



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 240229-0066]

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: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendments 54 and 55 to the
Fishery Management Plan (FMP) for Bering Sea and Aleutian Islands (BSAI) King and
Tanner Crabs (Crab FMP). This proposed rule would revise two provisions of the Crab
Rationalization Program (CR Program) to do the following: change active crab fishery
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
proposed rule 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 30 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 that were previously prepared for the CR Program are available from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address and to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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

SUPPLEMENTARY INFORMATION:

The king and Tanner crab fisheries in the exclusive economic zone of the BSAI are managed under the Crab FMP. The Crab FMP was prepared by the Council under the Magnuson-Stevens Act as amended by the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). Regulations implementing the Crab FMP, including the CR Program, are primarily located at 50 CFR part 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.

Amendments 54 and 55 to the Crab FMP and this proposed rule would revise two provisions of the CR Program to: 1) change active participation requirements for quota share 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.

CR Program Overview

The CR Program includes nine crab fisheries in the BSAI: Bristol Bay red king crab (BBR) (*Paralithodes camtschaticus*), Western Aleutian Islands (Adak) golden king crab (WAG) (*Lithodes aequispinus*) - West of 174° W., Eastern Aleutian Islands (Dutch Harbor) golden king crab (EAG) - East of 174° W., Western Aleutian Islands (Adak) red king crab (WAI) - West of 179° W., Saint Matthew Island blue king crab (*P. platypus*) (SMB), Pribilof Islands blue and red king crab (PIK), Western Bering Sea Tanner crab (WBT) (*Chionoecetes bairdi*) - West of 166° W., Eastern Bering Sea Tanner crab (EBT) - East of 166° W., and Bering Sea snow crab (BSS) (*C. opilio*). In this document, the phrases “crab fishery” and “crab fisheries,” quota share (QS),” “individual fishing quota (IFQ)” refer to these fisheries and the associated CR Program, unless otherwise specified.

The CR Program includes QS and processor quota share (PQS) that are revocable privileges and allow the holder to harvest or process a specific percentage of the annual total allowable catch (TAC) in a crab fishery, reduced by the allocation to the Western Alaska Community Development Quota (CDQ) Program and the Adak Community Development Allocation. CDQ entities are allocated 10 percent of the crab TACs and Adak is issued an annual allocation of 10 percent of the WAG TAC to provide BSAI communities the opportunity to participate and invest in the crab fisheries. This annual calculation is explained in regulations at § 680.40(h).

The CR Program initially assigned QS to persons based on their historic participation in one or more of the nine crab fisheries during a specific time 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 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 operators and crew on board catcher/processor vessels; and catcher vessel crew (CVC) QS was issued to operators and crew on board catcher vessels. Each crab fishing year, which is the period from July 1 of one calendar through June 30 of the following calendar year (§ 680.2), a person who holds QS in one or more of the crab fisheries may receive an exclusive harvest privilege for a portion of the annual TAC of a crab fishery, called IFQ. CVC QS and CPC QS, also called C shares, are described later in this preamble in *C Shares and Active Participation Requirements*.

A person's QS holdings equates to specific pounds of IFQ that are calculated on an annual basis for use in the corresponding crab fishing year. Each year, a QS holder submits a timely and complete application for a crab IFQ permit in order to receive IFQ for each crab fishery in which the person holds QS (§ 680.40(g)). IFQ provides the crab QS holder with an annual allocation of pounds of crab for harvest in a specific crab fishery during the year in which it was allocated. The amount of each annual IFQ allocation is based on the amount of QS held by a person in relation to the total QS pool in a crab fishery (§ 680.40(h)). For example, a person's QS equaling one percent of the QS pool in a crab fishery would receive IFQ to harvest one percent of the annual TAC allocated to QS in that crab fishery.

NMFS also issued PQS to CR Program 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 for each crab fishery. 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 also known as "share matching." Share matching requires IFQ holders to match up shares with IPQ holders that have available 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 must be matched and delivered to a processor with IPQ. 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.

Annually, QS holders must submit a timely and complete "Application for Annual Crab Individual Fishing Quota (IFQ) Permit" for allocations of IFQ for the upcoming crab fishing year in order to receive IFQ. IFQ applicants must indicate whether or not they are joining a cooperative. Each cooperative submits an annual IFQ application that includes the QS holder's annual IFQ application (or a copy of that application). Because IPQ is not subject to cooperative management, a PQS holder applies for IPQ directly to NMFS, and NMFS issues IPQ directly to the PQS holder. Under regulations at § 680.4(f), all applications for IFQ, IPQ, and cooperative IFQ must be filed with the NMFS Restricted Access Management (RAM) Division by June 15. Unresolved applications at the time of IFQ and IPQ issuance can result in a mismatch of A share IFQ to the IPQ it must be matched with.

Although the crab fishing year begins on July 1 and runs through June 30 of the following calendar year, individual crab fisheries open at various times. For instance, the WAG and EAG crab fisheries typically open on August 1 and the remaining seven crab fisheries open on October 15 or later in the crab fishing year. Therefore, NMFS prioritizes review of IFQ and IPQ applications based on the timing of fishery openings. To aid QS and PQS holders in meeting the June 15 application deadline, NMFS provides application forms on its website (see **ADDRESSES**), highlights the application deadline on the website, and sends notices to QS and PQS holders near the end of the crab fishing year reminding them to apply for IFQ or IPQ for the next crab fishing year.

Crab fisheries are also subject to provisions intended to maintain crab processing activity in communities that had historic crab processing activity. Crab fisheries participants, such as catcher vessels, are subject to regional delivery and processing requirements, commonly known as regionalization. Certain crab fisheries, the WBT, EBT, and a portion of the WAG QS, are not regionalized. Crab fisheries are also subject to the right-of-first-refusal (ROFR) provisions included in the CR Program, with the exception of WBT, EBT, WAG and WAI. The ROFR provisions provide certain Eligible Crab communities (ECC) (§ 680.2) with an option to purchase PQS or IPQ that would otherwise be transferred outside of the community holding the ROFR.

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, such as a crab processor, 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 facility CR Program facility (*i.e.*, processor cap). These limits are commonly referred to as QS ownership caps and use caps. The CR Program limits on IPQ use and holding and the amount of IPQ that can be processed at a given facility are discussed later in this preamble in the *IPQ Use Caps and Custom Processing Arrangements* section.

The following sections of this preamble focus on the two proposed actions and describe (1) background information on CVC QS and CPC QS and active participation requirements, the annual IFQ and IPQ application process, IPQ use caps and custom processing arrangements, and the facility use cap; (2) the need for Amendment 54 to the Crab FMP; (3) the need for Amendment 55 to the Crab FMP; and (4) the specific provisions and impacts of this proposed rule.

C Shares and Active Participation Requirements

NMFS initially allocated 3 percent of the QS to individuals holding State of Alaska Commercial Fisheries Entry Commission Interim Use Permits, generally vessel operators, who met specific historic and recent participation requirements in crab fisheries. After the initial issuance of CVC QS and CPC QS (collectively referred to as C shares), individuals may only acquire CVC QS or CPC QS through transfer (*i.e.*, purchasing QS on the open market). The following CVC QS and CPC QS provisions are the subject of this action.

An individual's CVC QS or CPC QS holdings equate to specific pounds of IFQ that are calculated on an annual crab fishing year basis. By June 15 of each crab fishing year, a CVC QS or CPC QS holder who wishes to participate in that crab fishing year's crab fishery must submit a timely and complete application for a crab IFQ permit in one or more crab fisheries in which that person holds QS.

Both in original CR Program design and subsequently reinforced through Amendment 31 (discussed below) 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 CR Program crab fisheries. Since June 2018 (3 years after implementation of Amendment 31), in order to receive an annual allocation of CVC IFQ or CPC IFQ, the regulations require a CVC QS and CPC QS holder to have met either of the following conditions to demonstrate active participation:

(1) Participated as crew in at least one delivery in a CR Program crab fishery in the 3 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 of State of Alaska or a U.S. commercial fishery in Federal waters off Alaska during the 3 crab

fishing years preceding the crab fishing year for which the QS holder is applying for IFQ (§ 680.40(g)(2)).

However, if a CVC QS or CPC QS holder holds QS in only a single crab fishery and that crab fishery is closed to fishing for an entire crab fishing year, NMFS will exclude that year when determining whether the CVC QS or CPC QS holder has satisfied the active participation requirement. If the CVC QS or CPC QS holder does not successfully demonstrate active participation over a 3-year period, the holder will not be issued IFQ for that subsequent crab fishing year.

While a CVC QS and CPC QS holder has 3 years in which to demonstrate active participation in order to receive IFQ, there is a different period of time applied in order for the CVC QS and CPC QS holder to prevent revocation of the QS altogether. In order to retain CVC QS and CPC QS, an individual has 4 crab fishing years to meet these same participation requirements (§ 680.40(m)). The Council recommended revocation of CVC QS and CPC QS if the QS holder continues to be inactive as an incentive for CVC QS and CPC QS holders to divest so that the QS is not held by inactive individuals for extended periods of time. CVC QS and CPC QS holders are exempt from meeting the active participation requirements in order to receive CVC IFQ and CPC IFQ under two circumstances. First, CVC QS and CPC QS holders are exempt if they have held QS for less than 3 crab fishing years in order to receive annual allocation of IFQ (§ 680.40(g)(2)(iii)) and less than 4 crab fishing years in order to retain QS (§ 680.40(m)(5)). Second, CVC QS and CPC QS holders are exempt if they have at least 150 fishing days of sea time as part of a harvesting crew in any U.S. commercial fishery and was either an initial recipient of QS or participated as crew in at least one crab delivery in a crab fishery in any 3 of the 5 crab fishing years prior to the CR Program implementation (§ 680.41(c)(1)(vii)(B)).

In summary, and unless exempt from one of the requirements described in the preceding paragraph, if a CVC QS or CPC QS holder fails to satisfy the participation requirements for 3 consecutive crab fishing years, NMFS will send that individual a notice of withholding and will not issue IFQ for the subsequent crab fishing year (§ 680.40(g)(3)(i)). If a CVC QS or CPC QS holder fails to satisfy the participation requirements for 4 consecutive crab fishing years and does not divest their CVC QS or CPC QS, NMFS will revoke the QS (§ 680.40(m)(4)). CVC QS and CPC QS holders are permitted to lease their IFQ and join cooperatives; however, CVC QS and CPC QS holders must meet the participation requirements in order to receive IFQ and retain QS (§ 680.40(m)). Regulations specifying eligibility to receive CVC or CPC QS or IFQ by transfer at § 680.41(c)(2)(ii)(C) would continue to apply and are unchanged by this proposed rule.

Annual Application Process

Annually, CVC QS and CPC QS holders must submit a timely and complete “Application for Annual Crab Individual Fishing Quota (IFQ) Permit” for allocations of IFQ for the upcoming crab fishing year.

Prior to the fishing season each year, NMFS will alert crab fishery participants about their QS status. NMFS’s notification process for CVC QS and CPC QS holders who fail to file their IFQ applications by the June 15 deadline or fail to meet participation requirements are similar. NMFS will issue a Notice of C Share QS Inactivity after reviewing the QS holder’s annual crab IFQ permit application if NMFS has determined that the QS holder has failed to meet the participation requirements or failed to file an IFQ application by the June 15 deadline. To ensure correct issuance of IFQ and IPQ (including the prescribed distribution of Class B IFQ derived from PQS holder affiliations), NMFS does not process any transfers of QS and PQS from the date applications for IFQ and IPQ are due (June 15) until issuance of those IFQ and IPQ

(§ 680.41(b)(1)). Therefore, for crab fisheries that open in October, a CVC QS or CPC QS holder may not have an opportunity to transfer their QS after they receive an official Notice of C Share QS Inactivity.

Further information regarding the period to submit evidence of participation for CVC QS and CPC QS holders who receive a Notice of C share QS Inactivity and the Initial Administrative Determination (IAD) process when submitted evidence fails to demonstrate active participation is available for IFQ withholding under § 680.40(g)(3) and for QS revocations under § 680.43. The process and timelines for the evidentiary period remain unchanged by this proposed rule and are explained in the following paragraphs. There are two different deadlines within which a CVC QS and CPC QS holder may submit evidence of participation if the holder received a notice of inactivity. A CVC QS or CPC QS holder who receives a Notice of C Share QS Inactivity will have 30 days to provide the information demonstrating participation as crew in at least one crab delivery that meets the requirements when the IFQ may be withheld. The CVC QS or CPC QS holder has 60 days to submit evidence of participation when the QS may be revoked. Following the expiration of the 30- or 60-day evidentiary period, NMFS will then send an Initial Administrative Determination (IAD) to the CVC QS or CPC QS holder if NMFS determines that the submitted evidence fails to demonstrate active participation as crew in at least one crab delivery or if the additional information or evidence is not provided within the time period specified. The IAD will explain the basis for the withholding of IFQ or for the revocation of QS determination.

A CVC QS or CPC QS holder who receives an IAD may appeal under the procedures set forth at 15 CFR part 906. To ensure that access to an annual allocation is not lost should a QS holder prevail on appeal of the IAD, NMFS holds in reserve the amount of IFQ in dispute until final agency action on the IAD. In some instances, final agency action is reached before NMFS issues IFQ for the upcoming crab fishing year,

allowing NMFS to either issue the IFQ to the successful appellant or return the IFQ to the general pool for distribution if the IAD was not appealed or the appellant was unsuccessful in the appeal. However, in instances where a final agency action is not reached before NMFS issues IFQ for the upcoming crab fishing year, NMFS must continue to hold the disputed IFQ in reserve due to being unable to recalculate and redistribute pounds of IFQ after the crab season opens. Therefore, if an appeals process continues after issuances of IFQ and the CVC QS or CPC QS holder is not able to provide appropriate evidence to their case, this IFQ could be held in reserve and left unharvested for that year. However, if a CVC QS or CPC QS holder is issued a Notice of C Share QS Inactivity for the withholding of IFQ or revocation of QS, they have no evidence to provide, and their appeal is resolved prior to the issuance of IFQ, those pounds of crab may be able to be redistributed to the other CVC QS and CPC QS holders.

To ensure correct issuance of IFQ and IPQ (including the prescribed distribution of Class B IFQ derived from PQS holder affiliations), NMFS does not process any transfers of QS and PQS from the date applications for IFQ and IPQ are due (June 15) until issuance of those IFQ and IPQ (§ 680.41(b)(1)). Therefore, for crab fisheries that open in October, a CVC QS or CPC QS holder may not have an opportunity to transfer their QS after they receive an official Notice of C Share QS Inactivity.

IPQ Use Caps and Custom Processing Arrangements

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. 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, 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, and the amount of IFQ that can be used onboard a vessel. Similarly, the CR Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use (*i.e.*, the amount of crab they can process), and the amount of IPQ that can be processed and custom processed at a given facility. Collectively, these limits are commonly referred to as use caps.

There are two use caps that are the subject of this action. In most of the crab fisheries (*i.e.* EAG, WAG, BSS, WAI, and BBR), § 680.42(b)(1) limits a person to hold no more than 30 percent of the PQS initially issued in the fishery, and to use no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given fishery. Four crab fisheries do not have PQS use caps. There is a limited use cap exemption for persons receiving more than 30 percent of the initially issued PQS. Exceeding this cap is prohibited under § 680.7(a)(7), which prohibits an IPQ holder from using more IPQ than the maximum amount of IPQ that may be held by that person. Only two PQS holders in the EAG, WAG, BSS, WAI, and BBR crab fisheries currently have holdings greater than 30 percent of the initially issued PQS based on their initial issuance (see Section 3.3.1.2 of the Analysis). With the exception of these PQS holders, no person may use, *i.e.* process, an amount of EAG, WAG, BSS, WAI, or BBR IPQ greater than an amount resulting from 30 percent of the initially issued PQS for that crab fishery. The rationale for the IPQ use caps is further described in the Program EIS and the final rule implementing the CR Program (70 FR 10174, March 2, 2005).

The CR Program is also designed to keep a person from evading the PQS ownership and IPQ use caps through corporate affiliations or other legal relationships. Section 680.42(b)(3)(iv) provides that IPQ use by an entity (other than a CDQ group) is calculated by summing the total amount of IPQ held by that entity and any of its affiliates. “Affiliation” is defined in § 680.2 to mean a relationship between two or more

entities, where one entity directly or indirectly owns or controls 10 percent or more of the other entity. Additional elements of the definition of “affiliation” are described in § 680.2.

Under § 680.7(a)(7), in addition to the IPQ crab held by the owner of a processing facility, any IPQ crab that is custom processed at a facility an IPQ holder owns will also be applied against the IPQ use cap of the facility owner. For the purposes of the regulation, an ownership interest in the facility is attributed to all IPQ holders who have a 10 percent or greater direct or indirect ownership interest in the facility. A custom processing arrangement exists when an IPQ holder has a contract with the owners of a processing facility to have their crab processed at that facility and the IPQ holder does not have an ownership interest in that processing facility or is otherwise affiliated with the owners of that processing facility. In custom processing arrangements, the IPQ holder contracts with a processing facility operator to have the IPQ crab processed according to that IPQ holder's specifications. Custom processing arrangements commonly occur when an IPQ holder does not have an ownership interest in a shoreside processing facility in that region or cannot economically operate a stationary floating crab processor. Thus, custom processing ensures CR Program crab can be processed even when the IPQ holder is remote and unable to process their own IPQ.

Although custom processing would typically be counted in calculating whether an IPQ holder has exceeded a use cap, there are several exemptions for IPQ crab processed under a custom processing arrangement. Shortly after implementation of the CR Program, the Council submitted and NMFS approved Amendment 27 to the Crab FMP (74 FR 25449, May 28, 2009). Amendment 27 was designed to improve operational efficiencies in crab fisheries with historically low TACs or that occur in more remote regions by exempting certain IPQ crab processed under a custom processing arrangement from applying against the IPQ use cap of the owner of the facility at which IPQ crab are

custom processed. For ease of reference, this preamble refers to this exemption as a “custom processing arrangement exemption.”

NMFS refers the reader to the preamble to the final rule implementing Amendment 27 to the Crab FMP for additional information regarding the rationale for custom processing arrangement exemptions in specific BSAI crab fisheries (74 FR 25449, May 28, 2009). Additionally, Amendment 47 added EBT and WBT IPQ crab to the custom processing arrangement exemption, allowing a facility to process more crab without triggering the IPQ use cap (81 FR 92697, December 20, 2016). This exemption was necessary to allow all of the EBT and WBT Class A IFQ crab to be processed at facilities currently processing EBT and WBT crab to prevent potential loss of benefits due to forgone crab harvests.

Section 680.42(b)(7) describes the three requirements that must be met for the custom processing arrangement exemption to apply. First, the custom processing arrangement exemption applies to IPQ issued for BSS with a North Region designation, EAG, EBT, PIK, SMB, WAG processed west of 174° W., and WAI or WBT. As described later in this preamble, the custom processing arrangement exemption does not apply to custom processing arrangements to IPQ issued for: BSS with a South region designation; WAG processed east of 174° W; or BBR.

Second, the custom processing arrangement exemption applies only when there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility. As noted earlier, “affiliation” is defined at § 680.2 as a relationship between two or more entities where one directly or indirectly owns or controls 10 percent or more of the other entity. Under § 680.42(b)(7)(i), NMFS does not count IPQ crab that are custom processed at a facility as IPQ crab “used” by the owner of that facility when the person whose IPQ crab is being custom processed is not affiliated with an IPQ holder with 10 percent or greater direct or indirect interest in that facility. In

such a case, NMFS credits a person who holds IPQ and who owns the processing facility only with the amount of IPQ crab held by that person, or any affiliates of that person, when calculating IPQ use caps.

In summary, these regulations allow processing facility owners who also hold IPQ to use their facility, or facilities, to establish custom processing arrangements with other IPQ holders to process more crab without exceeding IPQ use caps. This increases the amount of crab available for processing at the facility and provides a more economically viable processing operation. These regulations allow more than 30 percent of the IPQ for these crab fisheries (*i.e.* BSS with a North Region designation, EAG, EBT, PIK, SMB, WAG processed west of 174° W., and WAI or WBT) to be processed at a facility when the person whose IPQ crab is being processed is not affiliated with an IPQ holder with 10 percent or greater direct or indirect interest in that facility (§ 680.42(b)(7)).

Third, a custom processing arrangement exemption applies if the facility at which the IPQ crab are custom processed meets location requirements specified at § 680.42(b)(7)(ii)(B). Namely, the facility must be located within the boundaries as established by the State of Alaska of a home rule, first class, or second class city in Alaska in existence on the effective date of regulations implementing Amendment 27 (June 29, 2009). Additionally, the facility must be either 1) a shoreside crab processor or 2) a stationary floating crab processor that is located within a harbor and moored at a dock, docking facility, or other permanent mooring buoy, except for if the stationary floating processor is located within the boundaries of the city of Atka. Additional information on the location requirements for these facilities is found in the preamble to the final rule implementing Amendment 27 (74 FR 25449, May 28, 2009).

Finally, there is a prohibition against corporate entities owning a processing facility, if they are not linked through common ownership to a corporation holding IPQ, from processing more than 30 percent of the IPQ crab at the facility. Section 680.7(a)(8)

specifically prohibits a shoreside crab processor or a stationary floating crab processor from receiving more than 30 percent of the IPQ issued for a particular crab fishery. Although this regulation was intended to foreclose an IPQ holder from excluding custom-processed crab from its 30 percent use cap calculation by creative corporate structuring, Amendment 27 exempted custom-processed IPQ crab from the exempt crab fisheries under § 680.42(b)(7)(ii)(A).

Regulations implementing Amendment 27 also created a custom processing exemption for IPQ crab subject to ROFR provisions (§ 680.42(b)(7)(ii)(C) and section 3.2.5 of the Analysis). This custom processing exemption applies to IPQ crab from any of the crab fisheries and is triggered when the IPQ crab is derived from PQS that is subject to a ROFR, is transferred to another person who is not the initial recipient of the PQS, and who is located within the boundaries of the ECC for which the PQS is, or was, designated in the ROFR.

Facility Use Cap

In addition to exempting custom processing from counting towards the IPQ use caps, Amendment 27 also prohibited a person from processing more than 60 percent of the IPQ issued for the WAI or EAG crab fisheries in a crab fishing year at a single processing facility east of 174° W. This provision applies to all IPQ crab processed at a shoreside crab processor or stationary floating crab processor, and does not exempt IPQ crab that are delivered under a custom processing arrangement from IPQ use cap calculations. This provision was intended to limit the potential consolidation of IPQ ownership that could occur under the custom processing exemptions and to prevent excessive consolidation of the number of processors available to harvesters, a scenario that is more likely in these fisheries compared to the other fisheries with custom processing exemptions given their historically relatively small TACs compared to other crab fisheries.

Amendment 54 and Need for Action

Amendment 54 and this proposed rule are intended to provide CVC QS and CPC QS holders greater flexibility in meeting participation requirements and more clarity as to what those requirements are. 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 participation requirements by allowing all CVC QS and CPC QS holders – both initial recipients and new entrants – 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 at least one crab delivery also includes participating in the fishing trip that results in a crab landing, and 5) clarifying the exemption for CVC QS or CPC QS holders who hold QS exclusively in closed crab fisheries applies to more than just a single closed crab fishery. The purpose of Amendment 54 and the proposed rule is to provide CVC QS and CPC QS holders greater flexibility in maintaining and meeting active participation requirements for the annual issuance of IFQ and the retention of QS due to low crab abundance and reduced crew opportunities. Since 2020, there have been limited opportunities for crew to participate actively in the crab fisheries because of low crab abundance and because of the impacts of the COVID-19 pandemic.

On July 15, 2022, NMFS issued an emergency rule (87 FR 42390) to provide CVC QS and CPC QS holders 1 additional year to demonstrate active participation in any crab fishery for receiving IFQ or maintaining CVC QS or CPC QS, regardless of participation status in the preceding 4 years. At the same time the Council requested that emergency action, the Council also initiated an analysis of alternatives for changes to

CVC QS and CPC QS participation requirements to address the reduced crew opportunities due to the COVID-19 pandemic and unforeseen decline in abundance of crab in the BSS fishery.

As described in section 3.3.1 of the Analysis prepared for Amendment 54, the crab fisheries are currently in a state of flux with historical and recent closures continuing for a number of crab fisheries that have been declared overfished or in the process of rebuilding (Pribilof Islands blue king crab, SMB, and BSS) and are experiencing variable stock health dynamics impacted by environmental change (*e.g.*, BBR, WBT, EBT, and BSS). Only two crab fisheries are considered unaffected by recent declines in abundance (*e.g.* WAG and EAG).

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. In developing Amendment 54, 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 an active participation requirement. This action provides additional flexibility to existing CVC QS and CPC QS and continues to ensure that CVC QS and CPC QS is held and the associated IFQ is used by active fishery participants.

The Council recommended and NMFS supports revisions to the active participation requirements due to the variability in crab stock abundance to allow CVC QS and CPC QS holders greater flexibility in meeting participation requirements for crab fisheries in order to receive annual allocation of IFQ and retention of QS, while clarifying the active or “at-sea” participation requirement. The Council recommended continued support for designating CVC QS and CPC QS for active participants in the crab fishery and encouraged those who are no longer active in the crab fishery to divest their CVC QS

or CPC QS to maintain opportunity for new entrants to obtain QS. Re-implementation of the active participation requirements would provide a new opportunity for CVC QS and CPC QS holders to demonstrate active participation before any QS holder would have their QS revoked. Furthermore, this proposed rule would revise CVC QS and CPC QS holder participation requirements so that the requirements are the same for both initial recipients and new entrants.

Amendment 55 and Need for Action

Amendment 55 and this proposed rule are intended to improve crab processor efficiency by (1) exempting custom processing activity for the remaining three crab fisheries from processor use caps, and (2) removing the facility use cap. Amendment 55 would exempt custom processing of BSS IPQ with a south region designation, BBR IPQ, and 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 remove the CR Program processor facility use cap applicable to the EAG and 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). Processors in all crab fisheries would continue to be subject to the PQS use caps specified at § 680.42(b)(1).

Amendment 55 and this proposed rule are intended to provide additional flexibility for IPQ holders, processing facilities, and harvesters that participate in the affected crab fisheries. Many IPQ holders do not own a processing facility and rely on custom processing agreements with plants to process crab. Exempting custom processing from counting towards the cap on the amount of crab that an IPQ holder can process provides IPQ holders with a potentially larger market (*i.e.*, additional crab processing facilities) to custom process their crab.

The Council and NMFS recognize that the existing crab processing facility and IPQ use caps were designed and implemented when crab TACs in all crab fisheries were at a much higher level than recent years. Without the proposed action, four unaffiliated crab processing facilities would need to operate to fully process the crab fisheries. This is due to share matching requirements in order to custom process the crab in the BBR, south designated BSS, and WAG east of 174° W. 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 would allow for more custom processing opportunities but would also benefit the processing sector overall by not forcing more facilities than are needed to process relatively small TACs.

Amendment 55 would also provide an exemption to a regulatory constraint, which is expected to benefit participants in the BBR and WAG crab fisheries by expanding opportunities to fully harvest allocated QS. The proposed action is expected to improve processing efficiency in the fisheries. Additionally, the proposed action is expected to minimize processing costs and avoid unnecessary duplication by simplifying regulations and reducing resources needed to monitor and enforce the use caps. The proposed action would assist CR Program harvesters by ensuring that all available A share IFQ harvested crab 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. Amendment 55 does not impact B share IFQ due to not having share matching requirements and can deliver to any registered crab receiver (RCR).

The 30 percent PQS holding cap specified in regulations at § 680.42(b)(1)(i) would continue to apply to all crab fishery processors and is not modified by the proposed rule. NMFS expects that additional processors would enter the crab fisheries in

years where the crab TACs are sufficiently high to make processing activity economically viable.

This Proposed Rule

This proposed rule would make several changes to regulations at 50 CFR part 680 to implement Amendments 54 and 55. Specifically, the following proposed changes are described in the sections below: (1) restart active participation requirements and reissue QS that NMFS revoked between July 1, 2019 until the final rule implementing Amendment 54 is implemented; (2) standardize participation requirements for all CVC QS and CPC QS holders, both initial issues and new entrants, and expand the 30-day participation requirement to include serving as crew on a tender vessel; (3) clarify crew participation during at least one fishing trip; (4) adjust exemptions for CVC QS and CPC QS holders with QS exclusively in closed crab fisheries; (5) expand exemptions for custom processing from processor use caps; and (6) remove the facility use cap.

Restart Active Participation Requirements and Reissue Revoked QS

This proposed rule revises § 680.40 to modify participation requirements that a CVC QS or CPC QS holder must satisfy to be eligible to receive an annual allocation of IFQ and retain QS. First, under proposed regulations at § 680.40(g)(2) and (m)(1), the timing for when the active participation requirement would apply is restarted. The consecutive 3- and 4-year rolling requirement would apply starting on the date the final rule implementing Amendment 54 goes into effect. A CVC QS or CPC QS holder would then have 3 years to demonstrate participation in order to receive their allocation of IFQ and 4 years to demonstrate participation to retain QS and avoid QS revocation (§680.43).

This proposed rule adds a regulation at § 680.40(m)(6) to allow a CVC QS or CPC QS holder to request NMFS to reissue any QS that NMFS revoked from July 1, 2019, through the date a final rule implementing Amendment 54 goes into effect. In order to initiate reissuance of previously revoked CVC QS or CPC QS, NMFS would add a

field on the annual application for a crab IFQ permit to be available for two application cycles. This would provide approximately 1 year, to encompass two application cycles (due on June 15 each year), for an individual to request reissuance of their revoked CVC QS or CPC QS.

For example, if this action were approved, and a final rule was effective on June 1, 2024, which is prior to the application deadline of June 15, 2024, for the 2024/2025 crab fishing year, QS that had been revoked between July 1, 2019, and June 1, 2024, would be reissued to those CVC QS and CPC QS holder who applied for reissuance as part of the annual application for crab IFQ between the application period of June 1, 2024, through June 15, 2025. This would provide CVC QS and CPC QS holders two annual crab IFQ application opportunities to apply for QS reissuance. Active participation requirements would restart for the 2024/2025 crab fishing year and CVC QS and CPC QS holders would not need to demonstrate active participation until the 2027/2028 crab fishing year for annual issuance of IFQ and in 2028/2029 for retention of QS. In order to receive IFQ for the 2027/2028 crab fishing year, a CVC QS or CPC QS holder would have to satisfy the participation requirements during the 2024/2025, 2025/2026, or 2026/2027 crab fishing years. For retention of QS in the subsequent 2028/2029 crab fishing year, a CVC QS or CPC QS holder would have to satisfy participation requirements during the 2024/2025, 2025/2026, 2026/2027, or 2027/2028 crab fishing years.

Expand and Standardize Participation Requirements and allow Tendering

This proposed rule would modify regulations at § 680.40(g)(2) and (m)(2) to remove the distinction between initial recipients and new entrants. This proposed rule would expand and clarify participation requirements for new entrants to match the requirements of initial recipients where all CVC QS and CPC QS holders can satisfy the participation requirements by either participating in at least one fishing trip with a

delivery of crab in any crab fishery or by participating in a combination of crew activity on a fishing vessel or tender vessel in State of Alaska or Federal commercial fisheries in waters off Alaska for at least 30 days during the crab fishing year immediately preceding the crab fishing year for which the CVC QS or CPC QS holder is filing an annual application for a crab IFQ permit.

This proposed rule would also clarify the standard for meeting participation requirements by participating in one crab delivery to also include the fishing trip that results in a delivery of crab in any crab fishery. This proposed rule would modify the definition of “fishing trip” to specify that the definition is also applicable for purposes of participation requirements at § 680.40(g) and (m).

Clarify the Closed Fishery Exemption

This proposed rule would expand the closed fishery participation exemption for CVC QS and CPC QS holders who only hold QS in closed crab fisheries. This exemption would apply when a CVC QS or CPC QS holder holds only QS in one or more crab fisheries and all those crab fisheries are closed to fishing for an entire crab fishing year. In that situation, NMFS will exclude that crab fishing year when determining if the individual has satisfied the participation requirement for annual issuance of IFQ and revocation of QS. An individual with CVC QS or CPC QS in multiple crab fisheries would have to satisfy the participation requirement for any of the crab fisheries that are open and in which they hold QS.

Remove IPQ Facility Use Cap for Eastern Aleutian Islands golden king crab (EAG) and Western Aleutian Islands red king crab (WAI)

This proposed rule would revoke regulations at § 680.7(a)(9) to remove the cap on shoreside crab processors and stationary floating crab processors east of 174° W. from processing more than 60 percent of the IPQ issued in the EAG and WAI crab fisheries. The EAG and WAI crab fisheries are the only two crab fisheries subject to a 60 percent

cap on the amount of IPQ that can be used at a facility. This change would remove this restriction that is specific to only the EAG and WAI crab fisheries and help ensure that allocated IFQ would not be stranded if there is not more than one processing facility operating for each of these crab fisheries.

Exempt Custom Processing from IPQ Use Caps

This proposed rule would make numerous regulatory changes to exempt custom processing of BSS IPQ with a south-region designation, BBR IPQ, and WAG IPQ processed east of 174° W. from the IPQ use caps and would simplify regulations pertaining to facility use caps associated with custom processing.

First, this proposed rule would revise regulations at § 680.42(b) to exempt custom processed crab from the IPQ use cap. Amendment 55 would add the BSS, BBR, and WAG crab fisheries to the list of fisheries in which custom processing is exempt from the IPQ use cap. This would mean that custom processing would only count toward the IPQ use cap under rare situations involving processing outside of specific geographic boundaries. As such, this proposed rule would remove regulations at § 680.42(b)(7) and (8), the circumstances under which custom processing does not count in calculating IPQ use caps, and would revise remaining regulations (included at § 680.42(b)(1) through (9) of this proposed rule) to specify how IPQ use caps shall be calculated under the proposed action.

To simplify the application of the IPQ use cap, this proposed rule would modify the definition of “custom processing” at § 680.2 to specifically define ownership interest consistent with terminology used by in regulations governing the previous IPQ use caps exemptions at §§ 680.7(a)(7) and 680.42(b)(7). This proposed rule would then insert the term “custom processing” at § 680.42(b) to clarify that IPQ crab that is custom processed, as that term is defined under § 680.2, in any crab fishery would no longer count towards IPQ use caps. This proposed rule also would revise § 680.7(a)(7) to add a reference to §

680.42(b) to indicate where the reader can find the calculation of IPQ crab used for use caps.

This proposed rule would also remove paragraph § 680.7(a)(8) that prohibits using a corporate form to circumvent the IPQ use cap by arranging custom processing. This regulation meant that IPQ crab processed under a custom processing arrangement would not apply against the limit on the maximum amount of IPQ crab that can be processed at a facility in which no IPQ holder has a 10 percent or greater ownership interest. But this proposed action would exempt custom processing in all fisheries from counting towards the IPQ use cap if processed within certain geographic boundaries. Thus, the prohibition at § 680.7(a)(8) is no longer needed and this proposed rule would remove it.

Additionally, this proposed rule would modify § 680.42(b)(1) to specify that a person may not use IPQ in excess of the amount of IPQ resulting from the PQS held by that person unless that person received an initial allocation of PQS exceeding the 30 percent holding cap, is subject to an exemption specified at § 680.4(p), or is used for custom processing at a facility within specific boundaries identified under Amendment 27 as specified at proposed § 680.42(b)(1)(ii)(C)(2).

This proposed rule would also modify § 680.42(b)(2) introductory text and subparagraph (ii) to make technical corrections to the regulations and correctly reference the proposed custom processing exemption.

Regulations at § 680.42(b)(3) through (6) would be reorganized for improved clarity and understanding and included in the proposed regulations as paragraphs § 680.42(b)(3) through (9). The substance of these reorganized regulations at § 680.42(b)(3) through (6) has not been modified, but rather renumbered and edited for clarity.

Additional Regulatory Changes

This proposed rule also includes various technical edits and corrections to the regulations to remove typographical errors and improve their clarity.

At § 680.41(j), this proposed rule would correct a typographical error to change the word “and” to “an”.

At § 680.42(a)(3)(i), this proposed rule would strike the phrase “more than”, which is redundant of the phrase “in excess of”, which precedes it.

At § 680.42(b)(1)(i), this proposed rule would replace the phrase “more than” with the phrase “PQS in excess of” to make the language consistent with similar language at § 680.42(b)(1)(ii) that applies to use of IPQ.

At § 680.42(b)(2), this proposed rule would replace the phrase “more than” with the phrase “IPQ in excess of” to make the language consistent with similar language at § 680.42(a).

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendments 54 and 55, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

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 the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows: A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for this proposed rule are contained at the beginning of this the proposed rule in the preamble and

in the summary section of the preamble. The Magnuson-Stevens Act provides the statutory basis for this rulemaking. No duplicative, overlapping, or conflicting Federal rules have been identified.

The RIRs prepared for Amendments 54 and 55 contain a description of the purpose and need for the proposed actions, the statutory authority for the proposed actions, and a description of the alternatives, including a description of the status quo. Entities that would be directly regulated by this proposed rule include 1) 13 IPQ holders 2) 6 crab processing facilities 3) 160 CVC QS and CPC QS holders.

The proposed regulatory changes to implement Amendment 55 are intended to increase operational efficiency for these entities by removing the facility use cap for IPQ and/or removing custom processing from the accounting of IPQ caps for certain crab species when processed east of 174° W. Therefore, it is expected that the proposed action would have a beneficial on small entities.

The proposed regulatory changes to implement Amendment 54 are intended to respond to the recent combined impacts of the COVID-19 pandemic and the recent and substantial decline in crab abundance and fishery closures which have substantially reduced opportunities for crew to participate in crab fisheries. The proposed action also addresses concerns about future diminished opportunities for crew if crab stocks remain low. Therefore, the proposed actions are intended to provide more flexibility (relative to status quo) for CVC QS and CPC QS holders when there are diminished opportunities for crew positions on crab fishery vessels. Therefore, this action is expected to benefit CVC QS and CPC QS holders relative to the no action alternative.

The costs and benefits of the proposed action relative to the status quo are described qualitatively and quantitatively. The RIRs also provide information about potential indirect effects and distributional effects of the alternatives, and a description of

the net benefits to the Nation under the preferred alternative. Therefore, the RIRs conclude that the proposed actions would result in a net benefit to the Nation.

The analysis was developed through the Council process from 2021 through 2023. The information presented in the analyses was developed through the Council process, with numerous opportunities for individuals and entities that may be affected by the proposed action to provide input about potential economic impacts. CR participants provided extensive input to the Council and its advisory bodies on the anticipated impacts of the proposed action.

The proposed provisions provide flexibility to all directly regulated entities. Therefore, no directly regulated entities are expected to be adversely impacted by the proposed action.

The information provided above supports a determination that the actions would not have a significant economic impact on a substantial number of small entities. Because the proposed rule, if implemented, is not expected to have a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

Collection-of-Information Requirements

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This rule revises the existing requirements for the collection of information OMB Control Number 0648-0514 (Alaska Region Crab Permits). Because of a concurrent action for 0648-0514, the revision to that collection of information for this proposed rule will be assigned a temporary control number that will later be merged into 0648-0514.

This collection would be revised to add an option to the Application for Annual Crab IFQ Permit for a CVC QS and CPC QS holder to request reissuance of previously

revoked CVC QS or CPC QS. This revision does not change the number of respondents, responses, burden hours, or burden cost for this application. The public reporting burden for the Application for Annual Crab IFQ Permit is estimated to average 2.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding the following: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at <https://www.reginfo.gov/public/do/PRAMain>.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 1, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reason 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.

2. Amend § 680.2, by revising the definition for “Custom processing”, adding the definition for “Fishing trip”, and removing the definition for “Fishing trip for purposes of § 680.7(e)(2)” to read as follows:

§ 680.2 Definitions.

* * * * *

Custom processing means processing crab in any CR fishery when the IPQ holder does not have a 10 percent or greater direct or indirect ownership interest in the processing facility or affiliation with the processing facility’s owners.

* * * * *

Fishing trip means, for the purposes of §§ 680.7(e)(2), 680.40(g)(2)(i)(A), and 680.40(m)(2)(i), the period beginning when a vessel operator commences harvesting crab in a crab QS fishery and ending when the vessel operator offloads or transfers any processed or unprocessed crab in that crab QS fishery from that vessel.

* * * * *

2. Amend § 680.7 by:

- a. Adding a comma after the first use of “fishery” in paragraph (a)(5);
- b. Revising paragraph (a)(7); and
- c. Removing paragraphs (a)(8) and (9).

The addition and revision read as follows:

§ 680.7 Prohibitions.

(a) * * *

(7) For an IPQ holder to use more IPQ than the maximum amount of IPQ that may be held by that person under § 680.42(b).

* * * * *

3. Amend § 680.40 by revising paragraphs (g)(2), (g)(3) introductory text, (m)(1), (2), and (5), and adding paragraph (m)(6) to read as follows:

§ 680.40 Crab quota share (QS), processor QS (PQS), individual fishing quota (IFQ), and individual processor quota (IPQ).

* * * * *

(g) * * *

(2) *Eligibility for CVC IFQ and CPC IFQ.* For each crab fishing year after June 30, [date 3 years after date of publication in the Federal Register], individuals holding CVC QS or CPC QS permits must meet the participation requirements set forth in paragraph (g)(2)(i) of this section in order to receive CVC IFQ or CPC IFQ, unless the CVC QS permit holder or CPC QS permit holder meets the exemption provided in paragraph (g)(2)(ii) of this section.

(i) During one of the 3 crab fishing years preceding the crab fishing year for which the individual is filing an annual crab IFQ permit application, the individual has participated as crew in at least:

(A) One fishing trip where a delivery of crab is made in any CR fishery; or

(B) 30 days of:

(1) Fishing in a commercial fishery managed by the State of Alaska or in a Federal commercial fishery in the EEZ off Alaska. Individuals may combine their participation as crew in State of Alaska and Federal commercial fisheries in waters off Alaska to meet this requirement; or

(2) On a tender vessel operating in support of a commercial fishery managed by the State of Alaska or in a Federal commercial fishery in the EEZ off Alaska. Individuals may combine their participation as crew on a tender vessel in State of Alaska and Federal commercial fisheries in waters off Alaska to meet this requirement.

(C) Individuals may combine their participation specified in paragraphs (g)(2)(i)(B)(1) and (2) of this section to meet this requirement.

(D) If the individual holds CVC QS or CPC QS in one or more CR fisheries and all CR crab fisheries for which the QS holder holds QS are closed, NMFS will exclude that crab fishing year when determining whether the individual has satisfied the participation requirements specified in paragraph (g)(2)(i) of this section.

(ii) All of the CVC QS or CPC QS permits held by the individual were acquired using the eligibility criteria in § 680.41(c)(1)(vii)(B) or reissued under paragraph (m)(6) of this section and the individual has held those CVC QS or CPC QS permits for less than 3 crab fishing years.

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

* * * * *

(m) * * *

(1) Beginning July 1, [*date 4 years after date of publication in the Federal Register*], and each crab fishing year thereafter, individuals allocated CVC QS or CPC QS must meet the participation requirements set forth in paragraph (m)(2) of this section

in order to retain their CVC QS or CPC QS unless the CVC QS holder or CPC QS holder meets the exemption provided in paragraph (m)(5) of this section.

(2) During one of the 4 crab fishing years preceding the crab fishing year for which the individual is filing an annual crab IFQ permit application, the individual has participated as crew in at least:

(i) One fishing trip where a delivery of crab is made in any CR fishery; or

(ii) 30 days of:

(A) Fishing in a commercial fishery managed by the State of Alaska or in a Federal commercial fishery in the EEZ off Alaska. Individuals may combine their participation as crew in State and Federal commercial fisheries to meet this requirement; or

(B) On a tender vessel operating in support of a commercial fishery managed by the State of Alaska or in a Federal commercial fishery in the EEZ off Alaska. Individuals may combine their participation as crew on a tender vessel in State and Federal commercial fisheries to meet this requirement.

(iii) Individuals may combine participation specified in paragraph (m)(2)(ii)(A) and paragraph (m)(2)(ii)(B) of this section to meet this requirement.

(iv) If the individual holds CVC QS or CPC QS in one or more CR crab fisheries and all CR crab fisheries for which the QS holder holds QS are closed, NMFS will exclude that crab fishing year when determining whether the individual has satisfied the participation requirement specified in paragraph (m)(2) of this section.

* * * * *

(5) All of the CVC QS or CPC QS permits held by the individual were acquired using the eligibility criteria in § 680.41(c)(1)(vii)(B) or reissued under paragraph (m)(6) of this section, and the person has held those CVC QS or CPC QS permits for less than 4 crab fishing years.

(6) For CVC QS or CPC QS revoked by NMFS under regulations paragraph (m)(2) of this section from July 1, 2019, through [effective date of final rule], an individual may apply for reissuance of QS with the individual's annual crab IFQ permit application from [effective date of final rule] through June 15, [1-year after publication of final rule].

* * * * *

§ 680.41 [Amended]

4. Amend § 680.41 by removing the word “and” and adding in its place the word “an” in the paragraph heading for paragraph (j).

5. Amend § 680.42 by:

a. Removing the phrase “more than” in paragraph (a)(3)(i);

b. Removing the phrase “more than” and adding in its place the phrase “PQS in excess of” in paragraph (b)(1)(i);

c. Revising paragraphs (b)(1)(ii)(A) and (B), adding paragraph (b)(1)(ii)(C), and revising paragraphs (b)(2) introductory text, (b)(2)(ii), and (b)(3);

d. Redesignating paragraphs (b)(4) through (6) as paragraphs (b)(7) through (9);

e. Adding new paragraphs (b)(4) through (6);

f. Removing the reference to “(b)(4)(iv)” and adding in its place “(b)(7)(iv)” in newly redesignated paragraph (b)(7); and

g. Removing references to “(b)(4)” and adding in their place “(b)(7)” in two instances in newly redesignated paragraphs (b)(7) and (8).

The revisions and additions read as follows:

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

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) Derived from PQS that was received by that person in the initial allocation of PQS for that crab QS fishery; or

(B) Subject to an exemption for that IPQ pursuant to § 680.4(p); or

(C) Used for custom processing at a facility that is:

(1) Any shoreside crab processor located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on June 29, 2009; or

(2) Any stationary floating crab processor that is:

(i) Located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on June 29, 2009;

(ii) Moored at a dock, docking facility, or at a permanent mooring buoy, unless that stationary floating crab processor is located within the boundaries of the city of Atka in which case that stationary floating crab processor is not required to be moored at a dock, docking facility, or at a permanent mooring buoy; and

(iii) Located within a harbor, unless that stationary floating crab processor is located within the boundaries of the city of Atka on June 29, 2009, in which case that stationary floating crab processor is not required to be located within a harbor.

(2) A person may not use IPQ in excess of 60 percent of the IPQ issued in the BSS crab QS fishery with a North region designation during a crab fishing year. Except that a person who:

* * * * *

(ii) Has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed will not be considered to use any IPQ in the BSS crab QS fishery with a North region designation if that IPQ is custom processed at a facility consistent with paragraph (b)(1)(ii)(C) of this section.

(3) A non-individual entity holding PQS will be required to provide, on an annual basis, a list of persons with an ownership interest in the non-individual entity. This ownership list shall be provided to the individual level, will include the percentage of ownership held by each owner, and must be submitted annually with the complete application for a crab IFQ/IPQ permit.

(4) A person will be considered to be a holder of PQS for purposes of applying the PQS use caps in this paragraph if that person:

(i) Is the sole proprietor of an entity that holds PQS; or

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

(5) 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 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.

(6) 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. 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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6. In § 680.43, revise paragraph (a) to read as follows:

§ 680.43 Revocation of CVC and CPC QS.

(a) Beginning July 1, [*date 4 years after date of publication in the Federal Register*], the Regional Administrator will revoke all CVC QS and CPC QS held by an individual who has not met the participation requirements set forth in § 680.40(m). The

Regional Administrator will revoke an individual's CVC QS or CPC QS in accordance with the procedures set forth in this section.

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[FR Doc. 2024-04733 Filed: 3/6/2024 8:45 am; Publication Date: 3/7/2024]