENTARY INFORMATION:

The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendments 54 and 55 to the Crab FMP are available for public review and comment.

NMFS manages the king and Tanner crab fisheries in the U.S. exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) under the Crab FMP. The Council prepared, and NMFS approved, the Crab FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the Crab FMP appear at 50 CFR parts 600 and 680.

Background

NMFS implemented the CR Program as a limited access privilege program, also called a catch share program, for nine crab fisheries in the BSAI on March 2, 2005 (70 FR 10174). The CR Program FMP has been amended seventeen times since 2005. In this

document, the phrases “crab fishery” and “crab fisheries”, quota share (QS)”, “individual fishing quota (IFQ)” refer to crab fisheries associated CR Program, unless otherwise specified.

Amendment 54 and 55 to the Crab FMP and this proposed rule would revise two provisions of the CR Program to do the following: 1) change active participation requirements for QS established for CR Program vessel operators and crew; and 2) expand exemptions for custom processing from processor use caps and remove the processor facility use caps.

The CR Program initially assigned QS to persons based on their historic participation in one or more of nine crab fisheries during a specific period. Under the CR Program. NMFS issued four types of QS: catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch to shoreside crab processors or to stationary floating crab processors; catcher/processor vessel owner (CPO) QS was assigned to LLP license holders who harvested and processed their catch at sea; catcher/processor crew (CPC) QS was issued to vessel operators and crew on board catcher/processor vessels; and catcher vessel crew (CVC) QS was issued to vessel operators and crew on board catcher vessels. CPC QS and CVC QS are also called C shares. Each crab fishing year, which is the period from July 1 of one calendar year through June 30 of the following calendar year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch (TAC), called individual fishing quota (IFQ).

Both in original CR Program design and reinforced through the subsequent Amendment 31 to the Crab FMP (80 FR 15891, March 26, 2015), the Council and NMFS intended that individuals holding CVC QS and CPC QS be active participants in crab fisheries so that QS is not held by inactive individuals for extended periods of time. Since June 2018 (3 years after implementation of Amendment 31), in order to receive an annual

allocation of CVC QS or CPC QS IFQ, the regulations require a CVC QS and CPC QS holder to have either met one of the following:

(1) participated as crew in at least one delivery in a CR Program crab fishery in the three crab fishing years preceding the crab fishing year for which the holder is applying for IFQ; or

(2) if the individual was an initial recipient of CVC QS or CPC QS, participated as crew in at least 30 days of fishing in a commercial fishery managed by the State of Alaska or a U.S. commercial fishery in Federal waters off Alaska in the three crab fishing years preceding the crab fishing year for which the holder is applying for IFQ. Initial recipients of CVC QS and CPC QS can demonstrate active participation using either option while new entrants are limited to participating as crew in at least one delivery in a CR Program crab fishery.

NMFS also issued processor quota share (PQS) to processors based on their historic participation in one or more of the nine crab fisheries during a specific period. Each year, PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). A portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. CVO QS is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent is designated as Class B IFQ. Class A IFQ holders must be matched and delivered to a processor with IPQ that have available IPQ, also known as “share matching”. Class B IFQ is not required to be delivered to a processor holding IPQ for that fishery. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

When the Council recommended the CR Program, it expressed concern about the potential for excessive consolidation of QS and PQS, in which too few persons control all

of the QS or PQS and the resulting annual IFQ and IPQ as well as concern for regional consolidation of processors. The Council determined that excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, exclusion of regional locations that had crab landing and processing history, and other factors considered and described in the Program EIS. To address these concerns, the CR Program limits the amount of QS that a person can hold (*i.e.*, own), the amount of IFQ that a person can use (*i.e.* harvest crab), and the amount of IFQ that can be used on board a vessel (*i.e.*, vessel harvest cap). Similarly, the CR Program limits the amount of PQS that a person can hold (*i.e.*, own), the amount of IPQ that a person can use (*i.e.*, process crab), and the amount of IPQ that can be processed or custom processed at a given CR Program crab processing facility (*i.e.*, processor cap). These limits are commonly referred to as ownership caps and use caps. Additionally, regional landing designations were created for Class A QS based on the historic location that gave rise to the share.

Amendment 54

Amendment 54 would modify participation requirements for all CVC QS and CPC QS holders by instituting the following: 1) restarting the 3- and 4-year rolling timeframes for meeting active participation requirements for all CVC QS and CPC QS holders; 2) authorizing NMFS to reissue QS that was revoked between July 1, 2019 and the effective date of a final rule implementing Amendment 54, 3) standardizing and expanding the requirements by expanding the type of activity that would qualify as participation by allowing all CVC QS and CPC QS holders to participate in 30 days of fishing in any commercial fishery off Alaska, including crew on a tender vessel, 4) clarifying that the requirement to participate as crew in one crab delivery also includes participating in the fishing trip that results in a crab landing, and 5) clarifying the

exemption for CVC QS and CPC QS holders with QS exclusively in closed CR Program fisheries applies to a CVC QS or CPC QS holder with QS in more than just a single closed CR Program fishery.

The Council and NMFS established CVC QS and CPC QS, which are transferrable, with participation requirements as a mechanism to keep a portion of the crab QS in the hands of active fishery participants and provide opportunities for new entrants into the fishery. The Council recognized that some fishery participants struggled to maintain active participation during the COVID-19 pandemic and recent closures of crab fisheries due to low abundance, but the Council wanted to retain a participation requirement. Amendment 54 provides additional flexibility to existing CVC QS and CPC QS holders and continues to ensure that CVC QS and CPC QS is held by active fishery participants.

Amendment 55

Amendment 55 would exempt custom processing of Bering sea snow crab (*Chionoecetes opilio*) (BSS) IPQ with a south region designation, Bristol Bay red king crab (BBR) IPQ, and Western Aleutian Island golden king crab (WAG) IPQ processed east of 174° W. from being counted against a processor IPQ use cap. By exempting custom processing in these three crab fisheries, this action would align the application of the IPQ use caps across all crab fisheries. Further, Amendment 55 would also remove the 60 percent CR Program processor facility use cap applicable to the Eastern Aleutian Island golden king crab (*Lithodes aequispinus*) (EAG) and Western Aleutian Island red king crab (*Paralithodes camtschaticus*) (WAI) fisheries. The EAG and WAI crab fisheries are the only two crab fisheries subject to a cap on the amount of IPQ that can be used as a facility (as distinguished from the IPQ use caps, which are specific to the IPQ holder). By exempting custom processing in these three fisheries, this action would align the application of the IPQ custom processing use caps across all CR Program fisheries.

The Council and NMFS recognize that the existing facility and IPQ use caps were designed and implemented when crab TACs were at a much higher level than recent years. Without Amendment 55, four unaffiliated processing facilities would need to operate to fully process the crab fisheries. This is due to share matching requirements in order to custom process crab in the BBR, south designated BSS and WAG east of 174° W longitude. Given the high costs of operating a processing facility in the BSAI, this is not economically viable when very low amounts of crab are available. Amendment 55 allows for more custom processing opportunities but also benefits the processing sector overall by not forcing more facilities than are needed to process relatively small TACs.

Amendment 55 is expected to improve processing efficiency in the fisheries. Additionally, the proposed action is expected to minimize costs and avoid unnecessary duplication by simplifying regulations and reducing resources needed to monitor and enforce the use caps. The proposed action would help CR Program harvesters by ensuring that all available IFQ have an opportunity to be processed rather than leaving a portion of the A share IFQ stranded if there are not enough processors operating, which could also benefit communities with processing facilities.

Public comments are solicited on proposed Amendments 54 and 55 to the Crab FMP through the end of the comment period (see **DATES**). NMFS intends to publish in the Federal Register and seek public comment on a proposed rule that would implement Amendments 54 and 55, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendments 54 and 55 to be considered in the approval/disapproval decision on Amendments 54 and 55. All comments received by the end of the comment period on Amendments 54 and 55, whether specifically directed to the amendments or the proposed rule, will be considered in the amendment approval/disapproval decision. Comments received after that date will not be considered

in the approval/disapproval decision on the amendments. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

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

Dated: February 21, 2024

Everett Wayne Baxter,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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