

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 15 CFR Part 902

## 50 CFR Parts 679 and 6805

[Docket No. 040831251–5032–02; I.D. 082504A]

RIN 0648–AS47

**Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule implementing Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs (FMP). Amendments 18 and 19 amend the FMP to include the Voluntary Three-Pie Cooperative Program (hereinafter referred to as the Crab Rationalization Program or Program). Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require the Secretary of Commerce to approve and implement the Program. The action is necessary to increase resource conservation, improve economic efficiency, and improve safety. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable law.

**DATES:** Effective on April 1, 2005.

**ADDRESSES:** Copies of Amendments 18 and 19, the Final Regulatory Flexibility Analysis (FRFA), and the Environmental Impact Statement (EIS) for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, and on the Alaska Region, NMFS, Web site at <http://www.fakr.noaa.gov/sustainablefisheries/crab/eis/default.htm>. The EIS contains as appendices the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Social Impact Assessment (SIA) prepared for this action.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Alaska Region, and by e-mail to

[David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Susan Salvesson, 907–586–7228 or [sue.salvesson@noaa.gov](mailto:sue.salvesson@noaa.gov).

**SUPPLEMENTARY INFORMATION:** In January 2004, the U.S. Congress amended section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). As amended, section 313(j)(1) requires the Secretary to approve and implement by regulation the Program, as it was approved by the North Pacific Fishery Management Council (Council) between June 2002 and April 2003, and all trailing amendments, including those reported to Congress on May 6, 2003. In June 2004, the Council consolidated its actions on the Program into the Council motion, which is contained in its entirety in Amendment 18. Additionally, in June 2004, the Council developed Amendment 19, which represents minor changes necessary to implement the Program. The Notice of Availability for these amendments was published in the **Federal Register** on September 1, 2004 (69 FR 53397). NMFS approved Amendments 18 and 19 on November 19, 2004.

NMFS published a proposed rule to implement Amendments 18 and 19 in the **Federal Register** on October 29, 2004 (69 FR 63200). NMFS solicited public comments on the proposed rule through December 13, 2004. NMFS received 49 letters of public comment. NMFS summarized these letters into 234 separate comments, and responded to them under Response to Comments, below.

The Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The Council developed the Program over a 6-year period to accommodate the specific dynamics and needs of the BSAI crab fisheries. The Program builds on the Council's experiences with the halibut/sablefish Individual Fishing Quota (IFQ) program and the American Fisheries Act (AFA) cooperative program for Bering Sea pollock. The Program is a limited access system that balances the interests of several groups who depend on these fisheries. The Program addresses conservation and management issues associated with the current derby fishery, reduces bycatch and associated discard mortality, and increases the safety of crab fishermen by ending the race for fish. Share allocations to harvesters and processors, together with incentives to participate in crab harvesting cooperatives, will increase efficiencies, provide economic stability,

and facilitate compensated reduction of excess capacities in the harvesting and processing sectors. Community interests are protected by Community Development Quota (CDQ) allocations and regional landing and processing requirements, as well as by several community protection measures.

This preamble first provides a Crab Rationalization Program overview that presents a general description of all of the Program components. Subsequent sections address the response to public comments and changes in the rule from proposed to final. Please refer to the proposed rule for additional information on the Program.

**Crab Rationalization Program Overview**

The Program applies to the following BSAI crab fisheries: Bristol Bay red king crab (*Paralithodes camtschaticus*), Western Aleutian Islands (Adak) golden king crab (*Lithodes aequispinus*)—west of 174° W. long., Eastern Aleutian Islands (Dutch Harbor) golden king crab—east of 174° W. long., Western Aleutian Islands (Adak) red king crab—west of 179° W. long., Pribilof Islands blue king crab (*P. platypus*) and red king crab, St. Matthew Island blue king crab, Bering Sea snow crab (*Chionoecetes opilio*), and Bering Sea Tanner crab (*C. bairdi*). Golden king crab is also known as brown king crab. In this document, the phrases “crab fishery” and “crab fisheries” refer to these fisheries, unless otherwise specified. A License Limitation Program (LLP) license will no longer be required to participate in these crab fisheries.

Several crab fisheries under the FMP are excluded from the Program, including the Norton Sound red king crab fishery, which is operated under a “superexclusive” permit program intended to protect the interests of local, small-vessel participants. Also excluded from this Program are the Aleutian Islands Tanner crab fishery, Aleutian Islands red king crab fishery east of 179° W. long., and the Bering Sea golden king crab, scarlet king crab (*L. couesi*), triangle Tanner crab (*C. angulatus*), and grooved Tanner crab (*C. tanneri*) fisheries. An LLP license will be required to participate in the FMP crab fisheries excluded from the Program.

**Harvest Sector**

Qualified harvesters are allocated quota share (QS) in each crab fishery. To receive a QS allocation, a harvester must hold a permanent, fully transferable LLP license endorsed for that crab fishery. Using LLP licenses for defining eligibility in the Program maintains current fishery participation. Quota

share represents an exclusive but revokable privilege that provides the QS holder with an annual allocation to harvest a specific percentage of the total allowable catch (TAC) from a fishery. IFQs are the annual allocations of pounds of crab for harvest that represent a QS holder's percentage of the TAC. A harvester's allocation of QS for a fishery is based on the landings made by his or her vessel in that fishery. Specifically, each allocation is the harvester's average annual portion of the total qualified catch during a specific qualifying period. Qualifying periods were selected to balance historical and recent participation. Different periods were selected for different fisheries to accommodate closures and other circumstances in the fisheries in recent years.

Quota share is designated as either catcher vessel (CV) shares or catcher/processor (CP) shares, depending on the nature of the LLP license and whether the vessel processed the qualifying harvests on board. Catcher vessel IFQ will be issued in two classes, Class A IFQ and Class B IFQ. Crabs harvested with Class A IFQ will require delivery to a processor holding unused processing quota. Class A IFQ landings also will be subject to a regional delivery requirement. Under this regional requirement, landings will be delivered either in a North or in a South region (in most fisheries). Crabs harvested with Class B IFQ can be delivered to any processor and will not be regionally designated. Landings in excess of IFQ will be forfeited in all cases. Class B IFQ are intended to provide ex-vessel price negotiating leverage to harvesters. For each region of each fishery, the allocation of Class B IFQ will be 10 percent of the total allocation of IFQ to the CV sector.

Transfer of QS and IFQ, either by sale or lease, will be allowed, subject to limits including caps on the amount of shares a person may hold or use. To be eligible to receive transferred QS or IFQ, a person must meet specific eligibility criteria. Initial recipients of QS, CDQ groups, and eligible crab community entities are exempt from the transfer eligibility criteria.

Separate caps will be imposed to limit the amount of QS and IFQ a person can hold and to limit the use of IFQ on board a vessel. These caps are intended to prevent negative impacts from what can be described as excessive consolidation of shares. Excessive share holdings are prohibited by the Magnuson-Stevens Act. Different caps were chosen for the different fisheries because fleet characteristics and dependence differ across fisheries.

Separate caps on QS holdings are established for CDQ groups, which represent rural western Alaska communities. Processor holdings of QS will also be limited by caps on vertical integration. Quota share holders can retain and use initial allocations of QS above the caps.

#### *Crew Sector*

To protect their interests in the fisheries, qualifying crew will be allocated 3 percent of the initial QS pool. These shares are intended to provide long term benefits to captains and crew. The Council originally intended this provision to apply only to vessel captains. However, NMFS has determined that documentation necessary to allocate Crew QS, called C shares by the Council, requires that these shares be initially issued to individuals who hold a State of Alaska Interim Use Permit. In most cases, this individual will be the captain; however, the State does not require that the holder of the Interim Use Permit be the vessel captain. The allocation to crew will be based on the same qualifying years and computational method used for QS allocations to LLP license holders. Crew (C) QS will be issued as CVC QS and CPC QS, depending on the activity in the qualifying years. To ensure that Crew QS and IFQ benefit at-sea participants in the fisheries, Crew IFQ can be used only when the IFQ holder is on board the vessel.

To be eligible to receive an allocation, an individual is required to have historic and recent participation. Historic participation is demonstrated by at least one landing in each of three of the qualifying years. Recent participation is demonstrated by at least one landing in two of the three most recent seasons, with some specific exceptions.

CV Crew IFQ (called CVC IFQ) will be required to be delivered to shore-based processors for processing. CVC IFQ is not subject to specific delivery requirements until July 1, 2008. After July 1, 2008, CVC IFQ will be subject to the Class A IFQ/Class B IFQ distinction with commensurate regional delivery requirements unless the Council determines, after review, not to apply those designations. Before July 1, 2007, the Council intends to review CVC IFQ landing patterns to determine whether the distribution of landings among processors and communities of CVC IFQ differs from the distribution of IFQ landings.

CP crew will be allocated CPC QS and IFQ that include a harvesting and on-board processing privilege. Crab

harvested with CPC IFQ also can be delivered to shore-based processors.

Crew QS and IFQ can be transferred to eligible individuals. Leasing of Crew IFQ is permitted before July 1, 2008. After July 1, 2008, leasing will be permitted only in the case of a documented hardship (such as a medical hardship or loss of vessel) for the term of the hardship, subject to a maximum of 2 years over a 10-year period. Use caps apply to individual Crew QS holdings.

#### *Processing Sector*

A processing privilege, analogous to the harvesting privilege allocated to harvesters, will be allocated to processors. Qualified processors will be allocated processor quota share (PQS) in each crab fishery. PQS represents an exclusive but revokable privilege to receive deliveries of a specific portion of the annual TAC from a fishery. The annual allocation of pounds of crab based on the PQS is IPQ. IPQ will be issued for 90 percent of the IFQ allocated harvesters, equaling the amount of IFQ allocated as Class A IFQ. Processor privileges will not apply to the remaining TAC allocated as Class B IFQ, or for Crew IFQ until July 1, 2008. IPQs will be regionally designated for processing (corresponding to the regional designation of the Class A IFQ).

PQS allocations are based on processing history during a specified qualifying period for each fishery. A processor's initial allocation of PQS in a fishery will equal its share of all qualified pounds of crab processed in the qualifying period. Processor shares are transferable, including the leasing of IPQs and the sale of PQS, subject to caps and to community protection measures. IPQs can be used without transfer at any facility or plant operated by a processor. New processors can enter the fishery by purchasing PQS or IPQ or by purchasing crab harvested with Class B IFQ or crab harvested by CDQ groups or the Adak community entity.

A PQS holder is limited to holding 30 percent of the PQS issued for a fishery, except that initial allocations of shares above this limit can be retained and used. In addition, in the snow crab fishery, no processor is permitted to use or hold in excess of 60 percent of the IPQs issued for the Northern region.

#### *Catcher/Processor Sector*

Catcher/processors (CPs) have a unique position in the Program because they participate in both the harvesting and processing sectors. To be eligible for CP QS, a person is required to hold a permanent, fully transferable LLP license designated for CP use. In

addition, a person must have processed crab on board the CP, whose history gave rise to the LLP license, in either 1998 or 1999. Persons meeting these qualification requirements will be allocated CP QS in accordance with the allocation rules for QS for all qualified catch that was processed on board. These shares represent a harvest privilege and an on-board processing privilege. Catcher/Processor QS does not have regional designations.

#### *Regionalization*

The regional delivery requirements for QS are intended to preserve the historic geographic distribution of landings in the fisheries. Communities in the Pribilof Islands are the prime beneficiaries of this regionalization provision. Two regional designations will be created in most fisheries. The North region is all areas in the Bering Sea north of 56°20' N latitude. The South region is all other areas. Catcher vessel QS, Class A IFQ, PQS, and IPQ will be regionally designated. Crab harvested with regionally designated IFQ will be required to be delivered to a processor in the designated region. Likewise, a processor with regionally designated IPQ is required to accept delivery of and process crab in the designated region. Legal landings in a region in the qualifying years will result in QS and PQS designated for that region.

The Program has two exceptions to the North/South regional designations. In the Western Aleutian Islands golden king crab fishery, 50 percent of the Class A IFQ and IPQ will be designated as west shares to be delivered west of 174° W. longitude. The remaining 50 percent of the Class A IFQ and IPQ will have no regional designation and will not be subject to a regional delivery requirement. The west designation will be applied to all Class A IFQ and IPQ regardless of the historic location of landings in the fishery. A second exception is the Bering Sea Tanner crab fishery, which will have no regional designation. This fishery is anticipated to be conducted primarily as a concurrent fishery with the regionalized Bristol Bay red king crab and Bering Sea snow crab fisheries, making the regional designation of Tanner crab landings unnecessary.

#### *Crab Harvesting Cooperatives*

Harvesters may form voluntary crab harvesting cooperatives in order to collectively harvest their IFQ holdings. A minimum membership of four unique QS holders is required for crab harvesting cooperative formation. A crab harvesting cooperative is required

to apply for a crab harvesting cooperative IFQ permit. The crab harvesting cooperative IFQ permit will display the aggregate amount of IFQ in each crab fishery that will be yielded by the collective QS holdings of the members. IFQ could be transferred between crab harvesting cooperatives, subject to NMFS' approval. For inter-cooperative transfers, the crab harvesting cooperative will need to designate the crab harvesting cooperative member engaged in the transaction for purposes of applying the use cap of that member to the IFQ that is being transferred to the crab harvesting cooperative. Crab harvesting cooperative members will be allowed to leave a crab harvesting cooperative or change crab harvesting cooperatives on an annual basis prior to the August 1 deadline for the annual crab harvesting cooperative IFQ permit application. Vessels that are used exclusively to harvest crab harvesting cooperative IFQ will not be subject to use caps. Crab harvesting cooperatives are free to associate with one or more processors to the extent allowed by antitrust law.

#### *Community Protection Measures*

The Program includes several provisions intended to protect communities from adverse impacts that could result from the Program. Communities eligible for the community protection measures are those with 3 percent or more of the qualified landings in any crab fishery included in the Program. Based on these criteria, NMFS has determined that the following crab communities meet this criteria: Adak, Akutan, Unalaska, Kodiak, King Cove, False Pass, St. George, St. Paul, and Port Moller. All of these communities are identified as eligible crab communities (ECCs) for purposes of community protection measures.

*"Cooling off" provision.* Until July 1, 2007, PQS and IPQ based on processing history from the ECCs can not be transferred from those communities. The use of IPQ outside the community during this period is limited to 20 percent of the IPQ and for specific hardships. PQS and IPQ from three crab fisheries are exempt from the cooling off provision: Tanner crab, Western Aleutian Islands red king crab, and Western Aleutian Islands golden king crab.

*IPQ issuance limits.* IPQ issuance limits are established to limit the annual issuance of IPQ in seasons when the Bristol Bay red king crab or snow crab TAC exceeds a threshold amount. Under these circumstances, Class A IFQ issued in excess of these thresholds will not be

required to be delivered to a processor with IPQ but will be subject to the regional delivery requirements.

*Sea time waiver.* Sea time eligibility requirements for the purchase of QS are waived for CDQ groups and community entities in ECCs, allowing those communities to build and maintain local interests in harvesting. CDQ groups and ECCs are eligible to purchase PQS but are not permitted to purchase Crew QS.

*Right of first refusal (ROFR).* ECCs, except for Adak, will have a ROFR on the transfer of PQS and IPQ originating from processing history in the community if the transfer will result in relocation or use of the shares outside the community. Adak is not eligible for the ROFR provision because Adak will receive a direct allocation of Western Aleutian Islands golden king crab. In addition, the City of Kodiak and the Kodiak Island Borough in the Gulf of Alaska (GOA) have a ROFR on the transfer of PQS and IPQ from communities in the GOA north of 56°20' N. latitude.

#### *Community Development Quota Program and Community Allocations*

*Community Development Quota Program.* The CDQ Program is expanded to include the Eastern Aleutian Islands golden king crab fishery and the Western Aleutian Islands red king crab fishery. In addition, the CDQ allocations in all crab fisheries covered by the Program are increased from 7.5 to 10 percent of the TAC. The increase will not apply to the CDQ allocation of Norton Sound red king crab because this fishery is excluded from the Program. The crab CDQ fisheries will be managed as separate commercial fisheries by the State under authority deferred to it under the FMP. The State will establish observer coverage requirements, State permitting requirements, and transfer provisions among the CDQ groups. It also will monitor catch to determine when IFQ have been reached, enforce any penalties associated with IFQ overages, and monitor compliance with the requirement that CDQ groups must deliver at least 25 percent of their allocation to shore-based processors.

Crab harvested under the CDQ allocations (except Norton Sound red king crab) are subject to some of the Federal requirements that apply to all crab fisheries under the Program including permitting, recordkeeping and reporting, a vessel monitoring system, and the cost recovery fees.

CDQ groups can participate in the crab fisheries as holders of both QS and PQS. Some CDQ groups will be initial

recipients of QS because they hold LLP licenses and the appropriate catch history. In addition, CDQ groups are exempt from the transfer eligibility requirement related to sea time so they are eligible to obtain QS by transfer, subject to QS use caps for CDQ groups. CDQ groups also will be able to obtain PQS by transfer because there are no transfer restrictions on who can hold PQS. While harvesting crab with IFQ, CDQ groups are subject to the same regulations as apply to other IFQ holders. The purchase and holding of QS and PQS by the CDQ groups is subject to the administrative regulations for the CDQ Program at 50 CFR part 679. These regulations include information on reporting, prior approval, and use requirements for all CDQ investments, which include QS and PQS.

**Adak allocation.** An allocation of 10 percent of the TAC of Western Aleutian Islands golden king crab will be made to the community of Adak. The allocation to Adak will be made to a nonprofit entity representing the community, with a board of directors elected by the community. As an alternative and in the interim, the allocation and funds derived from it could be held in trust by the Aleut Enterprise Corporation for a period not to exceed 2 years, if the Adak community non-profit entity is not formed prior to implementation of the Program. Oversight of the use of the allocation for "fisheries related purposes" is deferred to the State under the FMP. NMFS will have no direct role in oversight of the use of this allocation. The State will provide an implementation review to the Council to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan. The Adak allocation will be managed as a separate commercial fishery by the State in a manner similar to management of the crab CDQ fisheries. As with the CDQ allocations, crab harvested under the Adak allocation will be subject to several requirements that apply to all crab fisheries under the Program including permitting, recordkeeping and reporting, a vessel monitoring system, and the cost recovery fees.

**Community purchase.** Any non-CDQ community in which 3 percent or more of any crab fishery was processed could form a non-profit entity to receive QS, IFQ, PQ and IPQ transfers on behalf of the community. The non-profit entity will be called an eligible crab community organization (ECCO).

#### *Protections for Participants in Other Fisheries*

The Program will greatly increase the flexibility for crab fishermen to choose when and where to fish for their IFQ, and this increased flexibility will provide crab fishermen with increased opportunity to participate in other fisheries. Restrictions on participation in other fisheries, also called sideboards, will restrict a vessel's harvests to its historical landings in all GOA groundfish fisheries (except the fixed-gear sablefish fishery). Restrictions will be applied to vessels but will also restrict landings made using a groundfish LLP license derived from the history of a vessel so restricted, even if that LLP license is used on another vessel. Groundfish sideboards in the GOA will be managed by NMFS through fleet-wide sideboard directed fishing closures in Federal waters and for the parallel fishery in state waters.

#### *Arbitration System*

BSAI crab fisheries have a history of contentious price negotiations. Harvesters have often acted collectively to negotiate an ex-vessel price with processors, which at times delayed fishing. The Arbitration System was developed to resolve failed price negotiations arising from the creation of QS/IFQ and PQS/IPQ. The complications include price negotiations that could continue indefinitely and result in costly delays and the "last person standing" problem where the last Class A IFQ holder deliveries will have a single IPQ holder to contract with, effectively limiting any ability to use other processor markets for negotiating leverage. To ensure fair price negotiations, the Arbitration System includes a provision for open negotiations among IPQ and IFQ holders as well as various negotiation approaches, including: (a) A share matching approach where IPQ holders make known to unaffiliated IFQ holders that have uncommitted IFQ available the amount of uncommitted IPQ they have available so the IFQ holder can match up its uncommitted IFQ by indicating an intent to deliver its catch to that IPQ holder; (b) a lengthy season approach that allows parties to postpone binding arbitration until sometime during the season; and (c) a binding arbitration procedure to resolve price disputes between an IPQ holder and eligible IFQ holders.

The arbitration process will begin preseason with a market report for each fishery prepared by an independent market analyst selected by the PQS and QS holders and the establishment of a

non-binding fleet wide benchmark price formula by an arbitrator who has consulted with fleet representatives and processors. Information provided by the sectors for these reports will be historical in nature and at least 3 months old. This non-binding price will guide the above described negotiations. Information sharing among IPQ and IFQ holders, collective negotiations, and release of arbitration results will be limited to minimize the antitrust risks of participants in the Program. The participants in the Arbitration System will also select Contract Arbitrators who will assist in Binding Arbitration.

The binding arbitration procedure is a last best (or final) offer format. The IPQ holder, each IFQ holder, and each crab harvesting cooperative could submit an offer. For each IFQ holder or cooperative, the arbitrator will select between the IFQ holder's offer and the IPQ holder's offer. After an arbitration decision is rendered, an eligible IFQ holder with uncommitted IFQ could opt-in to the completed contract by accepting all terms of the arbitration decision as long as the IPQ holder held sufficient uncommitted IPQ.

#### *Monitoring and Enforcement*

NMFS and the State of Alaska will coordinate monitoring and enforcement of the crab fisheries. Harvesting and processing activity will need to be monitored for compliance with the implementing regulations. Methods for catch accounting and catch monitoring plans will generate data to provide accurate and reliable round weight accounting of the total catch and landings to manage QS and PQS accounts, prevent overages of IFQ and IPQ, and determine regionalization requirements and fee liabilities. Monitoring measures will include landed catch weight and species composition, bycatch, and deadloss to estimate total fishery removals.

#### *Economic Data Collection*

The Program includes a comprehensive economic data collection program to aid the Council and NMFS in assessing the success of the Program and developing amendments necessary to mitigate any unintended consequences. An Economic Data Report (EDR), containing cost, revenue, ownership, and employment data, will be collected on a periodic basis from the harvesting and processing sectors. The data will be used to study the economic impacts of the Program on harvesters, processors, and communities. Pursuant to section 313(j) of the Magnuson-Stevens Act, the data and identifiers will also be used for

Program enforcement and determination of qualification for QS. Consequently, identifiers and data will be disclosed to NOAA Enforcement, NOAA GC, the Antitrust Division of the Department of Justice, the Federal Trade Commission, and RAM. With limited exceptions, participation in the data collection program is mandatory for all participants in the crab fisheries.

#### *Cost Recovery and Fee Collection*

NMFS will establish a cost recovery fee system, required by section 304(d)(2) of the Magnuson-Stevens Act, to recover actual costs directly related to the management and enforcement of the Program. The crab cost recovery fee will be paid in equal shares by the harvesting and processing sectors and will be based on the ex-vessel value of all crab harvested under the Program, including CDQ crab and Adak crab. NMFS also will enter into a cooperative agreement with the State of Alaska to use IFQ cost recovery funds in State management and observer programs for BSAI crab fisheries. The crab cost recovery fee is prohibited from exceeding 3 percent of the annual ex-vessel value. Within this limit, the collection of up to 133 percent of the actual costs of management and enforcement under the Program is authorized, which provides for fuller reimbursement of management costs after allocation of 25 percent of the cost recovery fees to the crew loan program.

#### *Crew Loan Program*

To aid captains and crew in purchasing QS, a low interest loan program (similar to the loan program under the halibut and sablefish IFQ program) will be created. This program will be funded by 25 percent of the cost recovery fees as required by the Magnuson-Stevens Act. Loan money will be accessible only to active participants and could be used to purchase either QS or Crew QS. Quota share purchased with loan money will be subject to all use and leasing restrictions applicable to Crew QS for the term of the loan. This final rule does not contain regulations to implement the crew loan program. The loan program will be developed by NMFS Financial Services.

#### *Annual Reports and Program Review*

NMFS, in conjunction with the State of Alaska, will produce annual reports on the Program. Before July 1, 2007, the Council will review the PQS, binding arbitration, and C share components of the Program. After July 1, 2008, the Council will conduct a preliminary review of the Program. A full review of

the entire Program will be undertaken in 2010. Additional reviews will be conducted every 5 years. These reviews are intended to objectively measure the success of the Program in achieving the goals and objectives specified in the Council's problem statement and the Magnuson-Stevens Act. These reviews will examine the impacts of the Program on vessel owners, captains, crew, processors, and communities, and include an assessment of options to mitigate negative impacts.

#### **Summary of Regulation Changes in Response to Public Comments**

This section provides a summary of the major changes made to the final rule in response to public comments. All of the specific changes, and the reasons for making these changes, are contained under Response to Comments.

#### *Harvester, Crew, and Processor Sectors*

The following significant changes from the proposed to final rule in response to public comments are necessary to meet the requirements of Amendment 18 and 19. In the final rule NMFS:

(1) Revised the way in which Class A IFQ and Class B IFQ are allocated to individual IFQ holders who hold PQS or IPQ, or who are affiliated with PQS or IPQ holders, so that Class A IFQ is issued in proportion to the amount of IPQ that is held by the IPQ holder or affiliates.

(2) Revised the definition of "affiliation" to clarify the term "otherwise controls".

(3) Clarified that CVC QS and IFQ are not subject to regional designation and the Class A and Class B IFQ assignment for the first three years of the program—until July 1, 2008.

(4) Revised the QS use caps that apply to non-individual PQS and IPQ holders so that the application of those caps considers the QS holding of that PQS and IPQ holder and the total QS holdings of all persons affiliated with that PQS or IPQ holder.

(5) Revised the PQS and IPQ use caps that apply to PQS and IPQ holders so that the PQS or IPQ holdings of that PQS or IPQ holder and the total PQS or IPQ holdings of all persons affiliated with that PQS or IPQ holder are used in the calculation of the PQS or IPQ holder's caps.

(6) Clarified that an "individual and collective" rule applies for computing QS use caps for individual PQS holders, CDQ groups, and all other QS holders. This methodology sums all QS holdings by a person and the percentage of ownership by that person in any QS

holding entity. This method is more consistent with Amendment 18.

(7) Added provisions on applying limits on the amount of "custom processing" that may be undertaken at any one processing facility, or at any facility, or group of facilities that is owned by an IPQ holder.

(8) Clarified the limited exemption that applies to using legal landings based on the activities of a vessel which received an LLP by transfer in order to remain in a fishery.

#### *Crab Harvesting Cooperatives*

In response to Council and public comments, NMFS removed the requirement in § 680.21 that crab harvesting cooperatives be formed under the Fishermen's Collective Marketing Act (FCMA, 15 U.S.C. 512). With this change, QS holders that hold PQS and IPQ, as well as QS holders affiliated with PQS and IPQ holders, can participate in crab harvesting cooperatives. To address antitrust concerns, NMFS: (1) Clarified that issuance of a crab harvesting cooperative IFQ permit is not a determination that the crab harvesting cooperative is formed or is operating in compliance with antitrust laws; and (2) added that members of crab harvesting cooperatives, that are not FCMA cooperatives, should consult counsel before commencing any activity under the crab harvesting cooperative if members are uncertain about the legality under the antitrust laws of the crab harvesting cooperative's proposed conduct. Additionally, NMFS added definitions of crab harvesting cooperatives and FCMA cooperatives at § 680.2.

Additionally, NMFS changed the regulations at § 680.42(c)(5) so that a CVC or CPC QS holder is subject to the owner on board restriction regardless of whether he or she joins a crab harvesting cooperative. NMFS revised the final rule at § 680.21(a)(1)(iii)(B) to allow CVC QS holders who join a crab harvesting cooperative to withhold their Class B IFQ from submission to the crab harvesting cooperative. This will take effect after the third year of the Program when CVC QS becomes subject to the Class A/Class B IFQ split. NMFS revised the final rule at § 680.21(a)(1)(iii)(A)–(B) to permit QS holders to hold memberships in one crab harvesting cooperative per fishery. If a QS holder joins a crab harvesting cooperative for fishery, all of that QS holder's IFQ for that fishery will be submitted to the crab harvesting cooperative.

NMFS revised intercooperative transfers at § 680.21(e) to require the designation of the members of the crab

harvesting cooperatives that are engaged in the transfer for purposes of applying the use caps of the members to the cooperative IFQ that is being transferred between the crab harvesting cooperatives.

#### ROFR

The final rule revises proposed provisions for an ECC's ROFR of purchase of PQS or IPQ that is being proposed by a PQS/IPQ holder for use outside the community. These revisions are in response to public comment and are intended to more closely reflect the original intent of the Council. First, the final rule clarifies that an ECC has discretion on whether or not to designate an ECC entity to represent it in ROFR and enter into civil contract arrangements for this purpose. If an ECC entity is not designated within a reasonable period of time, then the ECC permanently waives its opportunity to exercise ROFR. Second, statute terms for civil contracts establishing ROFR between eligible ECCs and holders of PQS/IPQ have been removed from the regulations. Instead, the regulations now refer to the provisions in section 313(j) of the Magnuson-Stevens Act. This approach ensures consistency with the Magnuson-Stevens Act and is appropriate because NMFS does not enforce these contract terms.

#### Arbitration System

NMFS made the following significant changes from the proposed to final rule in response to public comments. These changes are necessary to meet the requirements of Amendment 18 and 19. In the final rule NMFS:

(1) Clarified that only IFQ holders can initiate the Binding Arbitration procedure.

(2) Revised the timeline for the 2005 season for QS holders and PQS holders to join an Arbitration Organization which is responsible for selecting a group of experts that can assist in price negotiations: the market analyst, formula arbitrator, and contract arbitrator.

(3) Revised the mechanism for exchanging information between uncommitted IPQ holders and uncommitted Arbitration IFQ holders to allow for a third-party to provide data in an arms-length relationship.

(4) Established a minimum of 25 percent of the total IFQ held by an FCMA cooperative that must be committed to an IPQ holder in order to engage in share matching.

(5) Clarified the timing under which a Binding Arbitration procedure must occur and the process whereby it can occur.

(6) Clarified the ability of persons to participate in FCMA cooperatives and collectively negotiate, and the limits to which FCMA cooperatives may exchange information among cooperatives.

(7) Removed the requirement that the transferors require persons receiving QS/IPQ or PQS/IPQ by transfer to join an Arbitration Organization, and requiring the transferees to do that themselves.

(8) Required that CVO IFQ, CVC IFQ after July 1, 2008, and IPQ would not be issued for a crab QS fishery until the Market Analyst, Formula Arbitrator, or Contract Arbitrators have been selected for that fishery.

(9) Clarified the type of Arbitration Organization which a person must join depending on their holdings of QS/IPQ and PQS/IPQ.

#### Monitoring and Enforcement

NMFS made two major changes to requirements for CPs as a result of public comment. Both changes reduce the burden on participants in the crab fishery. First, NMFS reduced the required reporting interval for crab catch by CPs from once every twenty four hours to weekly. Second, NMFS removed requirements for CPs to provide an observer work area on board their vessels. NMFS also clarified regulations governing the use of the Interagency Electronic Reporting System (IERS) to ensure that vessels that are unable to use the Internet may report catch using an alternative, NMFS approved, method such as an email attachment to report catch.

#### Economic Data Collection

In response to public comment requesting additional time to prepare and submit the historic EDRs, the submission interval for the EDR is increased from 60 days to 90 days at §§ 680.6(a)(2), 680.6(c)(2), 680.6(e)(2) and 680.6(g)(2), to provide both the time to gather records and complete an accurate EDR. Also in response to public comment, the time interval allowed for verification of data by all submitters is extended in the final rule at § 680.6(i)(2) to 20 days from the 15 days interval identified in the proposed rule.

#### Cost Recovery and Fee Collection

The cost recovery fee system remains relatively unchanged from the proposed rule. NMFS received only one comment for the cost recovery fee system. NMFS responded affirmatively to this comment by adjusting the methodology by which CPs must calculate and submit fees to reduce any disparity between

fees paid by CPs and shoreside processors. An explanation of the revised methodology for CP fee calculation is contained in the response to comments.

#### Response to Comments

##### Harvest Sector

*Comment 1:* QS should belong to the American public, not fishing industry. It is not fair to the American public to have the interests of only those who enrich themselves have a say over the resource.

*Response:* Allocating QS and PQS to fishery participants is a provision of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18.

*Comment 2:* If a vessel sinks, it should lose all rights to fish forever.

*Response:* The sunken vessel provision that allocates QS to LLP license holders who have had a vessel sink are part of Amendment 18. Under section 313(j) of the Magnuson-Stevens Act, NMFS does not possess the discretion to alter the sunken vessel provision as it exists in Amendment 18. Any change to this provision requires an amendment to the Program and should be addressed with the Council.

*Comment 3:* The term "IFQ TAC" used in § 680.40(h)(5)(ii) in the calculation of the Class A IFQ allocation and the IPQ allocation is not defined. Care should be taken in defining the term to show that prior to July 1, 2008, CVC QS yield IFQ that are not subject to the Class A IFQ landing requirements and that IPQ should be issued for 90 percent of the CVO IFQ allocation. After July 1, 2008, CVC QS holders will receive Class A IFQ and IPQ will be issued for 90 percent of the CVO and CVC IFQ allocation. Clarify definition and calculation of IPQ and Class A IFQ allocations.

*Response:* NMFS agrees and has modified the final rule at § 680.40(h)(5)(ii) to more clearly reflect the nature of the Class A IFQ, the allocations that may occur, and the definition of CVC and CVO QS and IFQ.

*Comment 4:* Section 680.41(c)(2)(ii)(D)(2)(i) and (ii) does not adequately parallel the Council motion. For corporations and other entities, one "owner" (not "member") must meet the sea time requirement. In addition, that same owner must hold at least a 20 percent ownership interest in the entity. The section does not exactly parallel these requirements. Use language from the Council motion.

*Response:* NMFS agrees and has modified the final rule at

§ 680.41(c)(2)(ii)(D)(2)(i) and (ii) to more clearly show that one individual must meet both requirements in order to receive QS or IFQ by transfer. However, the final rule maintains the term “member” because not all persons who may hold QS or PQS will have “owners.” As an example, non-profit corporations don’t have “owners.”

*Comment 5:* The provisions § 680.41(l)(2) and (4) concerning the transfer of CVO QS and CVC QS, respectively, should be deleted in their entirety. They specifically provide, “Notwithstanding QS use limitations under § 680.42, CVO (CVC) QS may be transferred to any person eligible to receive CVO or CPO (CVC or CPC) QS as defined under paragraph (c) of this section.” These provisions appear to override any use caps contained at § 680.42 (the only section of the regulation defining use caps).

*Response:* NMFS agrees and has revised § 680.41(i)(5) in the final rule to clarify that the approval criteria for transfer do not preclude the use caps at § 680.42.

*Comment 6:* The rule limiting the acquisition of LLP licenses (and history) in excess of the cap after June 10, 2002, should apply to § 680.42(b)(3) and (4) (CDQ caps and vertical integration caps), as well as the general caps. Add in control date to this section.

*Response:* NMFS agrees and has revised § 680.42(a)(1) to accommodate this comment. This revised regulatory text also notes that a “person will not be issued QS in excess of the use cap established in this section based on QS derived from landings attributed to an LLP license obtained via transfer after June 10, 2002,” except under limited conditions addressed under the response to comment 40. This provision would apply to both CDQ groups and the vertical integration caps.

*Comment 7:* For CDQ groups, the individual and collective rule should be used to determine holdings for applying the caps at § 680.42(b)(3).

*Response:* NMFS agrees and has modified the final rule at § 680.42(b)(3) to clarify that the QS and IFQ use caps apply individually and collectively to CDQ groups to meet the intent of Amendment 18.

*Comment 8:* Table 7 mixes the concepts of eligibility and qualification. Eligibility defines the persons eligible to receive an allocation. For CVO and CPO, holders of permanent LLP licenses are eligible for an initial allocation. For CVC and CPC, persons meeting the historical participation requirement (*i.e.*, landings in 3 of the qualifying years for vessels) and recency requirements (*i.e.*, landings in 2 of the 3 most recent years) are

considered eligible. Once persons are found eligible, their allocations are based on the qualifying years shown in Column B. The same subset of years would apply to all participants (CVO, CPO, CVC, and CPC). Column E is incorrect. In addition, Columns C and D define CVC and CPC eligibility, not qualification. Revise table to reflect difference between eligibility and qualification.

*Response:* NMFS agrees and has revised Table 7 in the final rule to reflect the difference between eligibility and qualification.

*Comment 9:* Table 7 leaves out the season beginning in 1991 for Bering Sea Tanner crab. The seasons shown in (2) and (3) are one season, not two. Revise dates in the table to include the 1991 BS Tanner season.

*Response:* NMFS agrees and has revised the dates in Table 7 to include the 1991 BS Tanner crab season in the final rule.

*Comment 10:* Table 7 defines seasons with an opening and closing date. Often the last landing of the season is made after the closing date. The regulation should be clear that legal landings made after the closing date will be counted for allocations. Clarify that these landings will count for determining allocations.

*Response:* NMFS will consider legal landings made after the closing date of the fishery in the calculation of PQS and QS to be issued provided that the harvests were made during the periods established in Table 7.

*Comment 11:* Allocating QS only for fisheries for which the holder’s LLP license is endorsed is unfair, inequitable, and dramatically limits the amount of QS an LLP license holder will receive. Specifically, if a vessel has substantial history in a crab fishery, but did not qualify for an LLP license endorsement for that fishery, then the LLP license holder should receive QS based on that history.

*Response:* Allocating QS only for catch history in fisheries for which the holder’s LLP license is endorsed is a provision of the Council’s motion, which is Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18. The Council developed the method for distributing QS based on a linkage to permanent fully transferrable LLP license (with limited exemptions) after considerable debate and analysis in the EIS/RIR/IRFA prepared to support Amendment 18 and this final rule.

*Comment 12:* NMFS should explain how QS distribution will accommodate resolution of appeals on LLP licenses

and on QS allocation after initial QS allocation.

*Response:* NMFS anticipates that all LLP license appeals that affect the interim status of crab LLP licenses will be resolved by the time that this action is effective and the application period commences. However, other potential sources of Program application claims, for example, regarding landings and processing histories, will likely not be complete until during or after the application period. Some features of the Program such as one-time permanent regional QS and PQS assignments require that NMFS base its primary initial issuance computations and distribution on as complete a QS/PQS pool as possible. Therefore it is essential that all persons who believe they may be eligible for QS/PQS apply during the open application period, whether or not their LLP license status or other situation makes them ineligible for QS/PQS at that time. NMFS would not issue QS unless and until a person’s crab LLP license gained appropriate status or other claim was resolved in their favor by Final Agency Action of RAM, the Office of Administrative Appeals, or the Regional Administrator. At that time, NMFS would issue QS or PQS as appropriate to their application.

However, no distribution of annual IFQ or IPQ would be made for the newly issued QS/PQS until the next time at which NMFS makes a distribution of annual TAC to QS/PQS holders for that crab fishery so as not to disrupt the balance of existing QS and PQS amounts, arbitration agreements, use cap credits, etc. Regional assignments of QS/PQS issued initially but on a delayed basis would be based on original regional ratios computed from data developed for the primary initial QS issuance event.

*Comment 13:* Council intent, as stated in Amendment 18, was to calculate each holder’s QS as a weighted average. The proposed rule, at § 680.40(c)(2), uses a simple average determined by calculating the holder’s percentage in each of the history years, adding up the percentages, and dividing by the number of years. This section should be changed to comply with Council intent. The Council followed AFA, where the boats rejected the simple average approach in favor of adding up all the QS holder’s pounds in the aggregate, and then dividing by the aggregate total pounds in all of the history years (weighted average). Guideline harvest level (GHL) volatility in snow crab, for example, illustrates why. The aggregate annual landings vary significantly over the history years, meaning that a QS holder with very high landings in a low



GHL year would get more QS than a consistent participant. Someone who sat out a low GHL year (good idea for the health of the industry and fishery) would be severely penalized.

*Response:* The methodology used at § 680.40(c)(2) does use a weighted average when calculating the amount of QS that will be issued. The method requires determining the percentage of the total qualified landings a person and summing up the percentage of the total qualified landings of all persons that are qualified to receive QS. A person's percentage of the total qualified landings is divided by the percentage of the percentage of all the qualified landings in that fishery. This methodology is explained in detail in the preamble to the proposed rule (see 69 FR 63208) and in the final rule at § 680.40(c)(2)(iv).

*Comment 14:* The QS pool is so large that overfishing results. Quotas should be cut by 50 percent this year and 10 percent each year thereafter.

*Response:* NMFS disagrees. The QS pool represents the portion of available TAC for a fishery that will be allocated to QS holders annually. The QS pool yields IFQ every year which is the pounds of crab the QS holder may harvest, based on the amount of crab available for harvest. Each year, the TAC is determined through a scientific process that is designed to maintain healthy stocks and reduce the risk of overfishing.

*Comment 15:* The surviving spouse provision in the proposed rule at § 680.41(n) provides that if a QS holder dies, his spouse has 3 years to lease out his QS. There are no additional regulations in the proposed rule to explain what happens after that time. If this provision is similar to the halibut/sablefish QS surviving spouse provision, then the surviving spouse will have to either sell the QS or qualify to have the QS transferred to their name. They qualify by having 150 days of sea time-fishing only, no tendering or research vessel time. If they do qualify, then they have to be on board during the harvesting and delivery of the product.

This would be a hardship for a surviving spouse of a crab QS holder. Crab fishing is much different than halibut fishing, and provides a large portion of a family's annual income. A surviving spouse probably would not be able to leave the children and job and go out to the Bering Sea to crab fish for weeks at a time, a few times a year, even if she could qualify. I don't think it is the wish or intention of QS holders to leave their spouses and families in such a bind. In these cases, the spouse, along with the QS holder, have made

significant personal and financial investment in this fishery.

*Response:* Amendment 18 does not make a specific exemption to allow a beneficiary to receive an additional opportunity to lease IFQ or IPQ, other than the provisions established under the rule. In fact, the three year lease period allowed for beneficiaries of QS and PQS to use the IFQ or IPQ is designed to mirror existing leasing by beneficiaries under the halibut and sablefish IFQ program. Extending this limited leasing ability beyond three years would frustrate the overall intent of the Program, which is to limit leasing after several years have transpired.

A beneficiary of QS or PQS may sell the QS or PQS, or fish the IFQ or IPQ themselves after the three year period. Additionally, for CVO and CPO QS, if the beneficiary owns at least 10 percent of a vessel, they can hire someone else to fish the IFQs after the three year period. This provision is unlike the halibut/sablefish IFQ program where second generation QS holders cannot hire skippers to fish for them.

*Comment 16:* It is important that any active fisherman who holds Class B IFQ have the ability to transfer those shares to any other active fisherman. For example, an active fisherman who holds Class B IFQ for red king crab and golden king crab should be able to transfer his shares for either or both species to another active fisherman. This accommodates the fact that an active fisherman may have earned IFQ for a species that he is not fishing in a particular season, but should be able to transfer to another active fisherman who is fishing that species in that same season.

*Response:* Under the rule, Class B IFQ may be transferred to any eligible recipient mid-season, including an active participant in the fisheries.

*Comment 17:* The final rule should clearly instruct RAM to initially allocate our BSAI crab IFQs directly and individually to the owners of IFQ qualified vessels (corporations, LLCs, and partnerships) in proportion to their stock ownership or interest in the vessels that earned each respective BSAI crab fishing history. This will help NMFS avoid numerous, time-consuming transfers and sale procedures, and substantially reduce federal paperwork.

*Response:* QS will be issued to the holder of the LLP license at the time of application, and not to the owners of a corporation, or other organization, that holds the LLP license. The exact allocation of QS among the owners of a corporation would be an additional administrative burden on NMFS and the exact allocation may be subject to

contractual agreements among the owners that NMFS would be required to interpret and would be subject to appeal. In some cases, owners may wish to have the LLP license holding corporation also hold the QS. NMFS will allocate QS to the entity that holds the LLP license. If the owners of a corporation wish to receive a portion of the QS, that can be accomplished by a subsequent transfer from the QS holding corporation to the corporation's owners. The rule has not been modified.

*Comment 18:* The final rule should include a provision that provides for post delivery transfers of IFQ. Too often small errors in estimating the average weight of crab has adversely affect the crew's ability to judge the poundage of crab on board. Allowing transfers of IFQ after delivery would provide vessel operators with the flexibility needed to make the right decisions, and be consistent with national standard 1 of the Magnuson-Stevens Act.

*Response:* Transfers of IFQ after deliveries are particularly problematic for NMFS to track and monitor. In particular, NMFS does not have the ability to keep "real time" accounts accurate enough to allow this type of transfer. Amendment 18 does not provide any provisions for IFQ overages or the ability to undertake post-delivery transfers. While there may be some overages in some of the fisheries, NMFS does not anticipate that these overages will be severe in most cases and after the Program has been in place for a period of time, the likelihood of these overages will decrease.

*Comment 19:* The final rule should include language that allows flow thru of grandfathered ownership to an individual past the current one percent cap. For example, in the proposed rule an individual is allowed their historic ownership of QS past the one percent cap if earned in the qualification years and vessel history is acquired prior to January 1, 2002. Because QS will be awarded to LLP license ownership groups initially, the regulations should make sure the QS can flow thru to individual owners based on their ownership make up with no penalty assessed if their grandfathered QS exceeds one percent.

*Response:* Amendment 18 is clear that the exemption to the QS and IFQ use caps for corporations or other entities that are initially issued QS or IFQ in excess of the use caps do not extend to the individual members that comprise that corporation or other entity. The use cap exemption is limited to the entity that initially received the QS or IFQ, not to its constituent members who can only receive QS or IFQ from the entity



through transfers. Therefore, each member of that entity is subject to the QS and IFQ use caps without exemption. The exemption to the QS and IFQ use caps does not extend to persons who receive QS or IFQ by transfer.

*Comment 20:* The proposed rule at § 680.41(l)(2) and (4) incorrectly waives all use caps with respect to harvest shares. The motion establishes use caps.

*Response:* NMFS agrees and has modified the wording in the final rule at § 680.42(i)(5). See also response to comment 5.

*Comment 21:* The proposed rule at § 680.42(b)(4) exempts all PQS holders from the individual IFQ caps and applies a higher use cap to those persons. The motion intended a very limited exemption that would not apply to individuals.

*Response:* NMFS agrees and has modified the provision in the final rule at § 680.42(b)(4) to better reflect the intent of Amendment 18 by establishing that individual PQS holders do not receive an exemption to the overall QS and IFQ use cap that applies to non-individual PQS holders who also hold QS or IFQ.

*Comment 22:* If all vessels with catch history in the Eastern Aleutian Islands golden king crab fishery in the qualifying years were granted QS then there would not be such a concentration of QS holders in that fishery. Allocating QS only to holders of an LLP license endorsed for that fishery would result in a violation of the excessive shares provision of the Magnuson-Stevens Act.

*Response:* NMFS agrees that allocating QS to all vessels with catch history in the fishery would result in more QS holders in that fishery, however, Amendment 18 is clear that QS will only be issued for catch history for which the holder's LLP license is endorsed, with one limited exemption. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program as specified in Amendment 18.

*Comment 23:* In the early stages of the Crab Rationalization Program, it was discussed whether or not golden king crab should be included; as it was a fishery that still had never fully been utilized. Instead of excluding golden king crab, the opposite took place, in that the golden king crab fishery qualification period of 1996–2000, all years, is the most stringent of all crab fisheries. The golden king crab qualifications are further compounded because golden king crab is the only crab fishery that is not allowed to drop one year in its calculations. Not allowing the dropping of a year is a blatant discriminatory measure. The

golden king crab IFQ qualification years are years in which the golden king crab fishery GHs were not fully harvested and the fishery lasted 12 months. The golden king crab fishery GH has only become fully utilized for the first time in the year 2000. The proposed window of years for golden king crab was when the smallest number of approximately 15–17 vessels, had ever participated in the history of the golden king crab fishery.

The result is a select group of vessels will receive excessive golden king crab QS. Approximately 6 to 8 vessels would receive approximately 70 percent to 80 percent of the QS. Therefore, the golden king crab window of years has disenfranchised many of the other golden king crab LLP license holders; to benefit a select group of excessive share recipients. Golden king crab is the only fishery that “must” use the recent years of history up until implementation, as the GHs were finally fully harvested.

There was a lot of testimony to the Council requesting the qualification period include the current years in which the GHs were finally fully harvested. NOAA General Counsel also stated on the record that fishing history up until time of final action should be considered. Additionally the court ruling over the Halibut IFQ lawsuit, stated that fishing history up until final action should be considered. Yet the Council did not consider the years of history beyond 2000.

In conclusion, the qualification period for the golden king crab fishery does not conform to the National Standards under the Magnuson-Stevens Act. National Standards state that no such measure shall have economic allocation as its sole purpose. It is easy to point out that the specific years selected for golden king crab are for the sole purpose of economic allocation to a select few vessels. National standards state that “allocations should be fair and equitable to all fisherman”, not just a select few vessels as in golden king crab fishery. National Standards state that allocations shall be carried out in such a manner that no particular entity acquires an excessive share, not the excessive shares that are proposed in golden king crab fishery. National Standards must be adhered to.

*Response:* Amendment 18 establishes the qualifying years for the golden king crab fishery. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program as specified in Amendment 18. Therefore, this provision does not violate the Magnuson-Stevens Act and the rule has not been modified. The Council considered recent participation in the

golden king crab fishery in developing this Program. The allocation of QS or PQS in the golden king crab fishery is based on an extensive decision making process and the EIS/RIR/IRFA prepared for this action considered a variety of years for the initial allocation of QS.

*Comment 24:* The proposed rule at § 680.40(c)(2)(vii) requires an interim LLP license as a condition of eligibility for an LLP license/catch history exemption contemplated by the Council; and also disallows severability of catch history from an LLP license for initial allocation of QS. Additionally, § 680.40(b)(4)(ii)(B)(E) disallows severability of landings and history from LLP licenses. By requiring an interim LLP license to qualify for the exemption, the proposed rule excludes a vessel for which there was no interim LLP license, but which otherwise would qualify for the exemption. The proposed Council motion did not require an interim LLP license as a qualification for the history exemption, and it was not the intent of the Council to exclude the vessels in question. The final regulations should allow the history exemption for a very limited number of vessels in question (must have conducted a transfer by January 1, 2002) by removing the requirement of an interim LLP license for eligibility under this provision and providing an exception from the proposed rule which disallows severability of landings and catch history from the LLP license.

*Response:* NMFS agrees and has modified the final rule at § 680.40(b)(4)(vii) to remove the requirement of an interim LLP license for eligibility under this provision, based on this comment and comments 42 and 43. This provision is intended to address a specific situation in which LLPs were transferred between vessels so that a vessel could legally remain in the fishery. Amendment 18 did not specify that an interim LLP was a requirement to qualify for this provision.

*Comment 25:* The proposed rule at § 680.40(h)(4) provides that persons with 10 percent common ownership with a PQS holder would receive all Class A IFQ (and no Class B IFQ). The motion intended that the exclusively Class A IFQ allocation be limited to the amount of IFQ “controlled” by the IPQ holder, with the remainder allocated as Class A and Class B IFQ. Eligibility to receive an allocation of Class B IFQ in the Council motion relies on whether the processor “controls” delivery of the IFQ. Use of a “control” standard for determining whether Class B IFQ will be allocated has two effects: First, if the processor holds a limited amount of

IPQ, the Class A IFQ only allocation should be limited to an amount of IFQ that offset the IPQ holding, with the remainder of the allocation subject to the Class A/Class B IFQ split. Using this approach, a person receives a Class A only IFQ allocation for only those IFQ that are controlled by the processor, with the remainder of the allocation (which is beyond the control of the processor) as a Class A/Class B allocation. Second, if the processor does not control deliveries (regardless of the number of IPQ held), the Class B IFQ allocation will be necessary for negotiating strength of the person controlling deliveries in their negotiations with processors generally. If a "control" affidavit is used for determining who will receive Class B IFQ, the term "control" must be well-defined, so that the signatory to the affidavit knows what the attestation means.

Allocation of "only Class A IFQ" should be limited to the amount of controlled IFQ. The remainder of the allocation should be subject to the Class A/Class B division of fully independent harvesters. Additionally, the definition of control should be revised to reflect the nature of control at issue (*i.e.*, does the IPQ holder control the delivery of the IFQ). This definition may rely to some extent on "affiliation," but control of deliveries should be paramount.

*Response:* Amendment 18 provides that:

(1) Crab harvester QS held by IPQ processors and persons affiliated with IPQ processors will only generate Class A annual IFQ, so long as such QS is held by the IPQ processor or processor affiliate.

(2) IPQ processors and affiliates will receive Class A IFQ at the full poundage appropriate to their harvesters QS percentage.

(3) Independent (non-affiliated) harvesters will receive Class B IFQ pro rata, such that the full Class B QS percentage is allocated to them in the aggregate.

(4) "Affiliation" will be determined based on an annual affidavit submitted by each QS holder. A person will be considered to be affiliated, if an IFQ processor controls delivery of a QS holder's IFQ.

The commenter raises two separate points in this comment: (1) What is control for purposes of determining the amount of Class A IFQ that is to be issued to a person holding QS that is an IPQ processor or affiliate; and (2) how much Class A IFQ should be allocated to an IPQ processor or affiliate? Both of these questions must be answered to address the commenter's question.

#### (1) What Is Control?

The proposed rule measured control by requiring that each year in the Annual Application for Crab IFQ/IPQ the applicant provide documentation of affiliation declaring any and all affiliations using affiliation as defined in § 680.2 (See § 680.4(f)). Affiliation for purposes of determining a linkage with a PQS or IPQ holder is defined as: (1) Common ownership, either directly or indirectly by the PQS or IPQ holder of more than 10 percent of the QS or IFQ holding entity; (2) control of a 10 percent or greater interest by a PQS or IPQ holding entity in a QS or IFQ holding entity by controlling ownership or voting stock; and (3) a PQS or IPQ holder otherwise controlling a QS or IFQ holding entity through any other means whatsoever. This definition of affiliation is intended to broadly include activities that would allow a PQS or IPQ holding entity to exercise control over the activities of a QS or IFQ holder—specifically, the control of where the IFQ crab would be delivered. The definition of "otherwise controls" in the affiliation definition is intended to be broad and would encompass a range of arrangements either contractual or otherwise that could be used to express control. The current definition of affiliation does not define specific indices of control such as are provided in the AFA (See § 679.2 for the definition of affiliation under the AFA) or under regulations that govern the control of a fishing vessel by a non-U.S. citizen as defined under Maritime Administration (MARAD) regulations (See 46 CFR 356.11), although those indices of "control" would be subsumed under the broad definition of "otherwise controls" in the affiliation definition contained in the proposed rule.

Amendment 18 does not expressly define the method for establishing how control is to be measured, what indices should be used, and whether additional factors such as ownership of the IFQ holding entity could be used to define control. NMFS has decided that because control is not specifically defined in Amendment 18 and because control can be expressed in a variety of ways, that the affidavit that is submitted each year should include a definition of control of delivery that includes the ability of the IPQ holder to direct the delivery of the IFQ using measures of ownership and otherwise controlling the operations of the IFQ holder. These two aspects of "control" are necessary to ensure that IFQ that is held by an IPQ holder or an affiliate is apportioned the appropriate amount of Class A IFQ. Ownership is frequently used as one index of control

in measuring the ability of a person to exercise control over a corporation. Owning a corporation effectively determines the course of the activities of that corporation. The amount of ownership that results in an ability for the IPQ holder to direct the business operations (*i.e.*, where the IFQ crab are delivered) is subject to some debate and business arrangements.

The EIS prepared for the final rule does not provide a specific example of how a PQS or IPQ holder may control the deliveries of an IFQ holder. Section 2.2 of the EIS notes that: only QS holders that are unaffiliated with holders of processing shares would receive Class B IFQs. Holders of processing shares and their affiliates that hold QS would be allocated Class A IFQs for all of their IPQ holdings, with the remainder of their IFQ allocated as Class A IFQ and Class B IFQ at the same ratio as those allocated to independent harvesters. The annual poundage allocation of IFQ arising from the QS would be unaffected by the Class A/Class B IFQ distinctions. For each region of each fishery, the allocation of Class B IFQ would be 10 percent of the total allocation of IFQ. The absence of an affiliation with a holder of processing shares would be established by a harvester filing an annual affidavit stating that the use of any IFQ held by that harvester is not subject to any control of any holder of processing shares.

While this description provides some detail about the actual allocation of the Class A and Class B IFQ, and that affiliation with a processor would be established by an annual affidavit, the indices for control are not defined.

The proposed rule used a 10 percent ownership control standard as a means of measuring the control over an entity based on several factors: (1) The use of a 10 percent standard in several other aspects of Amendments 18; and (2) the standard used under the AFA which is a rationalization program that uses an affiliation definition for purposes of applying use caps and processing sideboard limitations.

*Use of the 10 Percent Standard in Amendment 18.* There are several sections throughout Amendment 18 where a 10 percent common ownership standard is used for purposes of determining whether or not a linkage occurs. While these standards do not *per se* state that a 10 percent common ownership standard is applicable to establish control, the consistent use of a 10 percent common ownership standard in various aspects of this program suggests that a 10 percent standard was perceived to be a threshold level at

which some form of control is being exercised by one entity over another entity. The principal use of the 10 percent standard is found in the following sections of Amendment 18:

(1) 1.6.2 Leasing of QS (leasing is equivalent to the sale of IFQs without the accompanying QS.). Leasing is defined as the use of IFQ on vessel which a QS owner holds less than 10 percent ownership of vessel or on a vessel on which the owner of the underlying QS is not present

(2) 1.6.4 Controls on vertical integration (ownership of harvester QS by processors): Option 3: Vertical integration ownership caps on processors shall be implemented using both the individual and collective rule using 10 percent minimum ownership standards for inclusion in calculating the cap. PQS ownership caps are at the company level.

(3) 2.7.1 Ownership caps. PQS ownership caps should be applied using the individual and collective rule using 10 percent minimum ownership standards for inclusion in calculating the cap. PQS ownership caps are at the company level.

(4) *Cooperative Section Rules governing cooperatives.* The Council clarified the following rules for governing cooperatives: Four entities are required for a cooperative. The requirement for four owners to create a cooperative would require four unique entities to form a cooperative. Independent entities must be less than 10 percent common ownership without common control (similar to the AFA common ownership standard used to implement ownership caps).

The RIR/IRFA prepared for this action also used a 10 percent ownership standard for purposes of measuring whether a common linkage exists between a processor and a harvester and whether a vessel was considered to be affiliated with a processor. (See 3.7.9.4 Shares of processor affiliates, and page 293 of Appendix 1). As is noted in the RIR/IRFA "[t]his level of ownership and the ownership of affiliates is intended to capture all relationships and influences and was used for determining ownership under the AFA (See page 191 of Appendix 1)." The RIR/IRFA analyzed the potential economic impacts of affiliation using this standard and the potential impacts on affiliated IFQ holders was detailed for each of the crab QS fisheries.

While alternative ownership standards could be chosen, NMFS is relying on the frequent and consistent use of a 10 percent standard throughout Amendments 18 and 19 and the EIS/RIR/IRFA prepared to support this

action as the basis for establishing affiliation, and therefore control, as being triggered when one entity holds a 10 percent or great common ownership interest in another entity.

*Other Indices of Control.* Amendment 18 indicated that control would be expressed "if an IPQ processor controls delivery of a QS holder's IFQ." Amendment 18 does not provide additional guidance on how that control may be expressed. The preamble to the proposed rule provides examples of control based on the definition of affiliation. "Examples of the types of control that may be encompassed by this definition include the authority to direct the delivery of crab harvested under an IFQ permit held by the second entity to a specific RCR, or when one entity absorbs the majority of costs and normal business risks associated with the operation of a second entity, including the costs associated with obtaining and using any amount of the QS, PQS, IFQ, or IPQ held by the second entity." The definition used in the proposed rule is broad, but may not provide an adequate definition for purposes of the affidavit that is required on an annual basis.

NMFS agrees that the definition of "otherwise controls" could be clarified by using specific indices in the final rule. NMFS is expanding the definition of "otherwise controls" using the indices that are used for determining impermissible control by a non-citizen of a United States fishing vessel under MARAD regulations at (46 CFR 356.11) as a guide for these specific indices. Those indices are detailed in the final rule and include those situation in which a PQS or IPQ holder has:

(1) The right to direct, or does direct, the business of the entity which holds the QS or IFQ;

(2) The right in the ordinary course of business to limit the actions of or replace, or does limit or replace, the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of the entity which holds the QS or IFQ;

(3) The right to direct, or does direct, the transfer of QS or IFQ;

(4) The right to restrict, or does restrict, the day-to-day business activities and management policies of the entity holding the QS or IFQ through loan covenants;

(5) The right to derive, or does derive, either directly, or through a minority shareholder or partner, and in favor of a PQS or IPQ holder, a significantly disproportionate amount of the economic benefit from the holding of QS or IFQ;

(6) The right to control, or does control, the management of or to be a controlling factor in the entity holding QS or IFQ;

(7) The right to cause, or does cause, the sale of QS or IFQ;

(8) Absorbs all of the costs and normal business risks associated with ownership and operation of the entity holding QS or IFQ;

(9) Has the ability through any other means whatsoever to control the entity that holds QS or IFQ.

Other factors that may be indicative of control include, but are not limited to, the following:

(1) If a PQS or IPQ holder or employee takes the leading role in establishing an entity that will hold QS or IFQ;

(2) If a PQS or IPQ holder has the right to preclude the holder of QS or IFQ from engaging in other business activities;

(3) If a PQS or IPQ holder and QS or IFQ holder use the same law firm, accounting firm, etc.;

(4) If a PQS or IPQ holder and QS or IFQ holder share the same office space, phones, administrative support, etc.;

(5) If a PQS or IPQ holder absorbs considerable costs and normal business risks associated with ownership and operation of the QS or IFQ holdings;

(6) If a PQS or IPQ holder provides the start up capital for the QS or IFQ holder on less than an arm's-length basis;

(7) If a PQS or IPQ holder has the general right to inspect the books and records of the QS or IFQ holder;

(8) If the PQS or IPQ holder and QS or IFQ holder use the same insurance agent, law firm, accounting firm, or broker of any PQS or IPQ holder with whom the QS or IFQ holder has entered into a mortgage, long-term or exclusive sales or marketing agreement, unsecured loan agreement, or management agreement.

(2) How Much Class A IFQ Should Be Allocated to an IPQ Processor or Affiliate?

The second main issue raised by the commenter is how much Class A IFQ is issued to QS or IFQ holders who are affiliated with PQS or IPQ holders. Amendment 18 appears to be somewhat internally inconsistent. It states that "Crab harvester QS held by IPQ processors and persons affiliated with IPQ processors will only generate Class A annual IFQ, so long as such QS is held by the IPQ processor or processor affiliate." However, the next sentence apparently modifies this statement by noting that "IPQ processors and affiliates will receive Class A IFQ at the full poundage appropriate to their

harvesters QS percentage.” Section 2.2 of the EIS further supports an approach in which the amount of Class A IFQ that is issued to an IFQ holder or affiliate is based on the proportion of QS held to the amount of PQS held by the PQS holder to which the QS holder is affiliated.

NMFS is interpreting Amendment 18 in the following manner:

(1) If a person holds IPQ and IFQ, than that person will be issued Class A IFQ only for the amount of IFQ equal to the amount of IPQ held by that person. Any remaining IFQ would be issued as Class A and Class B IFQ in a ratio so that the total Class A and Class B IFQ issued in that fishery is issued as 90 percent Class A IFQ and 10 percent Class B IFQ.

As an example, if a person held 100,000 pounds of IPQ in a fishery and 120,000 pounds of IFQ, that person would receive 100,000 pounds of Class A IFQ and 20,000 pounds of IFQ issued in the appropriate Class A and Class B ratio for that person;

(2) If a person holds IPQ in excess of the amount of IFQ held by that person, all IFQ holders affiliated with that IPQ holder will receive only Class A IFQ in proportion to the amount of IFQ held by that person relative to that amount of IPQ held by the IPQ holder to which they are affiliated. Any remaining IFQ would be issued as Class A and Class B IFQ in a ratio so that the total Class A and Class B IFQ issued in that fishery is issued as 90 percent Class A IFQ and 10 percent Class B IFQ.

For example, assume that an IPQ holder holds 200,000 pounds of IPQ and 100,000 pounds of IFQ in a fishery. Also assume that the IPQ holder is affiliated, either through a 10 percent common ownership standard, or through control, with 3 IFQ holders (IFQ holder A, IFQ holder B, and IFQ holder C). IFQ holder A has 100,000 pounds of IFQ, IFQ holder B has 25,000 pounds of IFQ, and IFQ holder C has 175,000 pounds of IFQ. Collectively, the three affiliated IFQ holders have 300,000 pounds of IFQ.

The IPQ holder would be issued all 100,000 pounds of his IFQ holdings as Class A IFQ because the amount of IPQ held (200,000 pounds) exceeds the total amount of IFQ that he holds. The remaining 100,000 pounds of Class A only IFQ would be allocated on a pro rata basis as follows.

(1) The total remaining IPQ (100,000 pounds) is divided by the total IFQ held by all affiliates of the IPQ holder (300,000 pounds). This yields a Class A only ratio of .333.

(2) The IFQ held by each affiliate is multiplied by the Class A only ratio. In our example:

IFQ holder A = 100,000 pounds  $\times$  (0.333) = 33,333 pounds of Class A only IFQ  
 IFQ holder B = 25,000 pounds  $\times$  (0.333) = 8,333 pounds of Class A only IFQ  
 IFQ holder C = 175,000 pounds  $\times$  (0.333) = 58,333 pounds of Class A only IFQ.

Any remaining IFQ held by these IFQ holders would be allocated using the Class A and Class B ratio. This example is limited to IFQ holders being affiliated with only one IPQ holder. In cases where an IFQ holder is affiliated with multiple IPQ holders with IPQ in excess of their IFQ holding, this same methodology would apply. This method meets the intent of Amendment 18, and is consistent with the statements in the EIS concerning the allocation of Class A and Class B IFQ among persons affiliated with IPQ holders.

*Comment 26:* The proposed rule at § 680.40(h)(4) contradicts Amendment 18 and Congressional mandate in applying the affiliation definition of 10 percent or more processor ownership for the allocation of Class B IFQ. This provision would cause severe economic harm to vessels that have affiliation by processors, stifle investment by QS holders in processing activity, and cause a number of serious problems for the development of a successful crab rationalization program. The final rule should define who can receive Class B IFQ as follows: Class B IFQ will be assigned to all eligible recipients except that Class B IFQ will not be assigned to any person whose delivery of crab is controlled by a holder of PQS or IPQ. Control will be determined based on an annual affidavit by each QS holder submitted as part of the annual application for crab IFQ/IPQ permit. A PQS or IPQ holder does not control QS or IFQ if the skipper responsible for delivery of crab harvested under the QS is contractually able to deliver its harvest wherever they choose without direction by the PQS or IPQ holder.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 27:* The proposed rule at § 680.40(h)(4)(ii) would prohibit issuance of Class B IFQ to holders of PQS or IPQ or to entities affiliated with such holders. An affidavit requirement is set forth in the proposed rule as a criterion for the issuance of Class B IFQ, as specified in the Council motion and is an important element of accountability and enforceability of the system devised by the Council, and

should be preserved. The final regulations should provide for an affidavit process for accountability and enforceability of a system devised by the Council for the issuance of B IFQ. Additionally, processor controlled IFQ holders should not be issued Class B IFQ.

*Response:* The response to this comment is addressed in the response to comment 25. The affidavit is maintained as the standard by which NMFS will determine affiliation with a processor. The Annual Application for IFQ or IPQ will note what standards meet affiliation thresholds. The accountability for accurately supplying this information to NMFS will rest with the applicant.

*Comment 28:* The test for determining which harvesters are ineligible to receive Class B IFQ should be whether a PQS holder, by any means whatsoever, controls where the harvester's IFQ are delivered. With respect to this test, control should be evaluated on the basis of criteria similar to those employed by the Maritime Administration when evaluating compliance with the AFA citizenship requirements. By focusing on IPQ holder ownership or control of an IFQ holder to the exclusion of other factors, the use of the affiliation standard at § 680.2 leaves open the possibility that Class B IFQ could be controlled by PQS holders in a manner that contravenes the intent expressed in the Council motion.

In order to fully protect the independence of Class B IFQ, each affiliation evaluation should include consideration of indicia of IPQ holder control of an IFQ holder and over IFQ delivery. Accordingly, the definition of affiliation used at § 680.40(h)(4) should be expanded to include indicia of direct or indirect control similar to those used for evaluating affiliation in the AFA context and control of U.S. flag fishing vessels (46 CFR 356.11). In each case, these regulations compel a thorough evaluation of both the ownership of an entity and other control factors that may permit a non-owner to none-the-less exercise control over that entity or its actions. An annual evaluation of this control should occur in conjunction with the IFQ application process, and subsequent to this application, applicants should be prohibited, without prior approval by NMFS, from entering into any relationship with a PQS holder or affiliate that modifies the indicia of control already evaluated.

*Response:* The response to this comment is addressed in the response to comment 25. The rule does not specify that IFQ recipients notify NMFS after the issuance of IFQ and IPQ that they have entered into a relationship with a

PQS or IPQ holder that would result in them becoming affiliated or otherwise resulting in increasing control by the PQS or IPQ holder. NMFS did not make this a requirement for several reasons:

(1) NMFS would not be able to reissue Class A or Class B IFQ once the season has begun. Because the amount of IPQ issued in a fishery is equal to the amount of Class A IFQ, modifying the amount of Class A IFQ issued to a person due to a mid-season change in affiliation would require reissuing IPQ as well and would significantly disturb the operation of the fishery;

(2) In some cases an IFQ holder would not be aware of changes in corporate ownership that could increase the degree of control being exerted by an IPQ or PQS holder. As an example, IFQ could be held by a corporation that is in turn owned by several other corporations. If one of those corporations purchased IPQ, the IFQ holding corporation may not be aware of this change in affiliation unless private contracts stipulated that the IFQ holder be notified that such a purchase had occurred. In any case, the IFQ holder would not be able to exercise control over the actions of this party purchasing the IFQ.

The Annual Application for IFQ or IPQ requires each applicant to annually submit their affidavit and provides a reasonable assurance that if affiliation were to change in mid-season, those changes would be reflected in the affidavit for the following year. NMFS established a time period shortly after the annual application is due until IFQ and IPQ is issued where no transfers of IFQ or IPQ would be approved. This will provide NMFS with time to determine affiliations, the amount of Class A IFQ and Class B IFQ to be issued to each IFQ holder, and issue that IFQ and IPQ. Once issued, transfers could occur that could result in Class B IFQ being transferred to IPQ holders or their affiliates. Because we are modifying the way in which Class A IFQ and Class B IFQ is allocated to PQS or IPQ holders and their affiliates, this would be permitted.

*Comment 29:* An extremely unreasonable burden would be put on harvesters if processors affiliated harvesters were interpreted to include harvesters who have a gear loan from a processor, a tender contract, or some other unforeseen link with a processor that would happen with normal business dealings. This could prohibit the harvester from receiving Class B IFQ, participating in arbitration, or joining a cooperative. The solution of signing a control affidavit stating that a processor has no control of landings

seems unclear. The final rule should carefully define control and affiliation so as to avoid creating a disadvantage to harvesters or creating a risk of having to sign an affidavit that could later be interpreted as fraudulent.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 30:* I am a fisherman with a partnership to two different crab vessels that will be participating in the upcoming crab rationalization. On one of these vessels I have been a partner for seventeen years with a group that also owns a small part of a processor. We have a co-ownership agreement that gives me complete control of when and where the vessel delivers. In the last seventeen years I have delivered many times to processors not owned by my partners, the choice has always been mine, as stated in our co-ownership agreement. To deny me Class B IFQ shares under § 680.40(h)(4) gives an unfair advantage to the other unaffiliated vessels who may be able to receive a premium for this crab from outside (non-PQS) buyers. I believe if a vessel could make an annual declaration of control, that any concerns of anti-trust violations could be alleviated, especially with a co-ownership agreement showing the “affiliated” partner not in control of decision making for the vessel or its QS/IFQ.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 31:* The allocation of only Class A IFQ to those vessels that are considered affiliated at § 680.40(h)(4) will disadvantage those minority co-owners that have complete operational control over the deliveries of the vessel and IFQ. The definition of control should be revised to reflect the nature of control at issue, taking into account past operating practices. For instance, a vessels may have partial or full ownership by an entity that also has partial ownership in a processing operation. While these vessels might be considered “affiliated” with a processor, they have historically acted independent of the processor and will continue to do so. The operator and in some cases the co-owners of the vessel and have full freedom to deliver wherever they wish, even to the point that a large portion of their QS will be in the Northern Region that their affiliated processor has never had operations. An annual declaration of control is a reasonable method for determining who will receive Class B IFQ.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 32:* I have had a business relationship with a processing company for 16 years. I have been a partner in the vessel for 12 years. They have never told me where to deliver my catch. I do not fish for their processing company and have not for 14 yrs. I have delivered to a different processor mainly for the last 14 years. My partner's attitude has always been its my choice where to deliver my product. I think I have earned my Class B IFQ and deserve them. I think a simple letter stating that I control where I will deliver my product will be sufficient.

*Response:* The response to this comment is addressed in the response to comment 25. The factors that this commenter raises would be supplied in the affidavit that he submits each year. If there are sufficient indicia to indicate that control exists, then that person would need to indicate that they are affiliated with an IPQ holder. If not, or if it is unclear, NMFS may request additional information.

*Comment 33:* Comment strongly supports the dual definition of control (by any means) and the 10 percent affiliation standard identified by NMFS in the proposed rule. The Program was developed with PQS included, which is a new concept in fisheries management. Due to the uncertainties in how this will work, the Council stipulated that only those non-affiliated QS holders would receive the IFQ in an Class A/B IFQ split. This is to benefit the independent QS holders and help to maintain a competitive market place. The concept of a simple affidavit stating that control over deliveries is insufficient. Anyone can say that they are not under the control of a processor. The added 10 percent ownership requirement, which is consistent with other definitions of affiliation by the Council and NMFS throughout the motion and the EIS, is appropriate and needed.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 34:* Nowhere in the Council motion are recipients of Class B IFQ restricted in nearly so severe a manner as in the proposed rule at § 680.40(h)(4)(ii). The Council motion clearly states that if the QS holder is appropriately able to execute an affidavit stating that no IPQ holder controls where the IFQ is delivered, that QS holder is entitled to receive Class B IFQ. If a QS holder executed such a document, and was discovered to have misrepresented the facts, then that QS holder would be liable for fraud under

federal law. By drawing the proposed rule so narrowly, NMFS has created new restrictions to prevent abuse, restrictions which were neither seen to be necessary by the Council nor which acknowledge the very real penalties which already exist under federal laws for fraud. NMFS should redraft the regulations to accurately reflect the Council motion, bearing in mind that industry participants are already appropriately held to the standard of making accurate representations to NMFS.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 35:* In order to fully protect the independence of Class B IFQ harvesters, each affiliation evaluation should include consideration of a broad range of indicia of "affiliation/control", as well as "affiliation/ownership". "Affiliation/control" and "affiliation/ownership" are two separate tests, both of which must be satisfied in order to be eligible for Class B IFQ. These separate tests are spelled out in the April 2003 Council motion on "Processor Holdings of Harvest Shares" It is crystal clear from the motion that the truly "independent (non-affiliated) harvesters" are to be the recipients of the full allocation of aggregate Class B IFQ. These are all or nothing tests, without any "proportionality" component relative to how much PQ is held, nor the degree of affiliation as a function of degree of processor ownership of the harvester QS holder.

Though the words of the April motion do not indicate a specific 10 percent ownership standard for defining "affiliation," 10 percent was the standard that was used in the RIR analysis that was before the Council when it made the motion.

Some have argued that discussion in section 1.6.4, of the EIS pg. 2-41 suggests proportionality in distributing Class B IFQ to non-fully independent harvesters. However, the EIS was not available to Congress when it acted to require implementation of the program as "approved by the North Pacific Fishery Management Council between June 2002 and April 2003, and all trailing amendments including those reported to Congress on May 6, 2003." Thus the 'legislative' history on how to allocate Class B IFQ to independent harvests should rest not on section 1.6.4 of the EIS which was not available, but on the RIR which was available in June 2002 and when the Council motion was made in April 2003, and which consistently used a 10 percent affiliation standard to define "independence" as

well as incorporating a separate test for "control."

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 36:* The Council motion included a trigger mechanism for red king crab and snow crab that would end the Class A/B IFQ designations for harvesting QS. If the red king crab GHL exceeds 20 million pounds and/or the snow crab GHL exceeds 175 million pounds, all harvesting shares above those trigger amounts are to be unrestricted or Class B IFQ. If the proposed rule's definition of affiliation remains in place, what shares will affiliated vessels receive when the trigger numbers are reached? Under the proposed rule they cannot receive Class B or unrestricted IFQ. This outcome, while not yet realized in terms of demonstrated GHL, highlights the inconsistency between the proposed regulation and the intent of the Council. Again, the prohibition to receive Class B IFQ to anyone with a 10 percent ownership standard has far reaching consequences. If the regulation remains unchanged, no holder of QS will dare to invest in processing because he will forfeit his ability to receive Class B IFQ. CDQ groups wishing to increase their participation in crab processing and harvesting will not be able to do so. The vessels whose delivery are uncontrolled but have a greater than 10 percent ownership share held by a PQS holder are also penalized. The regulations should be amended to follow the Council intent to utilize the affidavit process to determine control over delivery as the basis for allocating Class A and B IFQ.

*Response:* Portions of this comment are addressed in the response to comment 25. For the allocation of IFQ when the TAC for Bristol Bay red king crab or snow crab exceeds the specified amount, the final rule specifies at § 680.4(j)(3) that the allocations are made as a modified form of Class A IFQ that would not be subject to delivery to an IPQ holder, but which still have regional designation requirements as provided in Amendment 18. This differs from Class B IFQ, which are not subject to regional delivery requirements.

*Comment 37:* Class B IFQ should not be held by processor-affiliated entities. The important point here, as in the case of cooperatives, is to achieve, through a definition of "affiliation," a result that is consistent with objectives of the both rationalization program and the antitrust laws. Class B IFQ provide leverage for harvesters, who must bargain in a system which provides 90 percent of IFQ shares are Class A IFQ

that must be matched to IPQ. This intended leverage on the part of harvesters is compromised, if processor-controlled entities hold Class B IFQ. However, where a harvester is not controlled by a processor, then the rationale for holding Class B IFQ properly applies. The commenter believes that skippers and crew members of vessels in which there is some, but not controlling, processor interest, should enjoy the intended benefit of Class B IFQ.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 38:* The test for determining which harvesters are ineligible to receive Class B IFQ should be whether a PQS holder, by any means whatsoever, controls where the harvester's IFQ are delivered. With respect to this test, control should be evaluated on the basis of criteria similar to those employed by the MARAD when evaluating compliance with the AFA citizenship requirements. By focusing on IPQ holder ownership or control of an IFQ holder to the exclusion of other factors, the use of the affiliation standard at § 680.2 leaves open the possibility that Class B IFQ could be controlled by PQS holders in a manner that contravenes the intent expressed in the Council motion.

In order to fully protect the independence of Class B IFQ, each affiliation evaluation should include consideration of indicia of IPQ holder control of an IFQ holder and over IFQ delivery. Accordingly, the definition of affiliation used at § 680.40(h)(4) should be expanded to include indicia of direct or indirect control similar to those used for evaluating affiliation in the AFA context and control of U.S. flag fishing vessels (46 CFR 356.11). In each case, these regulations compel a thorough evaluation of both the ownership of an entity and other control factors that may permit a non-owner to none-the-less exercise control over that entity or its actions. An annual evaluation of this control should occur in conjunction with the IFQ application process, and subsequent to this application, applicants should be prohibited, without prior approval by NMFS, from entering into any relationship with a PQS holder or affiliate that modifies the indicia of control already evaluated.

*Response:* The response to this comment is addressed in the response to comment 25.

*Comment 39:* While the affidavit process does go a long way towards defining processor affiliates, an ownership standard is also necessary, such as the MARAD's definition of the

25 percent rule for foreign ownership of U.S. flagged vessels. This standard should be adopted in both the issuance of Class B IFQ and binding arbitration standards.

*Response:* The response to this comment is addressed in the response to comment 25. The 10 percent standard for ownership was chosen based on the preponderance of its use in Amendment 18 as a means of establishing linkages among various entities for a variety of applications. This same 10 percent standard was used for analysis in the EIS/RIR/IRFA supporting this action.

*Comment 40:* The proposed rule at § 680.42(b)(1)(i) could limit the benefits from the LLP license buyback to persons that purchased LLP licenses after June 10, 2002, that were put over the use caps by the buyback. Include a provision that would grandfather any initial allocation in excess of the use caps received from LLP licenses acquired after June 10, 2002, and prior to the referendum on the buyback, to the extent that the allocation would not have been in excess of the cap, but for the buyback.

*Response:* The comment applies to the final rule at § 680.42(a)(1)(i), which addressed PQS issuance. Neither the proposed rule nor Amendment 18 provided specific guidance on the potential implications of the BSAI Crab Fisheries Capacity Reduction Program, or the "Buyback" on persons who received catch history by transfer of an LLP license after June 10, 2002, that may result in an increased chance of that person receiving an allocation of QS in excess of the use caps established at § 680.42(a). Amendment 18 notes that "a cutoff date of June 10, 2002, was established for the QS ownership cap grandfather provision." Amendment 18 did not provide a specific exemption to this cut off date in the case of the Buyback being approved, although the Buyback was under development at the time that the Council took final action. Additionally, Congressional action on portions of the Buyback were approved prior to Congressional action on the Crab Rationalization Program.

However, the legislation that enacted the Buyback required that a referendum of eligible voters approve the program before it could be enacted. The final results from the referendum were provided on November 24, 2004. Prior to this time, it is reasonable to assume that an individual would not have known if the Buyback would have been approved, or if it would have an impact on the amount of QS a person would be issued based on LLP licenses transferred after June 10, 2002. This November 24, 2004, deadline is after the publication of

the proposed rule implementing the Crab Rationalization Program and NMFS was unable to incorporate the potential effects of the Buyback in the proposed rule because it had not yet been approved by the fleet.

Due to the lack of clear guidance on this issue in Amendment 18, but the potentially adverse and unanticipated effect of the Buyback, NMFS may make specific exemptions to the cutoff date in Amendment 18 to accommodate transfers that occurred after June 10, 2002 but prior to the approval of the Buyback by referendum on November 24, 2004. NMFS has modified the final rule at § 680.42(a)(1)(ii)(B) so that any person who applies to receive QS based on an LLP license transferred after June 10, 2002, but prior to November 24, 2004, will receive the amount of QS associated with that transferred LLP license in excess of the use cap for that crab QS fishery if that transfer would not have resulted in that person exceeding the QS use cap for that fishery if the total fishery catch history had not been reduced by the Buyback Program.

*Comment 41:* The proposed rule does not provide for a modification of the QS ownership caps as a result of recently approved crab vessel buyback. The purpose of the QS cap was to eliminate speculative purchases of QS above a certain level after the Council's motion passed in June of 2002. The buyback will have the impact of increasing QS holders' percentage ownership by about 10 percent. It was generally understood that the buyback would function so that the ownership cap would increase by the same percentage as the increase resulting from the implementation of the buyback and the final rule should reflect this understanding. If not, those who owned QS at the capped level would not be able to receive the benefits of the buyback program.

The buyback was a legal action that took place after the Council's June 2002 motion. The agency does have authority to implement regulations consistent with the Council's intent. In this case, no individual speculated on the purchase of QS that would put them over the cap. Instead, an industry approved buyback program resulted in every participant that remained in the fishery receiving a greater harvest share. It is in full compliance with the Council's intent that the QS cap be raised accordingly.

*Response.* This response is addressed in the response to comment 40.

*Comment 42:* The provisions § 680.40(b)(4)(ii)(B) and (E) of the proposed rule prevent the separation of an LLP license from its history. The

provision should allow separation in the case of a person acquiring an LLP license to remain in a fishery (§ 680.40(c)(1)(vii)). Insert a provision that permits the separation of an LLP license from its history to the extent necessary to achieve the purpose of § 680.40(c)(1)(vii) of the proposed rule.

*Response:* The commenter is referring to § 680.40(c)(2)(vii) in the final rule. This provision was intended to address the limited circumstance where a person transferred an LLP license for use on a vessel which otherwise would have been qualified to participate in the fishery. NMFS composed the proposed rule to limit this provision rather narrowly. Amendment 18 notes that "the underlying principle of this program is one history per vessel." The specific provision at § 680.40(c)(2)(vii) is intended as a general exemption to this rule. NMFS modified § 680.40(b)(4)(ii)(B) and (E) in the final rule to note that this general principle is not applied for purposes of complying with § 680.40(c)(2)(vii).

*Comment 43:* The provision at § 680.40(c)(1)(vii) permits a person that purchased an LLP license to remain in a fishery to use the history of the vessel on which the LLP license was used or on which the LLP license was based. The requirement that the vessel using the LLP license have an interim LLP license could limit the application of this provision to situations where multiple license transfers were required to comply with vessel length limits on LLP licenses. Remove the limitation that the LLP license be an "interim" license. The rule should be clear that no history may be credited toward two different allocations and that only one history may be credited to an LLP license.

*Response:* Amendment 18 does not explicitly limit the application of this exemption to persons with an interim LLP license. NMFS had established this limitation in the proposed rule to tightly constrain the applicability of this provision to the general rule that there should be only one catch history eligible to receive an allocation per vessel. NMFS has removed the exemption's limitation that the LLP license be an interim LLP license. Additionally, the provision at § 680.40(c)(2)(vii) clearly states that only one catch history may be credited to a person who applies to receive QS with a permanent, fully transferable LLP license. The catch history used by that QS applicant may be either that derived from that LLP license or the catch history from the vessel which that LLP was transferred and used, but not both.

*Comment 44:* The January 1, 2002, cut-off date on the provision, in the



proposed rule at § 680.40(c)(2)(vii), that would allow a person who applies to receive QS with an LLP license endorsed for a fishery to choose to receive the QS based either on the landings made by the vessel that was used to qualify for that LLP license or on the landings made by another vessel, is arbitrary. The cut-off date is unlawful and penalizes LLP license holders who purchased licenses after that date to remain in the fishery by not allowing them to receive QS based on the more extensive catch history of another vessel. Section 680.40(c)(2)(vii) should be revised either to strike the January 1, 2002, date or to accommodate the circumstance of a prospective applicant whose interim LLP license was not invalidated, and who did not purchase a permanent LLP license, until after that date.

*Response:* The January 1, 2002, cut-off date is a provision of Amendment 18. Amendment 18 was approved by the Council and codified by section 313(j) of the Magnuson-Stevens Act. NMFS does not possess the discretion to alter this provision as it exists in statute. Any change to this provision requires an amendment to the Program and should be addressed with the Council. Therefore, NMFS will not make this change in the final rule. The Council did establish a clear control date prior to final decision on this Program to prevent speculative behavior by interim LLP license holders or those without an LLP license to avoid redistributing QS allocations to those who did not have a permanent LLP license.

*Comment 45:* Clarification of Council intent is necessary to determine whether the Council meant to apply the January 1, 2002, cut-off date to the provision that would allow a person who applies to receive QS with an LLP license endorsed for a fishery to choose to receive the QS based either on the landings made by the vessel that was used to qualify for that LLP license or on the landings made by another vessel. Thus, there appears to be considerable uncertainty concerning how these exceptions to the general rule are intended to operate.

*Response:* NMFS disagrees that clarification of Council intent is necessary. Amendment 18 explicitly applies the January 1, 2002, date to this provision. Therefore, no uncertainty exists concerning implementation of these exceptions to the basis for QS distribution.

*Comment 46:* The proposed rule is arbitrary and capricious, does not constitute reasoned decision-making, and is not consistent with standards for agency action set forth in the APA and

judicial decisions applying those standards. There is simply no rational connection between the cut-off date and the invalidation/purchase criterion underlying the exemption, and no explanation was given for denying an allocation of QS to persons whose interim LLP licenses were invalidated by NMFS, and who thus did not purchase a permanent LLP license until after January 1, 2002. The Council selected the January 1, 2002, cut-off date in substantial part to accommodate the circumstances of a particular individual, and did not consider the situation of other interim LLP license holders. The Council entirely failed to consider that claims for LLP licenses were still pending before NMFS as of January 1, 2002, and that interim LLP licenses of some participants would not be invalidated until after that date. Further, the cut-off date was selected retroactively, and did not give interim LLP license holders any notice that their ability to continue participating in the fishery would hinge on purchasing a permanent LLP license by a date certain.

*Response:* This comment has been addressed in a previous response to comment 44.

*Comment 47:* The January 1, 2002, cut-off date is inconsistent with the National Standards for implementing the Magnuson-Stevens Act, in particular, National Standard 4. The cut-off date unfairly and inequitably denies an allocation of CVO QS to applicants for whom the invalidation/purchase trigger of the exemption did not occur until after January 1, 2002. It penalizes an LLP license holder who exercised its rights under the LLP to appeal an initial administrative determination (IAD) by NMFS, but whose appeal was not resolved by NMFS until after January 1, 2002. A person who did not appeal an adverse IAD, or whose appeal was resolved by NMFS prior to January 1, 2002, may receive an allocation of CVO QS under the exemption, but a person whose appeal was not resolved until after that date may not. There is no rational basis for this distinction.

*Response:* This comment has been addressed in response to comment 44. Additionally, the January 1, 2002 cut-off date is part of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program as specified in Amendment 18.

*Comment 48:* Principles of equal protection and due process, as contained in the Fifth Amendment to the U.S. Constitution, are offended by a regulatory system that makes a distinction between similarly situated persons on the basis of an arbitrary cut-off date. Persons whose interim LLP

licenses were invalidated after January 1, 2002, and who then purchased permanent licenses to insure that their vessels would remain authorized to participate in the fishery, are in the same position as persons for whom the invalidation/purchase trigger of the exemption occurred prior to that date. The timing of invalidation of an LLP license was governed by regulations implementing the LLP and largely under the control of NMFS. It simply is not fair to deny an allocation of CVO QS to a person based in the fortuitous timing of NMFS' decision to invalidate an LLP license. A participant in the fishery should not be penalized or denied an allocation of QS because it exercised its rights under the LLP regulations to pursue a claim for an endorsement but NMFS did not resolve that claim until after January 1, 2002.

*Response:* This comment has been addressed in response to comment 44.

*Comment 49:* The proposed rule at § 680.40 contemplates an interim LLP license as a condition for a license history exemption contemplated by the Council. By requiring such a license and prohibiting the severability of catch history from an LLP license for initial allocation of QS, the proposed rule excludes a vessel for which there was no such license, but which otherwise would qualify for the exemption. The owners of two of the vessels in question were advised to obtain a complete LLP package or they would be denied a permanent LLP license. They did so, without first being so denied, and thus, were not issued an interim LLP License. The Council did not require an interim LLP License as a qualification for the history exemption, and it was not the intent of the Council to exclude the vessels in question. The final regulations should allow the history exemption for the very limited number of vessels in question. The commenter estimates no more than four LLP licenses will utilize this exemption.

*Response:* This comment has been addressed in response to comments 42 and 43.

*Comment 50:* The exception at § 680.40(b)(4)(vii) of the proposed rule permitting issuance of QS to persons who made landings under an interim LLP license by acquired a fully transferable LLP license to preserve their fishing eligibility prior to January 1, 2002, should be narrowly construed to permit the intended beneficiaries of that exception to take advantage of it, but not allow unintended beneficiaries to likewise benefit from the exemption. The commenter is opposed to any broader interpretation of this exemption than is necessary to give effect to the

Council's intent and therefore encourages NMFS to strictly construe the proposed exemption in accordance with the Council's motion.

*Response:* NMFS has revised § 680.40(b)(4)(vii) in the final rule to limit the applicability of the provision while meeting the intent of Amendment 18. This includes not expanding the dates by which the transfer needed to occur, nor the limitation that only one catch history may be used for purposes of receiving QS.

#### Crew Sector

*Comment 51:* The provision at § 680.40(b)(2)(i)(B)(2) suggests that regional designations apply to CVC QS "prior to July 1, 2008." The provision should read, "on and after July 1, 2008."

*Response:* NMFS agrees and changed the language at § 680.40(b)(2)(i)(B)(2) to read, "on and after July 1, 2008."

*Comment 52:* The provisions in the proposed rule at § 680.40(h)(1) through (7) appear to make no IFQ allocations for CVC QS holders prior to July 1, 2008. The CVC IFQ should not be subject to region or processor landing restrictions during this time period. The provision should make clear that CVC QS holders receive an allocation prior to July 1, 2008.

*Response:* NMFS agrees and has modified the provisions at § 680.40(h)(1) through (7) in the final rule to clarify how CVC IFQ allocations occur.

*Comment 53:* The table at § 680.41(c)(1)(i) in the proposed rule is incorrect concerning CVC or CPC in lines (E) and (F). In line (E), the initial recipient of QS is not relevant (no provision authorizing recipients of an initial allocation to receive shares is included for the acquisition of CVC and CPC shares). The only standard for eligibility to receive CVC or CPC shares is that the person acquiring the shares must be an individual that is a U.S. citizen and an "active participant". Similarly, in line (F), a cooperative cannot receive shares since it doesn't meet those criteria. The line concerning cooperative acquisition could be deleted. Alternatively, a cooperative could be permitted to receive shares through an individual that meets the requirements, if the agency would like to assume the added administrative burden of tracking those transactions and performance of owner on board requirements. Limit eligibility to receive CVC and CPC shares to individuals who are U.S. citizens and "active participants."

*Response:* NMFS agrees and has restructured the table at § 680.41(c)(1)(v) so that it is clear that a person who wishes to receive CVC or CPC QS or IFQ

by transfer must be a U.S. citizen, have met sea time requirements, and be a recent participant in a crab fishery in the 365 days prior to applying for the transfer. The regulations at § 680.41(c)(1)(vi) have been modified so that CVC and CPC IFQ cannot be transferred to a cooperative because the regulations at § 680.42 have been modified so that owner onboard provisions would apply even if the CVC of CPC IFQ is being used in a crab harvesting cooperative. It should be noted that CVC and CPC IFQ may be used in a cooperative by a person who receives CVC or CPC IFQ by transfer and then converts that IFQ for use in the cooperative, provided that the owner on board provisions for use in a crab harvesting cooperative are met.

*Comment 54:* The table at § 680.42(b)(2)(i) specifies the use caps for CVC and CPC shares. Under the Council motion, these caps are to be equivalent to the CVO and CPO vessel use caps. As written, they are equivalent to the individual CVO and CPO use caps (in most cases one-half of the correct cap). Revise individual use caps for CVC and CPC shares to equal the vessel use caps.

*Response:* NMFS agrees, Section 1.8.1.9 of Amendment 18 notes that "C share ownership caps for each species are the same as the vessel use cap for each species." The table at § 680.42(b)(2)(i) in the final rule has been modified to correctly reflect Amendment 18.

*Comment 55:* An eligible captain, who intended to continue fishing but happened to die between seasons of causes unrelated to fishing, should qualify to receive CVC QS. The proposed rule is unclear whether this is the case. Is it the intent of Amendment 18 and the regulations to determine what kind of death will qualify?

*Response:* This comment is applicable to regulations at § 680.40(b)(3)(C)(2) in the final rule. Amendment 18 notes that "[f]or captains who died from fishing related incidents, recency requirements shall be waived and the allocation shall be made to the estate of that captain." Amendment 18 clearly establishes that the limits under which the recency requirements to receive CVC or CPC QS can be waived. NMFS has interpreted a "fishing related incident" as one in which the person died while serving as a member of a harvesting crew in any U.S. commercial fishery. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18. Any change to this provision requires an amendment to the Program and should be addressed with the

Council. The rule has not been modified.

*Comment 56:* The proposed rule contains many references to CVC (Catcher Vessel Crew) QS and CVS (Catcher Vessel Skipper) QS. Table 2, Eligibility to Receive Catcher Vessel Crew (CVC) Quota Share (QS) and Qualifying Year Periods, in the preamble to the proposed rule, lists 3 eligibility criteria, the second of which limits QS only to skippers. Since only 1 person on each vessel obtained an interim use permit in a given fishery, that person must be defined as the skipper. If the Council's intent was to award CVC QS to crew members, then it should add a phrase in eligibility requirement (2) that says, " \* \* \* being the individual named on a State of Alaska Interim Use Permit [OR BEING AN INDIVIDUAL WHO DECLARED TAXABLE INCOME FOR FISHING VESSEL PROCEEDS BASED ON IRS FORM 1099 FOR CRAB AND] and who made at least one delivery. If the Council's intent was not to award any CVC QS to crew members, then it should clarify its intent by requesting the removal of all references to CVC QS from § 680, leaving only CVS (Catcher Vessel Skipper) QS.

*Response:* The terms "C shares," "Captain's shares," and "Skipper shares" are used interchangeably in Amendment 18 to refer to QS and IFQ that would be allocated to non-LLP license holders—these terms are called CVC and CPC QS and IFQ by NMFS in the final rule. The preamble to the proposed rule (69 FR 63201) notes that "NMFS has determined that documentation necessary to allocate Crew QS, called C shares by the Council, would require that these shares be issued to individuals who hold a State of Alaska Interim Use Permit. Most likely, this individual would be the captain; however, the State does not require that the holder of the Interim Use Permit be the vessel captain." The phrase "crew" does not imply that persons other than those who made legal landings with an Interim Use Permit would qualify to receive CVC or CPC QS, and this is the skipper, or captain of the vessel in most cases. The rule has not been modified.

*Comment 57:* Highline vessel owners expressed concern that awarding enough CVC QS to crew members to be consistent with crew share history could become too much overhead to vessel operators in the future. This is one likely reason that the Council specified that 3 percent of the QS be issued to skippers, rather than their historic share of about 15 percent. In order to accommodate CVC QS for crew as well

as skippers, without a large negative impact on skippers, it would be fairer to allocate an additional maximum 3 percent for crew member quotas (CVC QS) qualified by evidence from IRS form 1099. This is because the average crew share is about  $\frac{1}{3}$  of the average captain share, but there about 3 times as many crew as captains. The ratio of CVC QS to actual Skipper share for harvest years could be multiplied by the actual crew share to determine CVC QS.

*Response:* Amendment 18 expressly limits the amount of QS that can be issued as CVC and CPC QS to 3 percent of the initial QS pool in a crab QS fishery. Issuing more than this amount would directly contradict Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18. Therefore, NMFS does not possess the discretion to alter the amount of QS that can be issued as CVC and CPC QS as it exists in statute. Any change to this provision requires an amendment to the Program and should be addressed with the Council. The rule has not been modified.

*Comment 58:* Awarding crew QS only to interim use permit card holders is not fair to crew and captains who may have fished as many or more years but had only forms 1099 for evidence. It is also contrary to the stated intention that these shares are intended to provide long term benefits to captains and crew. Forms 1099 are verifiable evidence. To be consistent with the above intention, IRS Forms 1099 should be admitted as an alternative eligibility qualifier at § 680.40(b)(3)(iii). The following wording should be added: alternatively, crew may establish eligibility by submitting copies of IRS forms 1099 and/or crew settlement sheets for any 5 qualifying seasons. This is simple, fair, and consistent with the intention quoted above. It provides protection for crewmembers who may rely more heavily on crab in the recent years than in the earlier years. One good reason for the above intention is dependence on crab for livelihood of current crew.

*Response:* This comment has been addressed in response to comment 56. The 1099 IRS form does not indicate that a person made legal landings in a crab QS fishery, only that a person earned income in a fishery. Such a form is not sufficient for determining whether legal landings have been made in the fishery.

*Comment 59:* Collateral damage of the crab rationalization will hurt most for crewmembers who do not receive CVC QS, who also do not find a new job soon. It would be irresponsible for our

industry to shift all of the cost of retraining, placement, and needs-based care onto the Department of Labor and the Department of Health and Social Services at the expense of the general taxpayer. Perhaps a portion of the Cost Recovery tax can be allocated towards reimbursing these agencies for costs of helping unemployed crewmembers.

Crewmembers have neither unemployment insurance nor a severance package. The federal government structured this crab plan in a manner that terminates about 1,000 crabbers or 80 percent of the industry's work force. They probably earned a modal value of \$20,000–\$30,000 per year crabbing. Most are desirable employees and will find work, but some may remain unemployed or underemployed for a long time. The taxpayers should not be saddled with having to bear the costs of maintaining the thousand crabbers about to be thrown out of work with neither severance pay nor unemployment. This burden on the taxpayers has not been evaluated, nor has the burden on the crew itself. It is as if a giant tax, amounting to a modal value of around \$20–\$30,000 per year is taken out of the crewman's pocket and dropped into the pocket of the vessel owner. There should be a Federal acknowledgment of responsibility for those hurt most by the plan at the end of the section on Cost Recovery and Fee Collection.

*Response:* The EIS/RIR/IRFA prepared to analyze the effect of Amendment 18 did examine the potential effects of this program on crew. This rule may result in fewer crew being employed as QS holders consolidate their fishing operations for improved economic efficiency—one of the primary goals of the Crab Rationalization Program. The Cost Recovery and Fee Collection portion of this Program is intended to offset the administrative costs and provide funds for loans to entry-level fishermen, including crewmembers who may not have received CVC or CPC QS.

*Comment 60:* If the crab resource is to be fairly divided among the qualifying participants in the fishery, crew must be included. For the Council to neglect crew is irresponsible. For as long as crews have been crab fishing, a share of the crab resource has been allocated to each crewman. Crew's and owners' catch history are inextricably intertwined. Each vessel's crew and owners have signed a crew share agreement at the start of each fishery that defines the crew's share of the resource. The crew invested sweat equity in the operation by providing at least 10 days to 2 weeks of skilled

services maintaining and improving vessels and gear before and after each fishery. As self-employed individuals, the crew paid their own taxes, expecting no fringe benefits normally associated with labor, such as owner contributions to health care plans, pensions, or workman's compensation. The crew suffered the physical brutality of the fishery and put their lives and health at risk whether or not the owner was on board. Without good crews and skippers, it was not possible to achieve a good catch history. Many vessel owners did not spend any time on the Bering Sea during the qualifying years. The crew was there, exposed to the elements. Vessel owners choosing to retire would benefit from a lower tax bill in the future, and the satisfaction of knowing that their net crew allocation provides a fair distribution.

*Response:* The effects of this Program on crew members were considered during its development by the Council. Please see response to comment 59. The distribution of QS among the various participants in the crab fisheries was discussed and debated extensively during the Program's development. The rule has not been modified.

*Comment 61:* While recognizing broad safety, conservation, and economic benefits of the rationalization program that is to be implemented by the present rulemaking, the commenter is concerned that many skippers and crew members in the BSAI crab fisheries will be confronted with severe financial dislocation. Adverse consequences will arise from fleet consolidation and coordination through IFQ transfers and fishing cooperatives, from overwhelming vessel owner control of IFQs, and from IPQs. Inevitably, there will be lost employment among skippers and crew members, as vessels are retired or otherwise idled by cooperative agreements. Furthermore, while those skippers and crew who remain in the fisheries will see increased harvests, they will also see the resulting benefits flow overwhelmingly to vessel owners and processors, not to mention those communities that will enjoy development quotas and other, similar advantages.

*Response:* This response was addressed in the response to comment 59.

*Comment 62:* There are measures that may be taken by rulemaking, consistent with the Program, the Magnuson-Stevens Act, other applicable law, that would provide some degree of protection and mitigation for skippers and crew members, so that they do not ultimately suffer the worst case. IPQs have a demonstrable potential for

adversely affecting skippers and crews (not to mention, independent vessel owners), and that this challenge should be addressed, as effectively as the law allows, in the present rulemaking. In short, the rulemaking should prevent processors from using the market power deriving from IPQs to achieve excessive leverage in price negotiations that affect not only vessel owners, but also skippers and crew members. Processors must not be provided an opportunity, by virtue of IPQs, to engage in the kinds of market-distorting practices proscribed by the antitrust laws. There are several, specific areas of concern in the proposed rule, with respect to the participation of processors: (1) Participation of processor-“affiliated” entities in cooperatives, (2) holding of Class B IFQ by processor-affiliated entities, and (3) participation of processors or their affiliated entities in binding arbitration.

*Response:* The ability of IPQ holders and their affiliates to participate in crab harvesting cooperatives, hold Class B IFQ, and use the Arbitration System, has been addressed in previous response to comments under those subjects, particularly the response to comments 25 and 164. The final rule, Amendment 18, and the Magnuson-Stevens Act all prevent IPQ holders from using the market power deriving from IPQs to achieve excessive leverage in price negotiations and to engage in the kinds of market-distorting practices proscribed by the antitrust laws. Additionally, the economic data collection program was developed to allow such analysis in the future.

*Comment 63:* Because of the adverse consequences to skippers and crew members, and because the rationalization program offers little of positive economic value to skippers and crew members, relative to vessel owners, processors, and communities, the proposed rule should, as a matter of principle, ensure that such value be maximized to the extent permitted by the Magnuson-Stevens Act and the Council-approved Program.

*Response:* This Program was intended to provide additional economic benefits and efficiencies to a variety of participants. Achieving economic efficiency is one of several goals that this Program is mandated to meet under the Magnuson-Stevens Act.

*Comment 64:* The Program has ignored the 1,500 to 2,000 crew members directly involved in the crab fisheries and has failed to include them in the decision-making. Many crew have been involved in crab fishing industry for their entire adult life. The crewmembers are directly responsible

for the catch records on every one of the vessels. The Program will create a devastating effect on the livelihood of 50–60 percent of the fleet’s crew. Under the Program, every boat will drop a crewmember. Owners with multiple boats will put the IFQ on select boats while their other boats pursue other options. Boats will be bought and sold for no other reason than to obtain their IFQ. What happens to the crewmembers of those vessels? Is it not the responsibility of government in a democratic society to make available programs so that the people they are putting out of work have the opportunity to seek gainful employment in other occupations? Economic stability/benefit is a good thing for everyone, however NMFS simply has not considered everyone involved. NMFS’ analysis regarding the effects of the Program on crew members is extremely poor.

NMFS has taken away our life, our livelihood, everything we depend on to live. We may not deserve much but we do deserve to be treated fairly by the Federal Government. Owners and processors get a percentage of IFQ for nothing, give us a percentage for nothing. Maybe buy us out so we can be retrained and enter another occupation.

*Response:* In developing Amendment 18, the Council analyzed the potential effects of this Program on crew members and provided some allocation of QS to crew who have participated in the fishery. The distribution of the benefits from the program include a variety of industry participants. This Program was developed over a six year period by the Council which included input from crew and other industry participants. The effects of this Program on crew are discussed extensively in the EIS/RIR/IRFA supporting this action.

*Comment 65:* It is important that the CVC and CPC QS ownership caps in the regulations be listed at the correct levels from Amendment 18, which are equal to the use caps for the vessels in all fisheries. For example, in the case of snow crab and Bristol Bay red king crab, vessel use caps are 2 percent and CVC and CPC QS ownership caps are also 2 percent.

*Response:* NMFS agrees. This comment has been addressed in response to comment 54.

*Comment 66:* The provision in the proposed rule at § 680.42(b)(1)(iii) creates ambiguity concerning non-individuals holding CVC IFQ and QS. CVC IFQ and QS may be held only by individuals. Limit CVC and CPC share holdings to individuals.

*Response:* NMFS agrees, the language in the final rule at § 680.42(b)(1)(iii) has

been clarified to note that CVC and CPC IFQ and QS may be held only by individuals who are qualified to do so. This change better reflects the provisions established in Amendment 18.

#### *Processing Sector*

*Comment 67:* The proposed rule does not correctly implement the Council’s intent for this fishery concerning the community of Adak. The clear intent of the Council was that 50 percent of the WAI golden king crab QS was to be processed in the WAI region. The problem has to do with some confusion in the Council’s motion because harvesting history for WAI golden king crab does not match the processing history and does not match the recent golden king crab processing activities in Adak. The proposed rule does not meet the Council intent to process 50 percent of the IPQ in the WAI region. The fact that Adak is excluded from the ROFR provision suggests the Council felt ROFR was unnecessary because they were guaranteed 50 percent of the WAI golden king crab could be processed without IPQ. Another inconsistency is that Adak would be precluded from acquiring 50 percent of the IPQ by the 30 percent ownership cap. If inadequate IPQ is available for lease or purchase, the requirement to process 50 percent of the WAI golden king crab in the western region can only be achieved by allowing the crab to be processed without IPQ.

*Response:* Persons who apply for PQS and receive PQS in excess of the use caps will be grandfathered in at that amount as long as that amount is not based on transfers of processing history after June 10, 2002. The rule has not been modified. Neither Amendment 18 nor the rule require that only one PQS or IPQ holder hold 50 percent of the PQS or IPQ in the Western Aleutian golden king crab fishery. The rule establishes that 50 percent of the total PQS and IPQ issued in this fishery must be processed West of a line at 174° W. longitude, as established in Amendment 18. The remaining PQS or IPQ does not have a regional designation and may be used West of 174° W. longitude as well. Nothing in this rule restricts the use of undesignated PQS or IPQ in Adak. In addition, at § 680.40, the final rule requires that 50 percent of the CVO and CVC QS in the Western Aleutian golden king crab fishery be designated for delivery West of a line at 174° W. longitude. This provision would not be implemented for CVC QS until July 1, 2008, as established under Amendment 18.

*Comment 68:* The provision in the proposed rule at § 680.40(e)(1)(i) and

(e)(1)(ii)(D) refers to the Total Processing Denominator (TPD) for each year. When taken together with the reference to the “average percentage of the TPD for a person” at (e)(1)(ii)(D), the provisions suggest that the “average annual percentage” approach to determining allocations will be used for processors, which is not correct. Clarify method of allocation of processor individual allocations is total individual qualified history divided by all qualified history.

*Response:* NMFS agrees and has clarified the provisions at § 680.40(e)(1)(i) and (e)(1)(ii)(D) in the final rule to note that a person’s initial allocation of PQS is equivalent to that person’s total qualifying legal processing history divided by all qualified history in that crab QS fishery.

*Comment 69:* The provision at § 680.42(c)(4) prevents the issuance of IPQ in excess of the “IPQ cap” in the Bristol Bay red king crab fishery and the Bering Sea snow crab fishery. It is very confusing to have this provision in the section on “use limitations” since it is not a use limit, but an allocation limit. The provision should likely be moved to § 680.40(h) and/or (i), which concern the allocation of Class A IFQ and IPQ.

*Response:* NMFS agrees and has moved the provision from § 680.42(c)(4) to § 680.40(h)(10) and § 680.40(j)(3), IPQ issuance limits, to avoid confusion with the use caps at § 680.42.

*Comment 70:* The legislation authorizing the program provided at section 313(j) of the Magnuson-Stevens Act provides that IPQ should not create a right, title, or interest in any crab, until that crab is purchased from a fisherman. No similar language appears in the regulation. Include the language from the legislation in the regulation at § 680.40(l).

*Response:* NMFS agrees. Section 680.40(l) notes that the QS and PQS permits issued under this Program do not constitute absolute rights to the resource. These limitations extend to the IFQ and IPQ resulting from the QS or PQS. NMFS modified the final rule at § 680.40(1) to more accurately reflect the legislative language at § 313(j)(7) of the Magnuson-Stevens Act.

*Comment 71:* Section 313(j)(2) of the Magnuson-Stevens Act states that if the Secretary determines a processor has leveraged its IPQ to acquire Class B IFQ, the processor’s IPQ shall be forfeited. If a specific regulatory re-statement of the ability of the Secretary to forfeit IPQ held by a processor that have acquired Class B IFQ is not included in the proposed rule, it should be included in the final rule.

*Response:* The regulatory text in the final rule at § 680.7(f) states that it is a

prohibition to use IPQ to acquire an interest in Class B IFQ. The specific requirement to forfeit those shares would be determined after investigation by NOAA Enforcement. Nothing in these regulations restricts the ability of NOAA Enforcement to require divestiture of PQS or IPQ if a person leveraged IPQ to acquire ownership interest in Class B IFQ.

*Comment 72:* Section 680.42(b)(2) creates an ambiguity concerning individuals holding PQS and IPQ being exempt from the cap. Only corporations and other non-individuals that directly hold PQS and IPQ are exempt from this cap. In addition, the exemption should be limited under the cap described at (b)(4), not generally. Section 680.42(b)(2) should read, “Except for corporations and other non-individuals as provided at (b)(4) and CDQ groups as provided for at (b)(3).”

*Response:* NMFS agrees. These comments now refer to the final rule at § 680.42(a)(2). Amendment 18 notes that “[a]ll individuals and subsidiaries will be subject to the general caps on QS holdings.” NMFS modified the final rule at § 680.42(a)(2) so that it is clear that except for corporations and other non-individuals and CDQ groups, the general cap that applies to QS and IFQ use would apply. This means that individuals that are holders of IPQ, or an affiliate, but not a direct corporate entity holding PQS would be subject to the QS and IFQ use caps at § 680.42(a)(2)(i).

*Comment 73:* (C48–80) For PQS holders, the AFA-style 10 percent limited threshold rule is used for determining compliance with the vertical integration cap on IFQ holdings. Under this approach all QS and IFQ holdings of the holder of the PQS and all of its affiliates are counted toward the cap. The application of this rule is not clear from the proposed rule at § 680.42(b)(4). A second issue arises in this provision of the regulation because this is an additional cap to the cap at § 680.42(b)(2)(i). This cap supersedes the cap at § 680.42(b)(2)(i) only for a corporation or other non-individual directly holding the PQS. In other words, all individuals will still be subject to the individual caps at § 680.42 (b)(2)(i). Clarify the method of calculating holdings and the application of the cap and the limited exemption.

*Response:* NMFS agrees and has modified the final rule at § 680.42(a)(4) accordingly. Amendment 18 notes that “[v]ertical integration ownership caps on processors shall be implemented using both the individual and collective 10 percent minimum ownership standards for inclusion in calculating

the general cap” which is “similar to the AFA common ownership standard used to implement ownership caps.” The intent behind these phrases are clarified in the EIS/RIR/IRFA. This approach would function so that a non-individual person that holds PQS would be limited to a QS and IFQ cap that would be calculated based on the sum of all QS or IFQ held by that PQS holder and all QS or IFQ held by any entity that is affiliated with that PQS holder. This method would comply with the Council’s intent in this provision that a corporate entity would have an exemption but that entities linked to that PQS holder through common ownership would be considered as holding QS or IFQ for purposes of applying this higher cap. The commenter is correct in that the use caps at § 680.42(a)(1)(i) would apply to all individuals, or other entities that do not hold PQS. Section 680.42(a)(4) has been modified.

It should be noted that this “AFA 10 percent threshold” method of computation is used only for purposes of computing the amount of QS and IFQ holdings that apply to QS and IFQ use caps for non-individuals that hold PQS. In the case of individuals who hold PQS, other persons that hold QS or IFQ but not PQS, or CDQ groups, QS and IFQ use caps are computed using an “individual and collective” rule. Under this standard, the amount of QS or IFQ that is computed as applying to a person is equal to the sum of the QS or IFQ held by the person and an amount equal to the percentage of holdings by that person in any entity in which that person has an interest. As an example, if an individual held QS and a 20 percent interest in another entity that held QS, the “individual and collective” rule would sum the holdings by that individual and 20 percent of the QS holdings by the other entity for purposes of computing how much QS that individual could hold. The same method would be used for IFQ holdings and IFQ use cap calculation. This “individual and collective” standard is similar to the one applied in the halibut and sablefish IFQ program for computing QS use caps under that program. The “individual and collective” rule does not require that a minimum of 10 percent ownership be triggered to count any collective holdings by a person.

*Comment 74:* Caps on PQS and IPQ should use the AFA-style 10 percent limited threshold rule, not the individual and collective rule. Under this approach all PQS and IPQ holdings of the holder of the PQS and all of its affiliates are counted toward the cap.

The application of this rule is not clear from the proposed rule at § 680.42(c)(1). Clarify the method of calculating holdings.

*Response:* NMFS agrees. The comment now refers to the final rule at § 680.42(b)(3). Amendment 18 notes that “PQS ownership caps should be applied using the individual and collective rule using 10 percent minimum ownership standards for inclusion in calculating the cap.” The application of this standard is similar to that which is being used in the application of the rule for calculating the amount of QS or IFQ that can be used by a non-individual that holds PQS. This approach would function so that a non-individual person that holds PQS would be limited to a PQS and IPQ cap that would be calculated based on the sum of all PQS or IPQ held by that PQS holder and all PQS or IPQ held by any entity that is affiliated with that PQS holder. This method would comply with the Council’s intent that PQS or IPQ holder through common ownership would be considered as holding PQS or IPQ for purposes of applying the PQS use cap to that person at § 680.42(b)(3).

*Comment 75:* Processing quota share, at § 680.40(e) of the proposed rule, is also calculated as a simple average, when Council intent was a weighted average. Total Processing Denominator (denominator is defined as “pounds \* \* \* in each qualifying year”) appears to be an annual number. Both the pounds for each person and pounds for the TPD should be summed over the history years, and then divided to obtain the percentage.

*Response:* The response to this comment has been addressed in response to comment 68.

*Comment 76:* Cooling-off period waiver in the proposed rule, at § 680.42(c)(5), should be brought into compliance with Amendment 18. The ECC may not waive the cooling-off period, even for a temporary move. The ECC may waive the ROFR after the two-year period expires, as specified in the Council motion on civil contract terms for ROFR. Amendment 18 allows a community group or CDQ group to waive any right of first refusal.

*Response:* The cooling off period established in Amendment 18 is reflected in the final rule at § 680.42(b)(4). The “cooling off” period that is established is based on the language used in Amendment 18. A community as defined for the “cooling off” period cannot waive the cooling off period, and nothing in these regulations would permit them to do so. An IPQ holder may use IPQ outside of a community during the “cooling off”

period only under the limited exemptions provided by Amendment 18 and in § 680.42(b)(4) for a small amount of IPQ and to address unforeseen circumstances.

*Comment 77:* Council intent was that any PQS earned based on processing history in the West region would be designated as west region PQS. However, the regulations at § 680.40(e)(2) state that a person will receive only west PQS if, at the time of the application, that person owns a crab processing facility that is located in the West region.

*Response:* Amendment 18 notes that the allocation of West regionally designated PQS in the WAG crab QS fishery would be made to “to participants with processing facilities in the West.” This statement is distinct from the criteria used in designating the allocation of PQS in the other fisheries. The allocation criteria here are explicit in that the allocation of West region QS is based on the ownership of a processing facility in the West region, and NMFS has determined this to mean ownership of a processing facility in the West region at the time of application. The rule has not been modified.

*Comment 78:* Public Law 108–199 Section 801(j)(6) states that the Secretary may revoke any IPQ held by any person found to have violated a provision of the antitrust laws of the United States. If a specific regulatory re-statement of the ability of the Secretary to revoke IPQ held by a person found to have violated antitrust law is not included in the proposed rule, it should be included in the final rule.

*Response:* NMFS does have the ability to revoke any IPQ held by a person that has violated an antitrust law of the United States as granted by this provision. This statutory authority was not part of the proposed rule but is an authority that exists under section 313(j) of the Magnuson-Stevens Act. An explicit regulatory statement was not placed in the proposed rule because it was not deemed necessary to reiterate the authority that NMFS has to revoke IPQ under these conditions. The rule has not been modified, but NMFS has the statutory authority to revoke IPQ for antitrust violations if necessary after review under the Magnuson-Stevens Act.

*Comment 79:* The Council motion recommends that NOAA Fisheries award PQS to processors that purchased crab during the relevant processing history years based on the entity that signed the fish ticket and did not base the award of PQS on the location where the crab was physically processed. The Council recognized and acknowledged

the use of custom processing and the regulation correctly reflects that Council intent in its definition of the initial award of PQS. The regulations do not specify how custom processing affects processor use caps; IPQ transfers; and community protection provisions. We believe that in order to achieve the efficiencies envisioned, custom processing will be used extensively in the future. Therefore we believe the final rule should treat custom processing as follows: Custom Processing and IPQ leasing should each be counted against the use cap of the processor doing the physical processing. For example, PQS holder X holds IPQ and purchases crab, which is processed by PQS holder Y. PQS holder X is subject to the use cap because it holds the IPQ. Processor Y’s use cap calculation should include both its own IPQ and the amount that it is physically processing for PQS holder X.

*Response:* Amendment 18 notes that “limits on ownership and use would count any crab custom processed by a plant toward the cap of the plant owner. The application of the cap to custom processing is intended to prevent consolidation which could occur if custom processing is not considered.” The proposed rule does not require that the processing which is occurring at a facility be counted against the owner of the facility if the owner also holds IPQ. Under Amendment 18, any IPQ that is “custom processed” at a facility would be counted against both the IPQ holder (the custom processor) and the IPQ holder that owns the facility. This accounting is potentially problematic in that there may be cases in which a processing facility is owned by multiple IPQ holders, or is not owned by an IPQ holder at all. In cases of multiple IPQ holders owning a processing facility, it is not clear whether the amount of IPQ crab custom processed at a facility would be counted against all IPQ holders on a pro rata basis, or in proportion to their ownership in the processing facility. It would also create a situation where IPQ use would be “double counted”, resulting in less IPQ being available to Class A IFQ holders that is needed.

To implement this provision of Amendment 18, NMFS modified the final rule at § 680.7(a)(7) to note that no IPQ holder may use more IPQ crab than the maximum amount of IPQ that may be held by that person including all crab that are received by any RCR at any shoreside crab processor or stationary crab processor in which that IPQ holder has a 10 percent or greater direct or indirect ownership interest. Therefore, a person that holds IPQ is limited to an

IPQ use cap based on: The sum of all IPQ held by that IPQ holder and all IPQ held by any entity in which that PQS holder has a 10 percent or greater direct or indirect ownership interest; and any IPQ crab that is received at a shoreside crab processor or stationary floating crab processor owned by that IPQ holder.

Ownership of a processing facility is defined as having a 10 percent or greater direct or indirect interest in the processing facility. This modification better comports with the intent of Amendment 18. NMFS will not directly collect ownership information on processing facilities, however, any IPQ holder that owns a processing facility is responsible for maintaining records adequate to ensure that the IPQ use caps are not exceeded through custom processing arrangements established by IPQ holders that also own processing facilities. NMFS will be able to account for processing facility ownership using the EDR required under this Program, should a specific facility or IPQ holder need to be investigated.

In addition, NMFS has added a prohibition to the final rule at § 680.7(a)(8) so that in those cases where a processing facility is not owned by an IPQ holder, no RCR or group of RCRs may receive more than 30 percent of the IPQ in any crab QS fishery at any shoreside crab processor or stationary crab processor. This limitation meets the requirements of Amendment 18 to limit the amount of processing that could be done at any one facility and limits the ability for IPQ holders to simply divest themselves of ownership in a processing facility as a means of avoiding the limitations on IPQ use through custom processing arrangements.

*Comment 80:* Lease of IPQ or physical processing outside the community should each count for purposes of community protections and should require agency transfer approval.

*Response:* Use of IPQ outside of an ECC would be considered as subjecting those IPQ shares and the underlying PQS to the cooling off and ROFR provisions as revised in this final rule. Any transfer of IPQ for use outside of that ECC subject to the cooling off provision or ROFR would need to be approved by NMFS under the current regulations. The rule has not been modified.

*Comment 81:* Processor interests should be made entirely transparent to authorized fisheries managers and enforcement officials, as well as to the antitrust authorities, and all available tools for preventing and punishing anti-competitive processor behavior should be employed aggressively. The

important safeguards contemplated by the Magnuson-Stevens Act and the antitrust laws, and reflected in the proposed rule, should be preserved.

*Response:* This Program requires extensive reporting of data by both harvesters and processors in order to ensure that existing antitrust laws are not violated and that the goals of this Program are met. These data can be used to investigate activities of concern.

*Comment 82:* The allocations of PQS are not equitable because processors with history processing crab in Alaska that do not meet the eligibility qualifications at § 680.40(d)(3) would not receive PQS. Specifically, if a processor lost its facility due to fire, and did not make \$1,000,000 worth of improvements to that facility, it would not qualify for the hardship exemption for eligibility at § 680.40(d)(3)(ii)(B). These regulations eliminate competition and prevent boats from delivering to a native-Alaskan owned processor with a long history of processing crab in the BSAI area.

*Response:* NMFS encourages all processors to complete an application for QS or PQS. The eligibility requirements in the regulations are provisions of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18.

*Comment 83:* The unique concentration of PQS holders in the golden king crab fishery presents a problem in terms of economic efficiencies the Program envisioned for processing in small fisheries. Two processors will receive greater than three-quarters of the initial PQS pool in the EAI golden king crab fishery, creating a problem with the 30 percent use cap. This is similar to the snow crab fishery where a few processors will hold north region PQS. In that case, the Council allowed an IPQ use cap up to 60 percent of the IPQ issued with a north region designation. The commenter requests an amendment that allows for an IPQ use cap of 60 percent of the IPQ issued in the EAI golden king crab fishery. This would allow processors to achieve efficiencies envisioned by the Program.

*Response:* Persons who apply for PQS and receive PQS in excess of the use caps will be grandfathered in at that amount as long as that amount is not based on transfers of PQS catch history after June 10, 2002. The rule has not been modified.

#### *Crab Harvesting Cooperatives*

*Comment 84:* The requirement at § 680.21 of the proposed rule, that

prohibits participation in crab fishery cooperatives by a QS holder who also holds PQS or IPQ, is affiliated with holders of PQS or IPQ, processes Class B IFQ, or is affiliated with a person that processes Class B IFQ, is overly restrictive and does not meet the intent of the overall Crab Rationalization program. Section 680.21 assumes that "harvest cooperatives" under the Council motion are intended to be FCMA cooperatives. This interpretation appears to have led NMFS to conclude that any processor affiliated QS holder could not join a cooperative. The Council motion intended cooperatives for the limited purpose of coordinating harvest activity to allow all holders of harvest shares to achieve efficiencies and should not require FCMA qualification. We also note that the December 3, 2004, memorandum of NOAA General Counsel on Harvesting Cooperatives under the Crab Rationalization Program clarifies that the cooperative system intended by the Council can be implemented consistent with antitrust law, providing NMFS with the latitude to address this critical flaw.

It is by no means clear that the Council, or the Congress, intended that cooperatives for BSAI crab harvesting should be only those as provided for in the FCMA for joint marketing purposes, as prescribed in the proposed rule at § 680.21. The language of the Council motion distinguishes and requires FCMA cooperatives in the arbitration program, the only portion of the motion in which a cooperative would engage in negotiation. In the arbitration section of the motion, FCMA cooperatives are distinguished as the only cooperatives that may negotiate on behalf of their members. In addition, the motion specifically identifies the role of its harvest cooperatives. The Council motion establishes a "harvesting cooperative" that is intended to coordinate harvests of its members' IFQ to achieve efficiencies in the fisheries. The terms that govern these harvesting cooperatives are delineated in the Council motion. The motion and clarification describe a system of coordination of harvests that would be used to pursue fleet consolidation. Similarly, the clarification describes systems of leasing and use of allocations. No mention of marketing or negotiation activities is made in either the motion or clarifications.

The Council envisioned all crab harvesting vessels having the opportunity to form harvesting cooperatives to achieve the benefits of fleet consolidation through the operation of leasing and transferring



crab harvesting quota share among the cooperative members. In fact, the Council motion encourages the formation of harvesting cooperatives by including incentives such as exemption from individual use caps for cooperative members and by allowing only cooperative members the ability to lease quotas five years following implementation of the crab rationalization regulations. The only distinction is that affiliated vessels cannot participate in price formation. It is critical to note that non-FCMA operational cooperatives, comprised of non-processor affiliated vessels, processor-affiliated vessels and processors, were envisioned by the Council to maximize operational efficiencies and net national benefits, and to broadly distribute those rationalization benefits across harvesters, processors and fishery-dependent Alaska coastal communities.

Participants in both federal and state crab rationalization working groups have always proceeded with an underlying assumption that all harvesters—both affiliated and non-affiliated—would be allowed to join harvesting cooperatives to achieve efficiencies and lessen the enforcement burden. Also, as the Council reiterated at its December 2004 meeting, it intended for all crab harvesting vessels to have the option to join crab harvesting cooperatives.

Given the limited scope of harvest cooperative actions and the distinction of FCMA cooperatives in the arbitration provisions of the motion, harvest cooperatives should not be required to be FCMA cooperatives and NMFS should remove requirement that harvest cooperatives be FCMA cooperatives.

The proposed rule has taken a conservative, zero-risk approach to antitrust that is inconsistent with Council intent. In so doing, the proposed rule, at § 680.21, defines the entire universe of cooperatives as only program-compliant FCMA (bargaining) cooperatives that need limited antitrust exemption. The preamble explains the proposed rule's cooperative membership restriction is due to Congress' inclusion in its codification of the Council plan amendments, that nothing in their approval shall be construed to create an implied or explicit exemption from the antitrust laws and regulations. The proposed rule interpreted that statutory language to mean that the only cooperatives available to the crab harvesting vessels are those allowed under the FCMA.

The justification in the proposed rule, at § 680.21, for FCMA status is flawed. The proposed rule claims crab

harvesting cooperatives are FCMA cooperatives because they combine and collectively manage their crab IFQ. This claim is untrue. All crab harvesters receive QS prior to forming a cooperative. The QS for each participant in a harvesting cooperative has been decided and NOAA will issue the QS. The cooperative members will not do the segmentation of the crab resource. They need no FCMA limited antitrust exemption to collectively catch because such activity is not engaged in market segmentation. They only need FCMA protection when engaged in collective bargaining or binding arbitration. Additionally, NMFS' position in the proposed rule ignores the fact that antitrust law already applies to all industry participants, that this fact was reiterated in Senator Stevens' statutory language, and that the simplest way to avoid any additional concerns would simply be to create a rule prohibiting any affiliated vessel from participating in price negotiations. The current regulation disregards the critical distinction in the Council's motion between FCMA cooperatives and non-FCMA harvesting cooperatives, treating all cooperatives as FCMA cooperatives and thereby limiting the ability of processors and their affiliates to realize the benefits of coordination of harvest activity that could be achieved through the harvest cooperative structure the Council has developed. The final regulations should be amended to allow the fullest participation possible by processor affiliated vessels in crab harvesting cooperatives so that each crab QS holder is able to meet the goals of crab rationalization.

The penalties imposed on the processor-affiliated vessels prohibited from cooperative participation under the proposed regulation are severe. Requiring crab harvesting cooperatives to be FCMA cooperatives causes the following problems: (1) Fishermen that cannot join a cooperative because of their affiliated partners are severely disadvantaged from their fellow fishers; (2) without the ability to form cooperatives, many of the benefits of the entire rationalization program will be lost to many vessels which find themselves, in one way or another affiliated with a processor; and (3) vessels that are affiliated with processors would be unfairly penalized by not being allowed to "stack" their quota on vessels, be restricted to vessel use caps, and face more restrictive transfer provisions. Such vessels will not be able to achieve the operational efficiencies intended by cooperatives such as lower operational costs

(dramatic savings on fuel, harvesting equipment, insurance), higher product recovery rates, higher quality and more diverse finished products, reduced bycatch of non-target species, and reduced environmental impact. Additionally, processors and processor-affiliated vessels would not be allowed to receive Class B IFQ. Other lost rationalization benefits include: improved management capability for harvests resulting in overage/underage; improved management capability for dealing with sideboard limitations; reduced administrative and enforcement costs; and improved safety (fewer and safer vessels fishing). The Council did not intend these benefit deprivations that derive from the errant definition of "cooperatives" used in the proposed rule.

We believe requiring all cooperatives to be FCMA cooperatives is neither warranted nor encouraged by antitrust law. We believe harvesting cooperatives can include vessels affiliated with holders of PQS. The antitrust laws are intended to prohibit anti-competitive behavior among competitors. Such conduct typically includes agreements among competitors to (a) increase prices or (b) reduce output in order to increase prices. At the same time, the antitrust laws encourage business to achieve efficiencies by lowering costs. Crab harvesting cooperatives and the harvesting allocation agreement among vessels, (including vessels affiliated with PQS holders) are not anti-competitive. They do not reduce output and are incentivized to maximize their production. A harvesting cooperative will simply divide the harvest of its government allocated QS in a manner to maximize efficiency. The efficiencies are reflected in lower operational costs (dramatic savings on fuel, harvesting equipment, insurance), higher product recovery rates, higher quality and more diverse finished products, improved safety, reduced bycatch of non-target species, and reduced environmental impact.

Given that the antitrust laws do not summarily condemn, and, indeed, encourage, cooperatives, associations, and other joint ventures that, as here, do not involve price fixing or other plainly anti-competitive practices, adopting a proposed rule that imposes a *per se* ban on such cooperatives in the BSAI is without justification. That is especially so in this instance because the underlying rationale for such a ban is the mistaken notion that such cooperatives in fact violate—or at least pose a significant risk of violating—the antitrust laws. For this reason alone, the proposed rule should not prohibit crab

processor-affiliated participation in crab harvesting cooperatives, as defined by the rule.

Participation of processor-affiliated entities in cooperatives should be permitted only where there is no price negotiation, that is, only in cooperatives that are established solely for operational fishing purposes. Processor affiliated vessels that form "non-FCMA" cooperatives should be prohibited from participating or voting in the price formation process under the Binding Arbitration system. In other words, participation in cooperatives authorized by the FCMA must be restricted to entities that are not affiliated with processors. By this means, the safety, conservation, and economic efficiency objectives of the rationalization program can be realized through operational cooperatives, without compromising competition that is the purpose of the antitrust laws to protect, or reducing the market leverage accorded harvesters not controlled by processors through FCMA cooperatives.

Section 680.21(b)(3) of the proposed rule that requires crab harvesting cooperatives to be established under the FCMA was based on antitrust concerns. However, a cooperative formed for the purposes of making harvesting more efficient would be analyzed under the "rule of reason" antitrust doctrine. Under this doctrine, a cooperative would be legal unless the pro-competitive benefits of the venture and its practices are outweighed by the anti-competitive effects that the arrangement cause.

Harvesting cooperatives that include vessels affiliated with processors greatly increase the efficiency of harvesting crab and pose no threat to competition. Simply put, excluding processor affiliated vessels from the ability to join cooperatives would deny a substantial percentage of the fleet many of the benefits contemplated by rationalization. As long as processor affiliated vessels are not involved in the negotiation of prices with the processor to whom they are affiliated, there is no anti-competitive impact from these cooperatives.

Non-FCMA operational cooperatives need no limited antitrust exemption because they involve neither market segmentation nor price formation and they pose no significant anti-competitiveness risks. Segmentation in the form of crab IFQ and IPQ occurred by statute, unlike the Pacific whiting cooperatives or AFA cooperatives, in which segmentation (issuance of IFQ) was conditional on cooperative formation and collective catching behavior. Therefore, we urge that the

regulations be modified to allow processor affiliated vessels to be members of crab harvesting cooperatives.

In light of the explicit Congressional intent that crab harvesting cooperatives not be given a special antitrust exemption, non-FCMA cooperatives must be strictly scrutinized to ensure compliance with applicable antitrust laws. As is the case for AFA catcher-vessel cooperatives, crab harvesting cooperatives whose membership includes one or more affiliated harvesters should be required to seek and obtain a favorable business review by the Department of Justice, Antitrust Division. However, because (unlike under the AFA) there is no argument that crab harvesting cooperatives have special status under antitrust laws, non-FCMA harvesting cooperatives should also be subject to initial and on-going scrutiny that is more stringent than that applied to AFA cooperatives.

The regulations should allow other forms of cooperatives, subject to review by the Department of Justice. In the first year of the crab harvesting cooperatives' existence, NMFS should condition the allocation of IFQ to a non-FCMA cooperative on that cooperatives' submission of a business review request to the Justice Department, and should require a copy of the business review request be submitted to NMFS with the cooperative's IFQ application. In subsequent years, the cooperative should be required to provide evidence of a favorable business review and should also provide both the Department of Justice and NMFS with prompt notice of any changes in its membership, governance, or activity. Finally, since non-FCMA cooperatives are not entitled to any antitrust exemption, the final rule should contain an explicit acknowledgment that NMFS's allocation of IFQ to a cooperative whose membership includes one or more affiliated harvesters in no way constitutes a determination that the cooperative was formed or is operating in compliance with applicable antitrust law. NMFS's allocation activity would not therefore provide a cooperative with an affirmative defense against antitrust liability, and the cooperative and its members would bear full responsibility for any violation of antitrust law.

The two types of cooperatives intended by the Council should be defined in the regulations at § 680.2: (1) For program-compliant FCMA cooperatives, a definition of voluntary cooperatives consisting only of harvesters with no affiliation to processors that are organized for the

purpose of bargaining and negotiating price, per the Council intent, and (2) for program-compliant non-FCMA cooperatives, a definition of voluntary cooperatives consisting of harvesters that are not affiliated with processors, processor-affiliated harvesters and one or more processors. The purpose of the second type of cooperative is to capture operational efficiencies in harvesting and processing, and to broaden the rationalization benefits to both sectors, per the Council intent. Inclusion of program-compliant non-FCMA cooperatives will require modifying some text throughout the regulations, especially at § 680.21, in order to correctly explain the intended program operation and benefits.

*Response:* NMFS has removed the requirement that crab harvesting cooperatives under § 680.21 be FCMA cooperatives and has modified the structure of the crab harvesting cooperative regulations to allow the formation of crab harvesting cooperatives by affiliated entities for the sole purpose of harvesting their crab IFQ. NMFS also has added regulatory definitions of crab harvesting cooperatives and FCMA cooperatives to § 680.2 of the final rule. The final rule, at § 680.21, continues to require FCMA cooperatives for the price arbitration system.

The rationale for the proposed requirement that crab harvesting cooperatives under § 680.21 be FCMA cooperatives is provided in the preamble to the proposed rule (69 FR 63226–63227). Subsequent to publication of the proposed rule, NMFS determined that affiliated harvesters could form an association to pool their crab QS and harvest the QS from one vessel with the likelihood that such activity would not violate the antitrust laws. Under the "Antitrust Guidelines for Collaboration Among Competitors," issued by the Department of Justice (DOJ) and the Federal Trade Commission (FTC), affiliated and non-affiliated harvesters could pool their crab QS and harvest it from one vessel with the likelihood that such activity would not be an antitrust violation as long as the activity of the cooperative promotes efficiency, does not have an anti-competitive effect, and is otherwise found to comply with the guidelines.

NMFS has decided that allowing holders of QS/IFQ that also holds PQS/IPQ or are affiliated with holders of PQS/IPQ to join crab harvesting cooperatives complies with Amendment 18 and Council intent in designing the Program. With this change, more participants will be able to participate in crab harvesting cooperatives for the

purpose of harvesting their IFQ and benefit from efficiencies gained through cooperatives.

NMFS agrees with the commenters that crab harvesting cooperatives that are not formed in accordance with the FCMA will not benefit from the antitrust immunity FCMA cooperative formation provides. Some activities by members of non-FCMA crab harvesting cooperatives could, under some circumstances, violate the antitrust laws. NMFS recognizes that withdrawing the requirement that crab harvesting cooperatives be formed under the FCMA will increase the risk of possible antitrust violations for the participants in the crab rationalization program who are not members of an FCMA cooperative. Therefore, NMFS strongly encourages members of non-FCMA crab harvesting cooperatives to consult counsel before commencing any activity if the members are uncertain about the legality under the antitrust laws of the crab harvesting cooperative's proposed conduct. NMFS has included a sentence in the final rule that includes this recommendation at § 680.21, as well as a statement that issuance by NMFS of a crab harvesting cooperative IFQ permit to a crab harvesting cooperative is not a determination that the crab harvesting cooperative is formed or is operating in compliance with antitrust law at § 680.21(b)(3).

Although NMFS has included this precautionary advice in the preamble and the final rule, NMFS declines to include regulatory requirements conditioning the allocation of IFQ to a non-FCMA cooperative on the submission of a business review letter request to DOJ in the final rule as the commenters suggest. NMFS has determined that such regulations would impose unnecessary administrative burdens on the public, NMFS, and the DOJ.

*Comment 85:* The provision at § 680.21(b)(3) prohibits PQS and IPQ holders and their affiliates to join crab harvesting cooperatives. This limits the ability of vertically integrated harvesters to achieve harvest coordination efficiencies.

*Response:* NMFS agrees, and for the reasons described in the response to comment 84, has removed this prohibition in the final rule.

*Comment 86:* The prohibition at § 680.21(f)(4) on crab harvesting cooperative members holding or transferring PQS and IPQ is likely to limit the achievement of efficiencies in the fisheries for a substantial number of vertically integrated share holders. This provision is unnecessary, if crab harvesting cooperatives are not required

to be FCMA cooperatives. Remove the prohibition on crab harvesting cooperative members holding or acquiring IPQ and PQS.

*Response:* NMFS agrees, and for the reasons described in the response to comment 84, has removed this prohibition from the final rule.

*Comment 87:* In the proposed rule, at § 680.21(f)(4), all non-affiliated cooperatives must be FCMA cooperatives and members may not hold or acquire IPQ. The reason for this is that the harvester Arbitration Organization and a collective bargaining cooperative is an FCMA cooperative and may be exposed to antitrust violation if this provision is removed.

*Response:* NMFS agrees that members of FCMA cooperatives may not hold or acquire PQS or IPQ and that only FCMA cooperatives can participate in collective negotiation. However, NMFS has removed the requirement that crab harvesting cooperatives under § 680.21 must be formed in accordance with the FCMA. See response to comment 84.

*Comment 88:* FCMA cooperatives are allowed under cooperative law to vertically integrate by collectively owning a processor(s). Yet, the proposed rule in § 680.21(g)(1) disallows this activity. Furthermore, the Council clearly intended for harvesters to individually or collectively direct-market Class B IFQ, if they so desired. Doing so under the proposed rule, however, would render the harvesters processor-affiliated and deny them all program benefits, including collective price bargaining. This oversight needs to be corrected.

*Response:* Under the final rule, crab harvesting cooperatives can direct-market crab caught with Class B IFQ. NMFS removed the limitation on processing Class B IFQ at § 680.21(b)(3) in the final rule with the removal of the requirement that all crab harvesting cooperatives be formed under the FCMA. See response to comment 84. PQS and IPQ are not required for the processing of crab caught with Class B IFQ. However, the final rule still contains the restriction on crab harvesting cooperatives owning PQS, IPQ, and QS. This prohibition is necessary to maintain the regulatory distinctions between IFQ held by entities that are not crab harvesting cooperative and IFQ held by crab harvesting cooperatives, and to simplify the administration of the Program. If the regulations allowed crab harvesting cooperatives to hold QS, PQS or IPQ, then the crab harvesting cooperatives would function like all other business entities under the Program. Therefore, crab harvesting cooperatives would no

longer function as a crab harvesting cooperative, and not be exempt from the vessel use caps, which is contrary to the intent of the Council motion.

Additionally, the Council did not establish QS, PQS, or IPQ ownership caps for crab harvesting cooperatives.

NMFS declines to respond to the comment concerning the legality of vertical integration by FCMA cooperatives as that subject is outside of NMFS' area of expertise.

*Comment 89:* The agency discussion in the preamble to the proposed rule (on page 63226 and 63227) sets the appropriate precautionary standard relative to antitrust constraints on cooperative membership relative to binding arbitration and limiting participation in FCMA cooperatives.

However, allowing the formation of a separate type of non-FCMA cooperative for the sole purpose of coordinating harvest arrangements and taking advantage of the exemption from leasing restrictions should be provided to processor-affiliated QS holders. This revision should require anyone forming or participating in such a cooperative to submit a request to the DOJ Anti-trust division for a Business Review Letter. Any change in membership of such a cooperative should require submitting a request for a new Business Review Letter.

If the agency allows for these non-FCMA cooperative for affiliate QS holders, the definition section should be updated to create clear definitions of FCMA cooperatives and non-FCMA cooperatives. The section on Binding Arbitration should be updated so that all the current generic references to "cooperative" are replaced with the term "FCMA cooperatives." The revisions of the proposed regulations should make it absolutely clear that non-FCMA cooperatives would not be provided any of the shelter from antitrust constraints embodied in the FCMA.

Additionally, non-FCMA cooperatives should not receive any Class B IFQ allocations.

*Response:* For the reasons discussed in response to comment 84, NMFS agrees that QS holders affiliated with processors should be permitted to join non-FCMA cooperatives and has changed the regulations accordingly. Additionally, NMFS has added definitions at § 680.2 for crab harvesting cooperatives and FCMA cooperatives. NMFS also agrees that the Arbitration System regulations at § 680.20 need to make it clear that, for the Arbitration System, cooperatives that wish to negotiate collectively must be formed

under the FCMA, and NMFS has changed the regulations to reflect this.

NMFS has included a sentence in the final rule at § 680.21 that members of crab harvesting cooperatives that are not FCMA cooperatives should consult counsel before commencing any activity if the members are uncertain about the legality under the antitrust laws of the crab harvesting cooperative's proposed conduct. NMFS also included a statement, in the final rule at § 680.21(b)(3), that issuance by NMFS of a crab harvesting cooperative IFQ permit to a crab harvesting cooperative is not a determination that the crab harvesting cooperative is formed or is operating in compliance with antitrust law. Although NMFS has included these statements in the final rule, NMFS declines to include regulations requiring members of crab harvesting cooperatives to request a business review letter from DOJ. NMFS has determined that such regulations would impose unnecessary administrative burdens on the public, NMFS, and DOJ.

Crab harvesting cooperatives with affiliated members will receive Class A and Class B IFQ that is converted for use in the crab harvesting cooperative according to the provisions set forth at § 680.40(h)(3). These provisions would apply to the IFQ that would be issued to the members of the crab harvesting cooperative if they were receiving the IFQ directly. As an example, if a crab harvesting cooperative had 5 members, all of whom were affiliated, or held IPQ, and 50 percent of their IFQ would be issued as Class A IFQ only, the amount of Class A IFQ that would be issued for use by the crab harvesting cooperative would be in the same proportion—50 percent of the IFQ issued to the cooperative would be issued as Class A IFQ only. The remaining IFQ issued to the cooperative would be issued as both Class A and Class B IFQ.

*Comment 90:* The proposed rule at § 680.21(g) allows a crab harvesting cooperative to freely engage in intercooperative transfers without regard to individual use caps. The motion intended intercooperative transfers to be conducted through members to allow the application of use caps. Once IFQ are inside a crab harvesting cooperative, any individual or vessel caps do not apply to the movement of those IFQ within the cooperative. In the absence of a requirement that intercooperative transfers be accounted for by individuals in a cooperative for purposes of applying use caps, the program is without any effective use caps. The final rule should require cooperatives to conduct

intercooperative transfers through members, as described in the Council motion. The provisions at § 680.41(h) should require designation of the member(s) of the cooperatives that are engaged in the transaction for purposes of applying use caps to the shares a person may bring to a cooperative. In the absence of this limitation, persons could join a cooperative and acquire shares in excess of the cap, making individual use caps ineffective.

*Response:* NMFS agrees that individual use caps should apply to intercooperative transfers, as required by Amendment 18. In the final rule, intercooperative transfers were moved from § 680.41(h) to § 680.21(f). The final rule at § 680.21(f) requires, on the application for intercooperative transfer, designation of the members of the crab harvesting cooperatives that are engaged in the transaction for purposes of applying the use caps of the members to the cooperative IFQ that is being transferred between the crab harvesting cooperatives.

*Comment 91:* The application of a ownership cap to intercooperative transfers at § 680.21(f) actually has the potential to disadvantage cooperative members and minimizes the potential efficiencies, in comparison to individual IFQ harvesters. The Council motion does not appear to effectively limit the IFQ that cooperative members could lease, in addition to the individual membership ownership caps. A lease is the use of an annual allocation that is generated in association with QS. In this circumstance it is not clear that it necessarily involves the possession of the QS which would trigger its application. Five unique QS holders, each fishing their own vessel, have the opportunity to collectively harvest twice the ownership/use cap as a cooperative association of the same number of individuals. This issue is important and deserves to be addressed in light of the objective to promote cooperative membership, minimize management complexity, and promote efficiencies in the long term.

*Response:* Amendment 18 does limit the amount of IFQ that crab harvesting cooperative members can lease through the application of the use caps to intercooperative transfers of IFQ. Use caps apply to both the QS and the IFQ a person holds. Amendment 18 clearly states that transfers (*i.e.* leases) of IFQ between crab harvesting cooperatives will be undertaken by the members individually, subject to use caps. Requiring an intercooperative transfer to occur through members is necessary for the application of the use caps. Section 313(j) of the Magnuson-Stevens Act

requires NMFS to implement the Program provisions as specified in Amendment 18. Note that although Amendment 18 uses the term 'ownership caps', in the final rule NMFS uses the term 'use caps' because persons do not own QS or IFQ.

*Comment 92:* The term "crab harvesting cooperative," which is used frequently throughout the rule, is not defined at either § 679.2 or § 680.2. The final rule should include definitions for "FCMA crab harvesting cooperatives" (made up of those who are eligible to receive "Arbitration IFQ") and "non-FCMA crab harvesting cooperatives" which would be limited in scope. Section 680.21(c)(2) should also be revised in a manner that is consistent with this approach.

*Response:* At § 680.2, NMFS has added a definition for crab harvesting cooperative, for the purposes of 50 CFR part 680, to mean a group of crab QS holders who have chosen to form a crab harvesting cooperative, under the requirements of § 680.21, in order to combine and collectively harvest their crab IFQ through a crab harvesting cooperative IFQ permit issued by NMFS. NMFS has also added a definition for FCMA cooperative, for the purposes of 50 CFR 680, to mean a cooperative formed in accordance with the Fishermen's Collective Marketing Act of 1934 (15 U.S.C. 521). Additionally, at § 680.20, NMFS has clarified that only FCMA cooperatives can participate in the Arbitration System. See NMFS' response to comment 84 as to why NMFS removed the proposed requirement that crab harvesting cooperatives be FCMA cooperatives.

*Comment 93:* Because of the potential for antitrust violations, two types of crab cooperatives should be allowed to be formed: (1) Unaffiliated cooperatives (FCMA type) that can hold, fish and trade Class A and Class B IFQ and CVC and CPC IFQ and enter into binding arbitration based on their best financial interest and efficiency; and (2) A non-FCMA "operational cooperative" for purposes of economic efficiency of processor affiliates, that allows processor affiliates to form cooperatives for purposes of Class A IFQ fishing but prohibits participation in arbitration and the fishing of Class B IFQ and CVC and CPC IFQ due to antitrust violation potential.

*Response:* The final rule distinguishes between FCMA cooperatives for the Arbitration System at § 680.20 and crab harvesting cooperatives at § 680.21. However, NMFS disagrees that crab harvesting cooperatives with affiliated members should be prohibited from

fishing Class B IFQ and CVC and CPC IFQ. Under the final rule, NMFS will issue Class B IFQ based on the amount of Class B IFQ that would be issued to each member individually, as discussed under comment 89.

*Comment 94:* The proposed rule at § 680.21 prohibits CDQ groups that share ownership of crab vessels with processors from being able to achieve the efficiencies of participating in crab harvesting cooperatives. Also, the proposed rule at § 680.40 prohibits CDQ groups that are affiliated with processors from receiving Class B IFQ. These prohibitions will severely affect CDQ groups who have made investments in crab harvesting vessels jointly with holders of PQS. These regulations will hamper the ability of CDQ groups to further integrate into the processing of king and Tanner crab and to consider processing crab for markets not yet utilized. CDQ groups could not be expected to purchase QS under these regulations that deny them the ability to join a crab harvesting cooperative and the ability to receive unrestricted Class B IFQ.

*Response:* NMFS agrees and has changed the regulations at § 680.21 to allow CDQ groups that are affiliated with processors to join crab harvesting cooperatives. See response to comment 84. Additionally, NMFS has changed the regulations in the final rule at § 680.40(h) to allocate Class B IFQ to persons that hold PQS/IPQ or are affiliated with PQS/IPQ holders. See response to comment 25.

*Comment 95:* Non-FCMA cooperatives are disallowed under § 680.21. If the final rule were to allow processor-affiliated vessels to join a non-FCMA cooperative that could participate in Program benefits, the four unique entity rule would be problematic. A single processor that owns multiple vessels could not form a cooperative because it could not pass the four-independent entity rule stipulated by the Council and by the proposed rule. Note however, the proposed rule applies to FCMA and are silent on Non-FCMA. If the four-entity rule applied to Non-FCMA cooperatives and if Non-FCMA cooperatives were allowed, then processors could cooperate and aggregate processor-vessels across multiple processors. Operational efficiencies intended by the Council require coordinated decision making among harvesters and processors with mutual interest. These efficiencies may be achieved only if Non-FCMA cooperatives are allowed.

*Response:* See Response to comment 84. NMFS has revised the regulations regarding FCMA cooperative formation

and provided additional advice for reducing potential antitrust risk. Non-FCMA crab harvesting cooperatives are permitted under this final rule.

NMFS proposed that any QS holder could be considered a “unique entity” for the purposes of crab harvesting cooperative formation. However, whether the QS holder is a “unique entity” for purposes of meeting the minimum requirement of four unique entities for crab harvesting cooperative membership depends on whether the QS holder is “affiliated” with another entity seeking membership in the same crab harvesting cooperative. NMFS has revised the definition of “affiliation” at § 680.2 to better accommodate the needs of the affected public. However, Amendment 18 does not distinguish between FCMA and non-FCMA cooperatives regarding affiliation and the four unique entity rule. Therefore, the definition of affiliation and the four unique entity rule apply equally to FCMA and non-FCMA cooperatives under this final rule.

*Comment 96:* The proposed regulations at § 680.21(d)(4) provide that IFQ resulting from CVC and CPC QS would be converted to standard IFQ, if the holder joins a crab harvesting cooperative, effectively removing any owner on board requirements for CVC or CPC QS. The motion intended the C share pool to benefit persons actively on board vessels in the fisheries. The final rule should not convert CVC and CPC IFQ to CVO and CPO IFQ when held by a crab harvesting cooperative and should require that the owner of the CVC or CPC IFQ be on board when the crab harvesting cooperative is fishing its CVC or CPC IFQ. Additionally, the regulations should clarify that CVC IFQ issued to a crab harvesting cooperative are not subject to the Class A/Class B IFQ split during the first three years of the program.

*Response:* Amendment 18 states that holders of CVC or CPC QS or qualified lease recipients are required to be on board the vessel used to harvest CVC or CPC IFQ and that CVC and CPC QS holders are eligible to join crab harvesting cooperatives. Amendment 18 does not provide any exemption to the owner on board requirements for CVC or CPC QS holders if the QS holder joins a crab harvesting cooperative. In developing the proposed rule, NMFS, for reasons provided in the preamble of the proposed rule (69 FR 63200, 63228, October 29, 2004), emphasized the Council's intent for crab harvesting cooperatives to maximize efficiencies and benefits through consolidation and collective management of the members' QS holdings by proposing to convert

CVC and CPC QS to CVO and CPO IFQ when held by a crab harvesting cooperative. However, comments received from the Council as well as comments received from the general public indicate that NMFS inappropriately allowed the rationale for maximizing crab harvesting cooperative efficiencies to override the legislated owner on board requirements for holders of CVC and CPC QS or qualified lease recipients. NMFS recognizes that the owner on board requirement is fundamental to supporting active participation in the crab fisheries and was intended to extend to CVC and CPC QS holders if the QS holder joins a cooperative. Therefore, NMFS has removed the requirement that all CVC and CPC QS held by the members of a crab harvesting cooperative be converted to CVO and CPO IFQ. Additionally, the final rule at § 680.42(c)(5) clearly provides that all CVC or CPC QS holders must be on board the vessel at all times when harvesting his or her CVC or CPC IFQ.

NMFS agrees that CVC QS is not subject to the Class A/Class B IFQ split during the first three years of the program. The final regulations clearly indicate at § 680.40(b)(1)(ii) and (h)(6)(ii) that CVC QS and the resulting IFQ will not be subject to the Class A/Class B IFQ split until July 1, 2008. Therefore, any CVC QS committed to a cooperative will not be subject to the Class A/Class B IFQ split until July 1, 2008.

*Comment 97:* The Program pushes all individual harvesters to join cooperatives by providing advantages to cooperative members over individual harvesters, such as in arbitration, price formation, overages, and QS transfer. Harvesters will be forced to join a cooperative in 5 years. While cooperatives will be easier for NMFS to manage, this is not sufficient reason to dictate the structure of how an individual harvester does business. Financial advantages will encourage most harvesters to join crab harvesting cooperatives. It should be a harvester's decision, based on what is best for the harvester.

*Response:* Amendment 18 specifically states that, for IFQ holders that are not crab harvesting cooperative members, leasing would be allowed for the first 5 years of the Program. NMFS does not possess any discretion to vary the implementation of the 5-year leasing provision at this time. Any change to the 5-year leasing provision requires an amendment to the Program and should be addressed through the Council process.

NMFS agrees that management of a few, well-organized cooperatives will be easier than management of multiple individual harvesters. Although the Council and NMFS designed the Program to encourage crab harvesting cooperative membership, membership in a crab harvesting cooperative is entirely voluntary and remains the decision of the individual harvester. Each harvester has the choice whether to join a crab harvesting cooperative based solely on their individual financial and operational needs.

*Comment 98:* It is important that a skipper or crew member's Class B IFQ do not automatically become crab harvesting cooperative shares by virtue of his or her vessel's participation in that crab harvesting cooperative. The decision whether to transfer his or her Class B IFQ to an eligible fisherman on a vessel in a different crab harvesting cooperative or on a vessel not participating in a crab harvesting cooperative must remain open to the skipper or crew member.

*Response:* NMFS agrees. However, during the first three years of the Program, CVC QS will not be subject to the Class A/Class B IFQ split (see response to comment 96). During the first three years of the Program, CVC QS holders will not be able to withhold their Class B IFQ from conversion to Cooperative IFQ when they join a cooperative because no Class B IFQ will exist for CVC QS holders. Therefore, if a CVC QS holder wishes to join a cooperative in any crab fishery during the first three years of the Program, he or she must commit all of his or her IFQ for that crab fishery to that cooperative.

Nonetheless, NMFS believes that allowing CVC QS holders to withhold their Class B IFQ from submission to a crab harvesting cooperative will allow for greater flexibility in fishing those shares and provides the greatest advantage to skippers and crew. Under this rule, the regulations have been clarified at § 680.21(a)(1)(iii)(B) to permit CVC QS holders to withhold their Class B IFQ from submission to a crab harvesting cooperative for use as individual IFQ when joining a crab harvesting cooperative after the third year of the Program.

*Comment 99:* The application of a 10 percent criterion to crab harvesting cooperative membership is unreasonably restrictive, and as a result, the proposed rule runs counter to the key policy objectives of the rationalization program: improved conservation and safety, and increased economic efficiency. The Council could not have intended this result, and there is a strong argument to be made that the

antitrust laws do not require such restrictive criteria, and in fact, that the 10 percent criterion, as applied in the manner provided in the proposed rule, would inhibit, not protect, competition.

This overly restrictive criterion for affiliation unduly limits the formation of crab harvesting cooperatives in the following ways: The effect of the 10 percent criterion will be to prohibit harvesters from participation in crab harvesting cooperatives, if they enter into agreements to invest in PQS; Holders of Class B IFQ who engage in custom processing of that IFQ with their own company, or are affiliated with an entity doing custom processing, including live crab sales, would be prohibited from participation in crab harvesting cooperatives; Holders of harvester QS who invest in any amount of PQS will be restricted to the issuance of only Class A IFQ, and forego market leverage opportunities of Class B IFQ; Under the 10 percent criterion, processors will realistically only be able to transfer or sell PQS to other processors. This will encourage consolidation of PQS among the existing processors and eliminate opportunities for harvester investment in PQS.

The Proposed Rule should allow for affiliated QS holders to participate in non-FCMA "operational cooperatives" for purposes of economic efficiency, but affiliated QS holders should be prohibited from participation in price formation negotiations.

*Response:* Amendment 18, clearly establishes that four unique entities may join to form a crab harvesting cooperative with the requirement that "entities must be less than 10 percent common ownership without common control." The decision to measure affiliation as a linkage between two or more entities with a 10 percent or greater common ownership interest is discussed in NMFS's response to comment 25. As discussed in the response to comment 84, NMFS has modified the final regulations to allow persons affiliated with PQS and IPQ holders to join crab harvesting cooperatives, provided that they are "unique entities" according to the standard set forth in Amendment 18 and under this rule.

The unique entity rule applies to the formation of crab harvesting cooperatives. For purposes of collective negotiation under the Arbitration System, only cooperatives formed under the FCMA may collectively negotiate. The Arbitration System does not permit "affiliated" IFQ holders to participate collectively in an FCMA cooperative for purposes of collective negotiation. Therefore, a crab harvesting cooperative

of IFQ holders without "affiliations" to PQS/IPQ holders that forms under the requirements of the FCMA could collectively negotiate, but a crab harvesting cooperative with affiliated IFQ holders could not collectively negotiate for purposes of the Binding Arbitration procedure under the Arbitration System.

*Comment 100:* Waiving the owner on board provision for C shares within a crab harvesting cooperative as outlined in the proposed rule at § 680.21(d)(4) greatly facilitates the use of those shares in a crab harvesting cooperative as long as the definition of "active participant" is attached to all CVC and CPC QS initially issued and subsequently transferred. "Active participant" means recent participation in a rationalized crab fishery in the 365 days prior to the use of the CVC or CPC IFQ. Class C shares should be kept "on the vessel" so that they not get locked up "on shore," which would happen if the owner on board requirement were dropped in a crab harvesting cooperative without requiring the C share holder to be an active participant in the fisheries. Dropping the owner on board requirement for C shares when in a crab harvesting cooperative greatly improves flexibility for the C share holder, especially in the case of small distant fisheries like St. Matthew blue king crab where, in the case of a small TAC, only a few boats may participate and it may be impossible to accommodate all the C share IFQ holders. Dropping the owner on board requirement in a crab harvesting cooperative will also reduce the burden put on the agency for tracking and managing CVC and CPC IFQ as a separate and distinct type of IFQ in the crab harvesting cooperative. If the active participant requirement were made the sole requirement for holders of CVC or CPC QS in a crab harvesting cooperative, then the CVC or CPC QS holder would only have to provide proof at the time of application for that season's IFQ that they had made a landing in a rationalized crab fishery in the past 365 days, reducing the workload on NMFS management and enforcement during the fishery itself.

*Response:* See response to comment 96. Amendment 18 does not include any exemptions from the owner on board requirement. NMFS agrees with the Council that CVC and CPC QS used in a crab harvesting cooperative is subject to owner on board requirements to be consistent with Amendment 18. NMFS also recognizes that the Council considered CVC and CPC QS owner on board requirements fundamental to supporting active participation in the crab fisheries. The final rule clearly

provides, at § 680.42(c)(5), that all CVC or CPC QS holders must be on board the vessel at all times when harvesting his or her CVC or CPC IFQ.

Nonetheless, NMFS does not agree that the proposed “active participant” designation alone would sufficiently prevent CVC and CPC QS from being fished in a crab harvesting cooperative by absentee owners. Active participation in the BSAI crab fisheries is demonstrated by a landing in a crab fishery in the last 365 days. Documentation of “active participation” includes an ADF&G fish ticket, an affidavit from the vessel owner, or other verifiable documentation. This would allow for an individual to be on board the vessel for a single landing in any given year and remain an absentee owner for the remainder of the year.

*Comment 101:* Because permitting affiliated crab harvesting cooperatives to hold Class B IFQ issued on the basis of membership in the cooperative by non-affiliated harvesters could result in IPQ holder control over Class B IFQ, non-FCMA crab harvesting cooperatives with affiliated members should not be permitted to hold Class B IFQ. Even if a non-FCMA crab harvesting cooperative limits its activity to harvesting allocation, that harvesting allocation function could permit a non-affiliated harvester to assign his or her Class B IFQ to an affiliated harvester, in direct contravention of the Council motion and the fundamental purpose of the Class A/Class B IFQ distinction.

*Response:* Amendment 18 does not preclude the ability of persons affiliated with PQS or IPQ holders from holding Class B IFQ. Prohibiting the issuance of Class B IFQ to a crab harvesting cooperative if it has members who are affiliated with an IPQ or PQS holder is not appropriate given the lack of restriction on affiliated entities that do not join crab harvesting cooperatives. Class B IFQ is not issued to individual members in a cooperative, but rather is issued to the crab harvesting cooperative as a single entity, and the specific use of Class B IFQ by members of a crab harvesting cooperative is determined by internal contractual agreements among members. If a crab harvesting cooperative operates in a manner that results in a violation of antitrust laws, DOJ has the ability to investigate any claims.

The goal of the Class B IFQ allocation is to provide additional negotiating leverage for harvesters when it comes to price negotiation with IPQ holders for their Class A IFQ. Joining a crab harvesting cooperative is a voluntary arrangement and parties to that arrangement should be aware of the

affiliations of the other members of the cooperative. If a person does not want to join a crab harvesting cooperative with affiliated IFQ holders out of concerns about potential use of Class B IFQ by the crab harvesting cooperative, that person does not have to join the crab harvesting cooperative, or could establish private contractual arrangements with other crab harvesting cooperative members concerning the use of the person's Class B IFQ. Allowing affiliated IFQ holders to join crab harvesting cooperatives is not in direct contravention to Amendment 18.

*Comment 102:* Why are CPs exempt from the processor restrictions on cooperative formation and able to fully benefit from rationalization? The answer seems to be that the proposed rule only considered antitrust risk at the point of ex-vessel pricing. Catcher processors are processors and in the AI golden king crab market, they have sufficiently large market share in which collusive marketing behavior could adversely affect the consumer. However, CPs also buy crab from catcher vessels. So, the fact that CPs can join FCMA cooperatives is a double standard. Shoreside processors must pass the standard of zero risk of potential collusion in the ex-vessel market or the first-wholesale market, while at-sea, vertically integrated CPs must pass a lesser standard of no likely price collusion at first-wholesale. Catcher processors need two limited antitrust exemptions: (1) Downstream wholesale pricing, especially in WAI golden crab, where CPs process a majority of the harvest and could adversely impact consumers, and (2) ex-vessel price formation with “over-the-side” purchases. The regulations should be consistent in their treatment of all processors, unless Amendment 18 explicitly differentiates between on-shore processors and CPs.

*Response:* The decision to exclude PQS and IPQ holders from crab harvesting cooperatives but permit CPs to join crab harvesting cooperatives stemmed from the proposed requirement that crab harvesting cooperatives be FCMA cooperatives. As stated in the preamble to the proposed rule, NMFS proposed to prohibit PQS and IPQ holders (or those affiliated with persons that hold PSQ or IPQ) from membership in crab harvesting cooperatives because, at the time of the issuance of the proposed rule, NMFS determined that, while there was some legal uncertainty, there was a significant risk that a crab harvesting cooperative with such members would fail to meet the requirements for FCMA cooperatives and thereby lose the antitrust immunity

provided by the FCMA. The proposed rule did not prohibit CPs from membership in FCMA crab harvesting cooperatives because the risk of inconsistency with the FCMA was less certain. NMFS has revised the regulations regarding crab harvesting cooperative formation by removing the FCMA requirement for crab harvesting cooperatives and permitting affiliated harvesters to join crab harvesting cooperatives, and has provided additional advice for reducing potential antitrust risk (*see* response to comment 84). These changes should eliminate any perceived disparity between the requirements imposed on CPs in relation to those imposed on shoreside processors regarding antitrust risk and participation in crab harvesting cooperatives.

NMFS does not have the statutory authority to impose the limited antitrust exemptions contained in the comment. Furthermore, section 313(j)(6) of the Magnuson-Stevens Act states that nothing in the Magnuson-Stevens Act constitutes either an express or implied waiver of the antitrust laws of the United States.

*Comment 103:* The proposed rule at § 680.21(b)(4) and (5) provides for “all or nothing” membership by a harvester in a single cooperative, thus prohibiting membership in multiple cooperatives in different fisheries. Restricting membership to only one cooperative will limit the ability of participants to achieve efficiencies. Additionally, benefits from leasing across cooperatives are not likely to be as large as membership in multiple cooperatives. This provision should be replaced with a provision that allows one cooperative per fishery or one cooperative per fishery and region to allow harvesters to more efficiently and safely harvest their IFQ.

*Response:* After extensive public comment and further consideration, NMFS has determined that QS holders may participate in more than one crab harvesting cooperative. NMFS initially determined that because the Program would allow unrestricted leasing between crab harvesting cooperatives, each cooperative would be free to focus on harvesting IFQ for the fisheries of its choice and through leasing would achieve the same benefits as allowing QS holders to join multiple cooperatives. NMFS now understands that QS holders would not be able to achieve the same level of efficiency by leasing as they would through joining multiple crab harvesting cooperatives. Additionally, NMFS initially determined that allowing QS holders to join multiple cooperatives would result



in an administratively unmanageable system. NMFS has since developed a method for simplifying the administration of multiple crab harvesting cooperatives.

NMFS also was concerned that if membership were allowed in more than one crab harvesting cooperative it would be easy for QS holders to allocate a nominal amount of IFQ to a crab harvesting cooperative and effectively result in single member crab harvesting cooperatives that undermine the Council's intent for a minimum membership of four entities. In the final rule, NMFS is requiring a QS holder to commit all of his or her QS holdings for a particular fishery for conversion to cooperative IFQ upon joining a cooperative in that fishery. NMFS has concluded that this requirement will deter the nominal donation of IFQ and subsequent formation of single member crab harvesting cooperatives.

Furthermore, NMFS was concerned that bycatch may increase if single-species crab harvesting cooperatives were formed because the crab harvesting cooperative would have to discard all legal crab species for which the cooperative did not possess IFQ. NMFS remains concerned about potential bycatch, but has concluded that diverse QS ownership by members in crab harvesting cooperatives and the ability to lease between crab harvesting cooperatives will help reduce potential bycatch concerns. Finally, NMFS was concerned that crab harvesting cooperative management would be diluted by members who have joined multiple cooperatives resulting in reduced effectiveness managing the harvesting of the cooperative's IFQ. By limiting crab harvesting cooperative membership by fishery, NMFS has concluded that it has sufficiently reduced the potential for membership dilution and has been convinced by public comment that multiple cooperatives can be effectively managed by their members.

Therefore, NMFS has been persuaded by public comment that the reasons articulated in the proposed rule preamble as to why QS holders may only join one crab harvesting cooperative are no longer valid. NMFS has revised the final rule at § 680.21(a)(1)(iii) to permit crab harvesting cooperative membership by a QS holder to one crab harvesting cooperative per fishery. A minimum standard of one crab harvesting cooperative per fishery is necessary to balance NMFS' desire to reduce administrative burden while continuing to allow participants to realize the efficiency benefits of cooperatives.

However, NMFS continues to require that all of a QS holder's IFQ for any fishery must be committed to the crab harvesting cooperative they wish to join. For instance, if a QS holder holds 10 units of IFQ in the Bristol Bay Red (BBR) king crab fishery and 20 units of IFQ in the Western Aleutian golden (WAG) king crab fishery and wishes to join a crab harvesting cooperative in the WAG fishery, he or she must commit all 20 units of WAG IFQ to the WAG crab harvesting cooperative he or she chooses to join. The QS holder may choose to fish his or her BBR IFQ independently or may commit all 10 units of BBR IFQ to a cooperative in the BBR fishery. Therefore, NMFS revised the final rule at § 680.21(a)(1)(iii)(B) to permit QS holders to join one crab harvesting cooperative per fishery, but it requires QS holders to commit all their IFQ to the crab harvesting cooperative in the fishery that they wish to join.

NMFS rejected further restrictions on crab harvesting cooperative membership by region because complicated crab harvesting cooperative relationships based on regional differences may unnecessarily hinder the efficiencies that NMFS is attempting to achieve with multiple crab harvesting cooperatives. Individual crab harvesting cooperatives must ensure compliance with the appropriate regional delivery requirements of crab harvesting cooperative IFQ.

*Comment 104:* The regulations should allow QS holders to be members, simultaneously, of different cooperatives in different fisheries or in the same fisheries in order to maximize economic efficiency and achieve other benefits.

*Response:* See response to comment 103. NMFS has determined that one cooperative per fishery will achieve a balance between minimizing administrative burden while continuing to allow participants to realize the efficiency benefits of crab harvesting cooperatives. NMFS also has determined that one crab harvesting cooperative per fishery is consistent with statutory and Council intent. However, NMFS has determined that membership in multiple crab harvesting cooperatives within a single fishery would result in an administrative burden that outweighs any additional corresponding efficiency benefits to the industry. NMFS has revised the regulations in the final rule to limit QS holders to membership in one crab harvesting cooperative per fishery.

*Comment 105:* The proposed rule at § 680.21(e)(3) provides that all members of a cooperative are liable for violations of any individual member. What kinds

of violations are swept up in this? The Council's intent was to hold all members of the cooperative accountable for violations like exceeding caps, bycatch, etc., not, for example, a personal violation, like a crewmember retaining undersized crab for personal consumption. Nor did the Council intend that one individual's failure to comply with the economic and social data requirements be applied to all members. This accountability needs to be clarified and brought into compliance with Council intent.

*Response:* NMFS has determined that the provision for crab harvesting cooperative joint and several liability as presented in the proposed rule is consistent with the Magnuson-Stevens Act and Council intent. NMFS was directed by statute that monitoring and enforcement of harvest allocations will be at the crab harvesting cooperative level and that crab harvesting cooperative members will be jointly and severally liable for the actions of the crab harvesting cooperative. This means that any violation by any member of a crab harvesting cooperative will be subject to joint and several liability. Joint and several liability means each liable party is individually responsible for the entire obligation, although the parties may decide among themselves how to apportion a particular penalty.

For instance, if NMFS finds an individual cooperative harvester retaining undersized crab, depending on the facts of the case, the harvester and the crab harvesting cooperative may both be the subjects of an enforcement action.

However, payment of fees and submission of an EDR are application requirements that must be completed before a PQS or QS holder may receive IPQ or IFQ. Any QS holder must first receive his or her IFQ before he or she can dedicate that IFQ to a crab harvesting cooperative. A complete application includes the submission of an EDR and payment of any fees. Applications for IFQ must also be timely to be considered by NMFS. If an individual does not receive his or her IFQ because they failed to submit a complete and timely application, no IFQ will exist for that person to convert into crab harvesting cooperative IFQ. Submission of a complete and timely application is not a matter of joint and several liability, but is a matter of individual responsibility and permit administration.

*Comment 106:* The proposed rule, at § 680.21(b)(2), does not apply a standard for a crab harvesting cooperative to reject any QS holder. Because a QS holder loses the benefits of QS

consolidation, leasing after five years, and elimination of the vessel cap, a change needs to be made to the regulations so that private persons may not deny a government benefit to a QS holder. One possibility would be a default cooperative, that any QS holder could join.

*Response:* Amendment 18 clearly directs that membership in crab harvesting cooperatives is voluntary. The term "voluntary" is generally defined as unconstrained by interference or not impelled by outside influence. Consistent with this definition, NMFS did not impose any regulations for membership requirements regarding crab harvesting cooperatives. NMFS took a minimalist approach and determined that no QS holder is required to join a crab harvesting cooperative to receive or harvest IFQ and no crab harvesting cooperative is required to accept a member as a QS holder that the crab harvesting cooperative does not wish to admit. Therefore, the regulations do not address any requirements for acceptance or denial regarding crab harvesting cooperative membership.

If a crab harvesting cooperative denies membership to a person, it is not a denial of a government benefit, but is simply a denial of membership to that person by that crab harvesting cooperative. The government benefit of participation in a crab harvesting cooperative continues to be available to any person regardless of whether the person joins or is rejected from a crab harvesting cooperative. NMFS anticipates that many crab harvesting cooperatives will exist for each fishery. A person rejected by one crab harvesting cooperative could continue to solicit other crab harvesting cooperatives for admission. Given the voluntary nature of crab harvesting cooperatives and the large number of crab harvesting cooperatives that NMFS anticipates will exist for each fishery under the Program, NMFS has determined that the creation of a NMFS sanctioned "default crab harvesting cooperative" is unnecessary.

*Comment 107:* The regulations require a minimum of four unique QS-holding entities for the formation of a crab harvesting cooperative, but do not clearly state that C share holders are considered "unique entities" for the purposes of crab harvesting cooperative formation. Each QS holding individual should be considered a unique entity, whether or not that individual holds some interest in a commonly held corporation. The final rule should clarify that C share holders are considered "unique entities" for the

purposes of crab harvesting cooperative formation.

*Response:* NMFS proposed that any QS holder, including CVC and CPC QS holders, could be considered "unique entities" for the purposes of crab harvesting cooperative formation and has continued this provision in the final rule. However, whether a CVC or CPC QS holder is a "unique entity" for purposes of meeting the minimum requirement of four unique entities for crab harvesting cooperative membership depends on whether the CVC or CPC QS holder is "affiliated" with another entity seeking membership in the same crab harvesting cooperative. If a CVC or CPC QS holder is "affiliated" with another entity seeking membership in the same crab harvesting cooperative, then NMFS will consider the CVC or CPC QS holder and the affiliated entity as representing only one unique entity. Conversely, if a CVC or CPC QS holder is not "affiliated" with any other entity seeking membership in the same crab harvesting cooperative, then NMFS will consider the CVC or CPC QS holder as one unique entity. NMFS has revised the definition of "affiliation" in section 680.2 to clarify that any individual QS holder, including CVC and CPC QS holders, qualify as unique entities for the purposes of crab harvesting cooperative formation provided they are not considered "affiliated."

#### *Community Protection Measures*

*Comment 108:* NMFS is giving away the fisheries resources forever to corporate interests outside of the Aleutians, including Japanese corporate interests with lobbying ties to Washington, DC. This amounts to economic genocide and strips local residents of economic opportunity that would provide them with the ability to continue to live in the region.

*Response:* Allocating QS to fishery participants is a provision of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions as specified in Amendment 18. Additionally, the Program contains provisions to allocate the crab resources to Alaskan communities, including communities in the Aleutian Islands. The CDQ allocation increased from 7.5 percent to 10 percent of the TAC, and the CDQ crab species are increased to include Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab. Adak will be allocated 10 percent of the Western Aleutian Islands golden king crab fishery, and 50 percent of this fishery must be processed in Adak. These provisions provide local residents with economic opportunities

in the BSAI crab fishing industry to support their ability to live in the region.

*Comment 109:* The Council motion outlines the terms that should govern the management of the Adak allocation of WAI brown king crab. No provision is made in the regulations for management of that allocation.

*Response:* NMFS regulations define the Adak community entity at § 680.2 and provide for the allocation of 10 percent of the TAC of Western Aleutian Islands golden king crab to the Adak community entity at § 680.40(a).

With respect to management or oversight of the use of this allocation by the Adak community entity, Amendment 18 states, in part, a "set of use procedures, investment policies and procedures, auditing procedures, and a *city or state oversight mechanism* [emphasis added] will be developed. Funds collected under the allocation will be placed in a separate trust until the above procedures and a plan for utilizing the funds for fisheries related purposes are fully developed. Funds will be held in trust for a maximum of 2 years, after which the Council will reassess the allocation for further action \* \* \*. Use CDQ type management and oversight to provide assurance that the Council's goals are met. Continued receipt of the allocation will be contingent upon an implementation review conducted by the *State of Alaska* [emphasis added] to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan."

NMFS interpretation of Amendment 18 is that the State of Alaska is primarily responsible for oversight of the use of the allocation for fisheries related purposes. Therefore, oversight of the use of the allocation by the Adak community entity for "fisheries related purposes" is deferred to the State of Alaska under the FMP. The FMP contains the Council's motion about oversight of the Adak allocation to provide specific direction to the State. NMFS will have no direct role in management or oversight of the use of the allocation and NMFS will not direct the State through Federal regulations about how to conduct its oversight responsibilities. The State will implement State regulations that are consistent with the FMP. Any persons believing that the State is acting inconsistently with the FMP may follow the appeal procedures in the FMP or raise the issue with the Council and request regulatory action to further clarify or define the State's oversight role.

In addition, the FMP directs the State to conduct an implementation review for the Council to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan. The Council's motion did not specify when this implementation review should be conducted. Therefore, it will be up to the Council and the State to determine an appropriate time for this review to be presented to the Council.

*Comment 110:* The proposed rule § 680.40(m) and § 680.41(c) and (d) incorrectly revised the rules of the right of first refusal. The motion clearly identifies the terms of the right of first refusal.

*Response:* NMFS agrees and the final rule has been revised from the proposed rule to remove § 680.40(m) and to reference the civil contract terms for the establishment of ROFR as set forth at section 313(j) of the Magnuson-Stevens Act. A list of contract terms is available from the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>. This approach ensures consistency with Amendment 18 and is appropriate because NMFS would not monitor or enforce these contract terms.

Regulations at § 689.41(c) and (d) have been revised to more closely reflect Council intent regarding the discretion of an ECC to designate an ECC entity and enter into civil contracts for ROFR.

*Comment 111:* The rationale for having both ECCOs and ECC entities is not clear. The ECCO seems to be the entity that holds shares for a community, while the ECC entity has the right of first refusal. The Council motion contemplates a single entity to serve both of these purposes. In addition, it is unclear that one entity would have the ability to exercise a ROFR, but not be able to take possession of shares on the exercise of that right. In addition, given the administrative burden of the program, it is unclear why the agency would like to oversee additional entities/organizations. The final rule should establish a single entity to hold the right of first refusal and any community shares.

*Response:* NMFS disagrees that Amendment 18 states that a single entity would serve both the ECCO function for purchase and holding of QS and the ECC entity function of representing a non-CDQ ECC in the exercise of ROFR. Amendment 18 states: "Ownership and management of harvest and processing shares by community entities in non-CDQ communities [ECCOs] will be subject to rules established by the halibut and sablefish community purchase program." This

"program" refers to the regulations established under Amendment 66 to the FMP for Groundfish of the GOA for the restrictions associated with the designation of an ECCO, including the requirement that these organizations be non-profit. No such restrictions were set forth in Amendment 18 for an ECC entity. While an ECCO could also serve as an ECC entity, an entity designated by an ECC to represent it in the exercise of ROFR may not meet the conditions and criteria for an ECCO. Thus, an ECC that wishes to purchase QS and designate an ECCO for that purpose could also designate the ECCO as its ECC entity for purposes of ROFR, but is not required to do so.

*Comment 112:* The requirement of a ROFR contract at the time of application at § 680.40(f)(3) and (7) is inconsistent with the Council motion. PQS applicants need to enter the contract only if the ECC entity is designated by a time certain. Instead, applicants for PQS should provide notice to an eligible community that they intend to apply for PQS that could be subject to a ROFR. If the community notifies the agency and the PQS applicant that it has formed an entity (and provides contact information for the entity) the PQS allocation would be made only on completion of the contract establishing the terms of ROFR. If the contract is not executed, the parties could seek remedies in civil court to the extent necessary.

*Response:* NMFS agrees and has changed the final rule to reflect that the designation of an ECC entity is a choice and not a requirement. Only if such a designation is made within 30 days prior to the ending date of the initial application period for crab PQS (§ 680.41(l)) would an ECC have opportunity to exercise ROFR in the future.

*Comment 113:* The contract terms for ROFR at § 680.40(m) are not those in the Council motion. A cleaner approach would be to just copy the Council motion, rather than reinterpret it.

*Response:* NMFS agrees and has removed § 680.40(m) from the final rule and cross referenced section 313(j) of the Magnuson-Stevens Act concerning civil contract terms for ROFR as statute provisions under § 680.40(f)(3). See also response to comment 110.

*Comment 114:* For purposes of implementing the ROFR at § 680.40(m), "movement of shares from a first or second class city, if one exists, and borough, if a first or second class city does not exist," constitutes "movement of shares from the community". Note that this differs from the cooling off period. Clarify provisions that apply to

movement of PQS/IPQ from the community.

*Response:* See response to comment 110. The final rule also has been revised to clarify that the definition of "community" for purposes of movement of PQS/IPQ during the cooling off period has been added to the final rule at § 680.42(b)(4) to differentiate these restrictions from the movement of PQS/IPQ for purposes of ROFR after the cooling off period (see response to comment 136 for additional information on the application of community for the cooling off period.)

*Comment 115:* The provision at § 680.40(m)(2) states that "any sale must be provided on the same terms" to the EEC entity. This wording is not a complete description of the right of first refusal, since the ability to exercise the right applies for a limited period and is exercised by performing the terms, not receiving an offer. Use the language from the motion.

*Response:* NMFS agrees. See response to comment 110.

*Comment 116:* Since ROFR applies to IPQ, the provision at § 680.40(m)(6) should be broadened to include waivers with respect to IPQ. Since ROFR applies to IPQ, the provision at § 680.40(m)(7) should be broadened to include ROFR with respect to IPQ, under the terms of the motion.

*Response:* NMFS agrees. See response to comment 110.

*Comment 117:* It is unclear at § 680.41(c)(3)(i) and (ii) whether the ECCO can hold and transfer PQS. The ECCO should be able to hold and transfer both QS and PQS. Clarify that ECCOs can hold PQS.

*Response:* NMFS agrees that an ECCO can hold and transfer both QS and PQS. Any person, including an ECCO, may apply to receive and hold PQS or IPQ by transfer. The final rule at § 680.41(c)(1)(i) makes this clear. Restrictions exist, however, on who can purchase QS and special provisions for transfer to and holding of QS by an ECCO must therefore be set forth in regulations.

*Comment 118:* The provision at § 680.41(c)(3)(i) and (ii) states that each ECC *must* designate an ECCO. The rationale for this absolute requirement is unclear. Communities have the option of designating an ECC entity, but would waive the ROFR and not be permitted to use the community purchase privilege, if they chose not to. "Must" should be changed to "may".

*Response:* The commenter is confusing ECCO provisions for the purchase of QS with ECC entity provisions for purposes of exercising ROFR. NMFS agrees that a non CDQ

ECC is not required to designate either an ECCO for purposes of purchasing and holding PSQ, IPQ or QS or an ECC entity to exercise ROFR. The final rule at § 680.41(l)(2)(ii) provides a 30-day time limit within which an ECC must designate an ECC entity if it wishes to do so. If an ECC entity is not designated, then opportunity for ROFR by the ECC is permanently waived.

*Comment 119:* The provision at § 680.41(d)(2)(i)(C) requires a statement from an authorized representative of a community that the ROFR has been offered on sale of shares outside a community. Several aspects should be clarified here. First, a signature from an authorized representative is too strict of a requirement. A provision that requires a PQS/IPQ holder that is subject to ROFR to provide notice to ECC entity (and the agency) of the sale is all that should be included here. Otherwise, reluctance to sign the authorization could lead to a delay in the transaction despite proper notice of the sale.

Second, the notice is only required if the sale meets the requirements for the ROFR (*i.e.*, some transfers do not trigger the ROFR). Intra-company transfers, transfers for use in the community, and some transfers of IPQ are not subject to the ROFR. This is not clear from the way the provision is drafted.

Third, somewhere in the regulation the process of completing a sale on which the ROFR is exercised should be stated. Under the Council motion, the ECC entity should notify the PQS/IPQ holder (and agency) of its intent to exercise ROFR (and evidence of its earnest money payment). Then regulations should require confirmation of performance for the agency to finish the transaction. The rule should be changed to only require notice of the transaction to the holder of the ROFR if the proposed transfer is subject to the ROFR. Regulations should be revised to better define the process for exercising ROFR.

*Response:* NMFS agrees and has changed the final rule at § 680.41(h)(2)(i)(C) to clarify that a holder of PQS/IPQ who wishes to transfer any PQS or IPQ subject to ROFR for use outside an ECC that has designated an entity to represent it in exercise of ROFR, must include an affidavit in the application for transfer stating that notice of the desired transfer has been provided to the ECC entity under civil contract terms enacted under section 313(j) of the Magnuson Stevens Act. The final rule at § 680.41(i)(8) and (9) also has been revised to clarify the process for approval of a transfer application subject to ROFR. In summary, the

Regional Administrator will not act upon the application for a period of 10 days. At the end of that time period, the application will be approved pending meeting the general criteria for transfer of PQS or IPQ under § 680.41(i), unless a court order is issued to NMFS to prohibit transfer based on a breach of civil contract terms referenced under § 680.41(f)(3). A 10-day stand down period by NMFS before approval of a transfer should allow sufficient time for an aggrieved signatory to a civil contract for ROFR to obtain a court order to stop a transfer of PQS/IPQ subject to ROFR so that contract terms may be fulfilled through civil court proceedings.

In the case of an application for transfer of PQS within an ECC that has designated an entity to represent it in exercise of ROFR, the Regional Administrator will not approve the application unless either the ECC entity provides an affidavit to the Regional Administrator that the ECC wishes to permanently waive ROFR for the PQS or the proposed recipient of the PQS provides an affidavit affirming the completion of a contract for ROFR that includes the terms enacted under section 313(j) of the Magnuson Stevens Act.

*Comment 120:* The community of Adak does not receive the ROFR. It should be expressly excluded from ROFR at § 680.41(j)(1)(ii).

*Response:* NMFS agrees that the community of Adak is not eligible for exercise of ROFR and noted that elsewhere in the regulations. The suggested regulatory clarification has been made to the final rule.

*Comment 121:* The community does not need to designate an ECC entity. If they do not the ROFR is waived. Change “must” to “may” at § 680.41(j)(2)(ii).

*Response:* NMFS agrees that under Amendment 18, an ECC is not required to designate an entity to represent it in the exercise of ROFR and has changed the final rule at § 680.41(l)(2) to clarify that such a designation is discretionary. Any such designation must be made at least 30 days prior to the ending date for the initial application period for crab PQS. If an eligible ECC does not designate an entity within that time period, opportunity to exercise ROFR for transfer of PQS or IPQ will be permanently waived. NMFS notes that an ECC that is also a CDQ community is not required to designate an ECC entity because Amendment 18 specifically states that the CDQ group to which that ECC is a member also will be the ECC entity in the exercise of any ROFR. See also response to comment 111.

*Comment 122:* Requiring the ECC entity to be a signatory to the transfer at § 680.41(j)(3) is inappropriate and should be removed. A ROFR only requires notice and the opportunity to exercise the right. It may be useful to have PQS holders submit an annual report identifying the amount of IPQ that it used in a community during the year and if used outside a community, who used the IPQ (which would be used to determine whether the ROFR would apply to a future transaction). Require that the transferor provide evidence of notice to the ECC entity.

*Response:* NMFS agrees that an ECC entity does not need to be a signatory to the transfer of PSQ or IPQ and has changed the final rule accordingly; see response to comment 119. To the extent that information on the use of IPQ within and outside an ECC can be publically released under federal and state data confidentiality standards, NMFS will plan to do so on an annual basis. This commitment does not require a regulatory provision.

*Comment 123:* The proposed provision at § 680.41(j)(4) seems to confuse the process of passing on the ROFR to a successor. If the transfer is within the ECC, the recipient of the PQS would need to sign a contract granting the ROFR to the ECC organization (not “exercising the right”) and agree to terms concerning the use of the shares in the community in future years. In addition, the ECC entity need not have signed the contract on application. The submission of the contract signed by the recipient of the shares will allow the agency to deliver the contract to the ECC entity for signature. If the ECC entity does not sign the contract the ROFR would be waived. Revise process for intra-community transfers consistent with the Council motion.

*Response:* The final rule at § 680.41(i) clarifies the process for transfer of PSQ within an ECC. See response to comment 119. The final rule at § 680.40(f)(3) also was revised to clarify the role of a civil contract for ROFR in the PQS application process. NMFS will not be involved in the completion of these civil contracts. Instead, an application for crab QS or PQS from a person based on legal processing that occurred in an ECC, other than Adak, must also include an affidavit signed by the applicant stating that notice has been provided to the ECC of the applicant's intent to apply for PQS 60 days prior to the end of the application period. If the ECC designates an entity to represent it in the exercise of ROFR in the designated time period, then the application also must include an affidavit of completion of a contract for

ROFR that includes the terms enacted under section 313(j) of the Magnuson Stevens Act. The affidavit must be signed by the applicant for initial allocation of PQS and the ECC entity designated under § 680.41(l)(2). Also see responses to comments 121 and 112.

*Comment 124:* The provisions at § 680.41(j)(5) defining the ROFR in the North Gulf need to limit the ROFR to the same terms generally as the general ROFR. This means that the ROFR applies only to the first transfer from the community of origin. These terms are not clear in the current regulation. Revise regulation consistent with the Council motion.

*Response:* The final rule at § 680.40(f)(3)(ii) has been revised to clarify that the civil contracts between the ECC (only the ECC comprised of the City of Kodiak and Kodiak Island Borough is eligible) and applicants for PQS based on legal processing that occurred in the GOA north of a line at 56°20' N. lat. must adhere to the same terms for civil contracts established under section 313(j) of the Magnuson Stevens Act as the general ROFR contract agreements. Also see response to comment 110.

*Comment 125:* The cooling off provision allows IPQ to be used inside the borough, if one exists, and inside the first or second class city, if a borough does not exist. The provision at § 680.42(c)(5) appears to limit use of shares outside of the first or second class city in all cases. Revise provision to define boundaries based on Council criteria.

*Response:* NMFS agrees and has clarified the different definition of "community" to which the "cooling off" period applies at § 680.42(b)(4) that applies specifically to PQS/IPQ transfers during the cooling off period. See also response to comment 114.

*Comment 126:* An initial recipient of PQS (*i.e.*, a shore-based processor) must submit a signed community ROFR with his/her application. The proposed rule at § 680.40(f)(3) and (m), does not address what happens if a community fails to establish an entity to negotiate the community ROFR, or otherwise fails to consummate a ROFR deal with the processor during the application period. There is no remedy for the PQS holder, which runs the risk of losing IPQ for the crab year. The Council anticipated this situation and incorporated language in Amendment 18 that states an ECC (both CDQ and non-CDQ) must establish the entity to negotiate the ROFR prior to the application period; otherwise that community loses its ROFR rights. If an ECC does not establish an appropriate entity within 60 days of the initial

application period, that community loses its ROFR rights.

*Response:* NMFS agrees and has changed the final rule accordingly. See response to comments 121 and 111.

*Comment 127:* The proposed rule's "affiliation" standard adversely impacts CDQ groups and eliminates Council-intended community protection. Most, if not all CDQ groups invested in crab harvesting assets, either as partners or sole owners, following passage of the June 10, 2002, Council motion. They did so cognizant of the fact that the motion assigns CDQ groups the community ROFR rights for PQS earned in their communities, as a form of community protection. But the proposed rule's narrow definition of "affiliation" undermines the community protection from ROFR rights. ROFR rights are rendered meaningless if a CDQ group exercises its ROFR rights and purchases processing assets to keep them in the community. The CDQ crab harvesting investments become "processor-affiliated." Those CDQ vessels and all that may be indirectly affiliated with them lose their Class B IFQ. They may not join cooperatives under § 680.21. They lose all rationalization benefits, like the vessel cap exemption, leasing rights after 2010, and the right to lease IFQ from a cooperative. The Council never intended this benefit deprivation.

The Council anticipated these sorts of problems and established a context-specific definition of "affiliation." With regard to Class B IFQ, the definition focused on control of landings, not the 10 percent rule that is uniformly applied in the proposed rule. The proposed rule should be modified to reflect Council intent. An affidavit approach re-establishes a functional ROFR process; in the absence of it, ROFR is a meaningless right that offers no community protection.

*Response:* In response to other comments, NMFS has revised the final rule to allow processor affiliated vessels to join crab harvesting cooperatives and therefore to gain the benefits from participating in crab harvesting cooperatives. See response to comment 84. Further, the definition of "affiliation" under § 680.2 has been modified to allow crab harvesting cooperatives or other processor affiliated entities to receive Class A/Class B IFQ in amounts proportional to the amount of IPQ held by the person with whom the QS holder is affiliated. See response to comment 25 for a more specific discussion of this change.

*Comment 128:* The Council recognized CDQ organizations as the ECCO for CDQ communities, because CDQ organizations are already

established to buy, sell and lease QS and other assets in a manner consistent with the NPFMC's intent for this program. Therefore, the rationale for requiring at § 680.41 that a CDQ group apply on behalf of the ECC and also establish a separate ECCO is inefficient and perhaps even inconsistent with Council intent. CDQ groups are already authorized to hold shares for their community(s) and the NPFMC has also given the CDQ groups the right of first refusal. This suggests that the Council motion contemplates a single entity to serve both of these purposes.

*Response:* NMFS agrees that Amendment 18 contemplates that the CDQ group to which an ECC is a member would serve both as the ECCO for purposes of purchasing and holding PQS or QS and as the ECCO for purposes of ROFR. Given the nondiscretionary nature of this designation, CDQ communities do not need to identify either the ECCO or ECC entity because that ECCO or entity already is specified under the Council's motion and in regulations.

*Comment 129:* The requirement that a PQS applicant must submit a signed ROFR prior to PQS issuance at § 680.40(f)(3) and (f)(7) is not practical in cases where the ECC has not established an ECC entity within the appropriate time frame; or where the ECC entity has overstepped the Council's ROFR terms. The Council specified ROFR contract terms that should be incorporated into the proposed rule. These terms are specific, yet at the same time they do not pose any enforcement liability on the NMFS.

*Response:* The final rule at § 680.41(l) establishes time limitations for the designation of an ECC entity to represent a non CDQ ECC in the exercise of ROFR. Signed ROFR contracts will not be required to be submitted, only an affidavit that such a contract has been completed consistent with the terms set forth under the Council's motion. These terms have been removed from regulations at § 680.40(m) because they are already set forth specifically in statute and to avoid any inconsistency between regulations and statutory language. Additionally, these contract terms will not be monitored or enforced by NMFS. NMFS is requiring PQS holders to submit an affidavit attesting that the contract has been completed. Also see response to comment 112.

*Comment 130:* As an ECC, ROFR rights are very important to our community. But the proposed rule at § 680.41(d)(2)(i)(C) does not implement these rights in a manner that is both clear and consistent with the Council motion. We offer these suggestions:

The ROFR provision in the proposed rule requires a statement from an authorized representative of a community that the ROFR has been offered on sale of shares outside a community. This could be a problem. A provision that requires a PQS/IPQ holder that is subject to ROFR to provide notice to ECC entity (and the agency) of the sale is important and necessary; but the signature-requirement is not. An ECCO's reluctance to sign the authorization could lead to a delay in the transaction despite proper notice of the sale.

Also, the notice is only required if the sale meets the requirements for the ROFR (*i.e.*, some transfers do not trigger the ROFR). Intra-company transfers, transfers for use in the community, and some transfers of IPQ are not subject to the ROFR. The proposed rule needs to be more specific in this regard.

*Response:* NMFS agrees that the ROFR provisions of the proposed rule should be changed to more accurately reflect the intent of the Council and statute provisions of section 313(j) of the Magnuson Stevens Act. The final rule at § 680.41(h)(2)(i)(C) and (i)(8) reflects the recommended changes.

*Comment 131:* The ROFR requirement was approved by the Council to protect a crab community from losing its processing industry. The proposed regulation establishes a timetable that requires a ROFR contract be submitted prior to the award of PQS. This does not meet the intent of the Council and does not aid in the protection of the community. There may be occasions when the proper community entity simply cannot act in a timely fashion and the processor awaiting PQS is penalized by not receiving PQS due to circumstances completely beyond his control. We believe the regulation should be revised to require that the ROFR be fully executed prior to a holder of PQS completing a permanent sale of his PQS.

The proposed regulation also conflicts with Council intent in that it would require the community group or CDQ group to affirmatively reject the option to purchase. The Council motion required the exact opposite—the Council plan required a community group or CDQ group to affirmatively accept the option. The Council interpretation is critical because it requires the community to take action and will protect from community inaction for any reason. The ROFR requirement in the proposed regulation with regard to leasing is inconsistent with Council intent. The proposed regulation states that the ROFR is required if PQS is leased in excess of

one year. The Council test stated that the ROFR arises if the 80 percent of the PQS is leased in any three of five years. The regulation should be revised to reflect that original intent of the Council.

*Response:* The terms of a civil contract for ROFR have been removed from regulations at § 680.40(m), including the terms associated with leasing of PQS referred to in the comment, because these terms are enacted by statute. This approach also avoids any regulatory conflict with Amendment 18 concerning these terms and conditions. See also response to comment 113.

NMFS has changed the final rule at § 680.40(f)(3) and (f)(7) to require only that an affidavit be signed by the PQS applicant that a civil contract for ROFR has been completed. NMFS will not issue an IAD on unverified claims or issue PQS until such an affidavit is received. The final rule also has been changed so that an ECC entity would not be required to affirmatively reject an option to exercise ROFR. See response to comment 119.

*Comment 132:* Add the following definition for a non-profit to § 680.2 to clarify the phrase non-profit organization used in the regulations: Non-profit organization means: (1) An Alaskan municipal corporation in a non-CDQ ECC; or (2) a corporation organized under the Alaska Nonprofit Corporation Act. A municipal corporation is not a profit entity. This definition is consistent with the intent of requiring a non-profit organization to serve as the representative of an ECC and provide a community with the option of designating a municipal corporation as the non-profit organization EEC entity for the ECC.

In smaller communities, establishing a limited purpose non-profit entity for the ECC entity will be inefficient. For example, an additional volunteer board would need to be recruited, separate insurance, legal and accounting services would be required, and the rules for participation in the ECC entity and election and meeting procedures would need to be determined. Allowing a municipal corporation would avoid these inefficiencies because all of the organizational infrastructure is already in place within a municipal corporation. Moreover, publically elected officials, who operate in what they feel is in the best interest of the public, would be the final decision makers.

*Response:* Amendment 18 for community purchase and management of PQS and QS states: “\* \* \* Ownership and management of harvest and processing shares by community

entities in non-CDQ communities will be subject to rules established by the halibut and sablefish community purchase program.” This program was implemented under the final rule implementing Amendment 66 to the FMP for Groundfish of the GOA (69 FR 23861, April 30, 2004). The proposed and final rules implementing Amendment 18 for community purchase and management of crab QS and PQS are consistent with Amendment 66 provisions. Thus, NMFS believes that the commenter's suggestion is inconsistent with Amendment 18 and would require a subsequent FMP amendment to the Program in the future.

*Comment 133:* Section 680.40(f) makes it seem that the ROFR can be used on QS purchase and it should be clarified that ROFR can only be used on PQS and IPQ.

*Response:* NMFS agrees and has changed the final rule accordingly.

*Comment 134:* Clarify at § 680.41(j)(4) that ROFR does not apply for transfers of IPQ inside an ECC.

*Response:* The proposed and final regulatory text only refers to applicability of ROFR to transfer of PQS within a community to maintain the opportunity for ROFR contract provisions between an ECC entity and all PQS holders in the community. NMFS agrees that ROFR does not apply to the transfer of IPQ within a community because this activity only is an annual transfer that maintains processing history within the community. NMFS does not believe that regulatory changes are necessary to clarify this point.

*Comment 135:* The proposed rule at § 680.40(a)(1) stipulates that “with the exception of the WAI golden king crab fishery, the Regional Administrator shall annually apportion 10 percent of the TAC specified by the State of Alaska for each of the fisheries described in Table 1 to this part to the Western Alaska CDQ Program.” CDQ groups strongly support this above provision as a community protection measure under the Crab Rationalization program. The increase in CDQ allocations of Crab species from 7.5 percent to 10 percent is consistent with National Standard 8 of the Magnuson-Stevens Act. National Standard 8 includes the requirement that conservation and management measures, consistent with the conservation requirements of the Magnuson-Stevens Act, take into consideration the importance of fishery resources to fishing communities. This standard establishes the goals of providing for the sustained participation of those communities and of minimizing

adverse economic impacts to the extent practicable.

*Response:* The increase in the allocation of crab TACs to the CDQ Program and the addition of two new CDQ allocations for Eastern Aleutian Islands golden king crab and Adak red king crab are required by section 313(j) of the Magnuson-Stevens Act.

*Comment 136:* ROFR has distinct characteristics that differ between the "Cooling Off" period and after the cooling off period. This is not clear in the proposed rule. If the IPQ holder and the physical processor are in the same community, agency transfer approval should not be required and the activity should not count for purposes of community protections. We believe that the Council intended that use caps and community protections should not be circumvented by the use of custom processing arrangements. We also believe that the Council did not intend to require a formal agency transfer approval for custom processing arrangements in a single community.

*Response:* NMFS agrees. Amendment 18 clarifies that the "cooling off provision" would limit the transfer of PQS or IPQ outside of a community for the first two years of the Program. However, Amendment 18 defines a community for purposes of the "cooling off" provision as "the boundaries of the Borough, or if no Borough exists, the first class or second class city as defined by applicable state statute." NMFS incorrectly applied the same geographic boundaries to both the ROFR provisions and the "cooling off" provisions at § 680.42(b)(4). The commenter's concern is addressed by modifying § 680.42(b)(4)(iv) to clarify the geographic boundaries to which the "cooling off" provisions apply.

#### Arbitration System

*Comment 137:* The provisions in the proposed rule at § 680.20(h)(2)(ii)(B), (h)(3)(iii)(C), (h)(3)(iv)(D), and (h)(3)(v) permit IPQ holders to initiate arbitration. Only IFQ holders are permitted to initiate arbitration under the Council's arbitration program. The final rule should limit arbitration initiation to IFQ holders.

*Response:* NMFS agrees. Amendments 18 and 19 state that the Binding Arbitration procedures can be initiated by the Arbitration IFQ holder only. The reference to the IPQ holder initiating binding arbitration has been removed from § 680.20(h)(2)(ii)(B), (h)(3)(iii)(C), (h)(3)(iv)(D), and (h)(3)(v).

*Comment 138:* CVC QS holders should not be required to be in Arbitration Organizations in the first three years of the program, as required

in the proposed rule at § 680.20(a)(1). In Amendment 18, arbitration is optional for these share holders until July 1, 2008. They could elect to join the arbitration process by joining an Arbitration Organization, but should not be required to join. The final rule should make membership in Arbitration Organizations optional for CVC QS holders prior to July 1, 2008.

Additionally, the reference to paragraph (b)(1) at § 680.20(d)(1) of the proposed rule should be clear that CVC QS holders may (not must) join Arbitration Organizations prior to July 1, 2008.

*Response:* NMFS agrees. CVC QS and IFQ holders may participate in the Arbitration System, but are not required to do so prior to July 1, 2008. This interpretation is consistent with Amendments 18 and 19. NMFS has corrected the final rule at § 680.20(a)(1) and § 680.20(d)(1) to note that participation in the Arbitration System by CVC QS holders is not required prior to July 1, 2008.

*Comment 139:* The proposed rule at § 680.20(a)(2) should not limit negotiations to the preseason period. Although the process for arbitration states that negotiations should be conducted in the preseason, the purpose of that language is to define the matching of shares for purposes of the arbitration procedure. The regulation suggests that IFQ and IPQ cannot be used if parties do not reach a preseason negotiation. Nothing is lost in the arbitration process from allowing voluntary negotiations between holders of uncommitted shares to occur after the season is begun.

*Response:* Amendments 18 and 19 state that "at any time prior to the season opening date, any IFQ holders may negotiate with any IPQ holder on price and delivery terms for that season (price/price formula; time of delivery; place of delivery; etc.)." Although this statement could suggest that the open negotiation process was anticipated to be limited to the preseason period, the use of the word "may" as opposed to "must" would allow the process to extend beyond the preseason period. This statement is made under the general heading of "Last Best Offer Binding Arbitration." It is presumed that the limitation on the use of open negotiations would apply to persons who are using the negotiation methods that are established under the Arbitration System (*i.e.*, share matching and binding arbitration), but not necessarily to those IFQ and IPQ holders who are ineligible to use the Arbitration System or to those Arbitration IFQ holders that have not yet committed shares to a specific IPQ

holder. Under this revision, an Arbitration IFQ holder that has committed shares to a specific IFQ holder would not be permitted to reenter open negotiations as is expressed under Amendments 18 and 19. However, if an Arbitration IFQ holder has not yet committed shares, open negotiation would be available to that person after the season has begun.

NMFS is revising this portion of the regulations at § 680.20(a)(3) to clarify that if Arbitration IFQ holders choose to use the Arbitration System, they may enter into open negotiation prior to, and during the crab fishing season. Once the season begins, those persons who have committed shares to an IPQ holder would be subject to the limitations established under Amendments 18 and 19. Persons who are affiliated with PQS or IPQ holders would continue to be eligible to use open negotiation after the fishing season has begun.

*Comment 140:* The word "uncommitted" has been omitted in front of IPQ in a few places in the proposed rule at § 680.20(a)(3). Only uncommitted shareholders can negotiate deliveries with holders of uncommitted IFQ.

*Response:* NMFS agrees that Amendments 18 and 19 are intended to limit the ability to negotiate to uncommitted IPQ holders. NMFS has changed the final rule at § 680.20(a)(2) to clarify this point.

*Comment 141:* The provision at § 680.20(d)(1)(iv) of the proposed rule permits a person to be a member of only one Arbitration Organization. If a person is only permitted to be a member of a single organization, holders of both IFQ and IPQ cannot meet the requirements of the regulation to be members of separate organizations for IFQ and IPQ. The final rule should be revised to allow membership in one IFQ Arbitration Organization and one IPQ Arbitration Organization.

*Response:* NMFS agrees that the regulations in the proposed rule do not accommodate the situation of a person who holds both PQS/IPQ and QS/IFQ. The regulations at § 680.20(d)(1)(iv) have been modified to allow a person who holds PQS/IPQ to join only one PQS/IPQ Arbitration Organization, a person who holds Affiliated QS/IFQ to join only one Affiliated QS/IFQ Arbitration Organization, and a person who holds Arbitration QS/IFQ to join only one Arbitration QS/IFQ Organization. This section has been renumbered based on responses to comments, and the text to which the commenter refers is now found at § 680.20(d)(1)(iii) not at § 680.20(d)(1)(iv).



*Comment 142:* The provision at § 680.20(e)(2)(ii) of the proposed rule requires the use of the "Share Matching Approach," the "Lengthy Season Approach," and "Binding Arbitration." None of these should be required of all participants since arbitration is intended to be voluntary. The regulation requires Arbitration Organization membership and contracts that define the terms that govern arbitration participation. This provision is over broad. The final rule should be revised to state that participants shall engage in arbitration subject to the rules and to the extent specified in the contracts.

*Response:* The regulations are intended to require that if a member of an Arbitration Organization intends to use the Arbitration System, that member would be required to use the negotiation approaches of open negotiation, Lengthy Season, and Share Matching outlined at § 680.20(h). NMFS agrees that the wording in this regulation may not reflect the intent that members of an Arbitration Organization that choose to use the Arbitration System, may use any of the negotiation approaches that are described at § 680.20(h). Regulations governing the use of the negotiation approaches are already defined at § 680.20(h) and additional contractual requirements on the members of Arbitration Organizations are not required. The regulation at § 680.20(e)(2)(ii) has been removed to reduce confusion and more accurately reflect the Statute.

*Comment 143:* The provision at § 680.20(e)(2)(v) of the proposed rule is over broad and should be deleted. All information generated pursuant to § 620.20 would require each Arbitration Organization to obtain documents that it and its members have no access to.

*Response:* The provisions governing the use of information in the Arbitration System is intended to facilitate the ability of uncommitted IPQ holders to communicate to uncommitted IFQ holders the amount of IPQ that may be available. The role of the Arbitration Organizations in this process is to help ensure that information is communicated to their members in a manner that minimizes the potential risks of violating antitrust statutes. The goal of the information exchange is not to place undue burdens on the participants. NMFS agrees and has modified the regulations so that the delivery of information from uncommitted IPQ holders to the uncommitted Arbitration IFQ holders could be accomplished by requiring Arbitration Organizations to hire administrative personnel or contract with a third party data collection

agency, that does not have a linkage with either the IPQ holders or IFQ holders, for the delivery of that information to Arbitration QS/IFQ Arbitration Organizations. Arbitration Organizations therefore will not be required to obtain documents that their members cannot see in a manner that requires their members to see them. The regulations in this section have been modified to improve the ability of uncommitted IPQ holders to communicate the amount of shares available through the Arbitration Organizations or through a third-party data collection agent. NMFS has renumbered the regulations based on changes from other comments, and has modified and redesignated the text to which the commenter refers to at § 680.20(e)(2)(iv).

*Comment 144:* The provisions at § 680.20(e)(2)(v)(B)(1) and (2) of the proposed rule require the Arbitration Organizations to deliver notices to uncommitted Arbitration IFQ holders. IPQ Arbitration Organizations, however, have no way of knowing who holds uncommitted IFQ. The provisions should be revised so that persons required to deliver notices (1) have access to the names of those required to receive the notice; (2) have access to the information required to be delivered; and (3) are required to maintain confidentiality.

*Response:* This concern has been addressed by modifying the information distribution system as per the previous comment response in comment 143. However, IPQ holders will not be allowed access to information about who holds uncommitted IFQ. All information exchanges will be subject to existing antitrust laws.

*Comment 145:* As drafted, the arbitration requires the Arbitration Organizations to deliver several different notices and pieces of information to members that meet certain criteria. The regulation also places strict limitation on the persons who may receive this information (*i.e.*, only holders of uncommitted IFQ are permitted to receive the terms of the arbitration finding or the identities of the holders of uncommitted IPQ that are parties to an arbitration proceeding). The provisions create a paradox under which the persons (or organizations) required to deliver the notices are unlikely to be able to deliver the notices, because no person would be in a position to receive the information that needs to be disseminated or know the identities of the persons that need to receive the information. The regulations could overcome this problem by providing Arbitration Organizations

with the ability to hire a third party for the delivery of notices. That third party should be required to be independent of any associations with any IFQ holders or IPQ holders (except for the management of Arbitration Organization notices) and be bound to hold all information received confidential.

*Response:* This concern has been addressed by modifying the information distribution system. See response to comment 143.

*Comment 146:* The timeline at § 680.20(f)(4) may not be appropriate for the first year delivery of the arbitration formula. The final rule should allow the same time as permitted at § 680.20(e)(6) for the Market Report.

*Response:* NMFS agrees. The timeline that has been developed may not adequately address the timing of the fishery in the first year of the program. The best available estimate is that QS/PQS and IFQ/IPQ will not be issued until August 1. In order to make the arbitration system available to the participants in the first year of the program, the timeline for joining an Arbitration Organization, selecting the market analyst, formula arbitrator, and formula arbitrator has been modified so that it will occur after the expected date of QS issuance. NMFS has modified the timelines for the Arbitration System in 2005 at § 680.20(c)(3), (d)(3)(i), (e)(6) and (f)(4) and (g)(4)(viii) as follows:

- (1) The deadline for QS and PQS holders to join an Arbitration Organization is August 15, 2005;
- (2) The deadline for Arbitration Organizations with members who are QS or PQS holders to submit a complete Annual Arbitration Organization Report is August 20, 2005;
- (3) The deadline for the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrators is September 1, 2005; and

- (4) The deadline for the completion of the Market Report and Non-Binding Price Formula is September 30, 2005 or 25 days prior to the date of the start of the crab season for that crab QS fishery.

NMFS understands that this new timeline may be problematic for participants in the golden king crab fisheries which typically begin in mid-August. Given these deadlines, the Arbitration System may not be available to participants in this fishery prior to the start of the season given current season opening schedules.

Consistent with Council intent, IFQ/IPQ will not be issued for this or any other crab QS fishery under § 680.20(e)(7) until the market analyst, formula arbitrator and contract arbitrator have been selected. The extent to which these activities can be

completed by mid August will be dependent upon voluntary cooperation among fishery participants prior to issuance of IFQ/IPQ. The time lines in the final rule are deadlines, but the required activities could occur earlier, thus perhaps allowing for issuance of IFQ/IPQ for the golden king crab fishery by mid August. However, if fishery participants cannot conclude these activities by mid August, their IFQ/IPQ will not be issued prior to the August 15 start date, but CPO IFQ will be available for harvest.

Any concern about different start dates for the CV and CP fisheries may be attenuated by a delayed start date in the golden king crab fishery for the first year of the program. A change in the start date of the fishery is deferred to the authority of the State of Alaska Board of Fisheries, and is not addressed in these regulations.

*Comment 147:* Section 680.20(h)(3) describes the arbitration procedure. The regulation should also provide that a single binding arbitration proceeding (excluding quality disputes, performance disputes, and the lengthy season approach) is permitted for each IPQ holder per fishery per year. The final rule should include a provision that limits each IPQ holder to a single binding arbitration proceeding per fishery per year.

*Response:* Amendments 18 and 19 do not provide a specific provision to this effect. However, given the fact that binding arbitration proceedings are limited to arbitration during a five day period that occurs from 15 days prior to the season until 10 days prior to the start of the crab fishing season, the practical effect may be that there is a single arbitration per IPQ holder per crab QS fishery during this five day period. However, this would not preclude additional arbitration proceedings that could arise from a lengthy season approach, quality dispute, or performance dispute. Section 680.20(h)(3) has been modified to note that there can only be one arbitration proceeding for an IPQ holder during this 5-day period.

*Comment 148:* Section 680.20(h)(3)(ii) generally sets out the process by which arbitration is initiated. Although the commitment of shares is defined in the definitions section of the proposed rule (§ 680.2, Committed IFQ and Committed IPQ), the regulation could be clarified, if the process for negotiated commitments were included here. The final rule should include description of commitment definition at § 80.20(h)(3)(ii).

*Response:* As the commenter notes, this process is clarified in the

definitions section. The regulatory text provides that open negotiation is possible until an Arbitration IFQ holder has committed IFQ to an IPQ holder. Once that commitment has occurred, the IFQ holder is subject to the provisions established under the Lengthy Season approach, Share Matching and Binding Arbitration. The regulations at § 680.20(h)(3)(ii) have been modified to more clearly state that once IFQ are committed, open negotiation is no longer possible.

*Comment 149:* The provisions at § 680.20(h)(3)(iii) concerning the “Lengthy Season Approach” should specify that the adoption of this negotiation/arbitration approach is available only to persons that have committed shares. The final rule should require share commitments for participants to use the lengthy season approach.

*Response:* NMFS agrees and has modified § 680.20(h)(3)(iii)(A) to note that the Lengthy Season approach requires a commitment of shares by the IFQ and IPQ holder.

*Comment 150:* The inclusion of the provisions at § 680.20(h)(3)(iii) concerning the “Lengthy Season approach” at this point in the regulations adds confusion to the arbitration process. This paragraph primarily concerns the commitment of shares and the process that share holders undertake preceding, and possibly leading up to, Binding Arbitration. The lengthy season approach is an alternative to that standard procedure. The provisions concerning the lengthy season approach should be included in the contract for the Contract Arbitrators, but as a separate provision outside the process description here.

*Response:* The Lengthy season approach is described as an alternative mechanism to allow for committed Arbitration IFQ holders and committed IPQ holders to negotiate specific contract terms later in the season, or enter into binding arbitration if those processes are unsuccessful. The regulations at § 680.20(h)(3)(iii) have been modified to more clearly state that the Lengthy Season approach is an alternative approach to the standard binding arbitration procedure.

*Comment 151:* The process for arbitration of the lengthy season approach is not well defined in the Council motion. The regulation at § 680.20(h)(3)(iii) should not attempt to specifically define that process. The regulation should state that industry should define the procedure for arbitration of the lengthy season approach, including the timing of the

proceeding and the ability of any IFQ holders to join the proceeding or opt-in to the outcome of the proceeding.

*Response:* The requirements of when binding arbitration may occur under a Lengthy Season approach provide considerable flexibility to the participants. The regulation has not been modified.

*Comment 152:* The provision at § 680.20(h)(3)(iv)(B) of the proposed rule requires an arbitration IFQ holder to commit at least 50 percent of the IFQ held to an IPQ holder to make a unilateral commitment. The provision should provide for the commitment of the lesser of 50 percent of the IFQ held and an amount of IFQ that results in the commitment of all the processor's IPQ. In the absence of this provision, a harvester may be unable to commit any IFQ to a processor under the provision because the processor does not hold sufficient IPQ to take most of the harvester's IFQ. In addition, the regulation should consider a lower level than 50 percent for a cooperative to make a unilateral commitment, since a cooperative represents several share holders. A more appropriate threshold might be 50 percent of the average share holding in the cooperative. Revise the provision concerning the minimum commitment. For a cooperative unilateral commitment, a more appropriate threshold might be 50 percent of the average CVO share holding in the cooperative.

*Response:* Amendments 18 and 19 state that the IFQ offered must be a “substantial amount” of the IFQ holders uncontracted (uncommitted IFQ). The 50 percent commitment of shares was based on the assumption that it would represent a substantial amount of shares that a single IFQ holder could commit. NMFS has revised the final rule at § 680.20(h)(3)(iv)(B) to allow for an offer of uncommitted Arbitration IFQ equal to the total amount of uncommitted IPQ available, if that amount is less than 50 percent of the Arbitration IFQ holders uncommitted Arbitration IFQ. Because a cooperative is an association of multiple persons, it is reasonable to reduce the amount of IFQ that a cooperative must commit. Rather than linking this to a percentage of the average IFQ converted by members in the cooperative, a more administratively simple approach would be to require that cooperatives commit at least 25 percent of the IFQ held by the cooperative to an IPQ holder. Because cooperatives are likely to hold larger amounts of IFQ than a single IFQ holder, a 25 percent standard would be a substantial amount of the total holdings of the cooperative, and likely, would be at least equivalent to an

amount equal to 50 percent of any single IFQ holder. This 25 percent threshold for FCMA cooperatives has been added to the final rule at § 680.20(h)(3)(iv)(B).

*Comment 153:* The time period to initiate arbitration at § 680.20(h)(3)(iv) must be limited on both sides, since only one arbitration proceeding is allowed for each processor. The share matching limit of 25 days before the start of the season is intended to also operate as a limit on the ability to initiate arbitration. In the absence of a limit, a harvester could initiate an arbitration proceeding several months prior to the season, which is unreasonable for all parties including other harvesters that may wish to deliver to that processor. The final rule should limit IFQ holders from initiating binding arbitration more than 25 days prior to the season opening.

*Response:* Amendment 18 states a Binding Arbitration proceeding must begin “no later than” 15 days before the season opening date. The regulations at § 680.20(h)(3) are consistent with Amendment 18 and provide that a Binding Arbitration proceeding may begin at any point prior to 15 days before the start of the crab fishing season, except in the case of Share Matching. NMFS agrees it is reasonable to also include a date before which a harvester could not initiate a Binding Arbitration proceeding to limit a harvester’s initiating a Binding Arbitration several months prior to the season. NMFS has modified the final rule at § 680.20(h)(3)(v) to include a requirement that the Arbitration IFQ holder must initiate the Binding Arbitration procedure between 25 days and 15 days prior to the date of the first crab fishing season and a requirement that decisions would need to be issued not later than 10 days prior to the start of the crab fishing season. These requirements would effectively provide a 5-day period during which all arbitration proceedings must be decided.

*Comment 154:* The provision at § 680.20(h)(3)(v) needs to limit arbitration to holders of shares that are committed to one another. Revise provision so that an IFQ holder may initiate arbitration with an IPQ holder to which the IFQ holder has committed shares.

*Response:* NMFS agrees and has modified the final rule at § 680.20(h)(3)(v) to more clearly state that arbitration is limited to IFQ and IPQ holders to whom shares have been committed.

*Comment 155:* The provisions § 680.20(h)(3)(v)(A), (B), (C), and (D), which reference the use of Open

Negotiations, the Lengthy Season Approach, Share Matching, and Performance Disputes, do not work here because of the timing of these actions and the timing for initiating arbitration. For example, performance disputes will not arise until during the season, while the arbitration referred to here is limited to preseason. These references should be removed, as the preceding language defining the terms of arbitration are clear. The procedures for the lengthy season approach and performance disputes should be defined in the contract, but not specifically defined in the regulation. Remove the references at § 680.20(h)(3)(v)(A), (B), (C), and (D) to the open negotiations, lengthy season approach, share matching, and performance disputes.

*Response:* NMFS agrees and has changed the final rule at § 680.20(h)(3)(v) to clarify the issue raised in this comment. Section 680.20(h)(3) applies to the timeframe for initiating Binding Arbitration prior to the season, if an open negotiation process is unsuccessful. It does not apply to the lengthy season approach, performance disputes, or quality disputes.

*Comment 156:* There needs to be a limit at § 680.20(h)(3)(vi) of the proposed rule on the time during which a person can join an arbitration proceeding in order to prevent parties joining during the proceeding to disrupt the proceeding. Require the contract with the Contract Arbitrator to specify the terms and timing of joining the proceedings.

*Response:* Amendments 18 and 19 do not specify a time frame by which arbitration proceedings must be initiated. The proposed rule did not specify a particular time during which binding arbitration must be joined, but did note that binding arbitration could be concluded in a fashion so that post-arbitration opt-in could occur. This effectively created the need for an end of arbitration at some point before the end of the season. The contracts that establish the binding arbitration system could include terms that specify a time period during which binding arbitration may be joined. The final rule at § 680.20(h)(3)(vi) has been modified to clarify that the contract with the Contract Arbitrator may specify the terms and timing of joining the proceedings.

*Comment 157:* The ability to join in a binding arbitration under § 680.20(h)(3)(vi) of the proposed rule should be contingent on the IPQ holder having uncommitted shares and the harvester making a commitment of IFQ.

Limit joining by requiring a commitment under § 680.20(h)(3)(iv).

*Response:* The proposed regulations do not explicitly state that this is the case. The final regulations at § 680.20(h)(3)(vi) have been modified to provide that joining an arbitration requires that uncommitted IPQ be available.

*Comment 158:* The rationale for requiring separation of the schedule meeting and the meeting defining terms of last best offers, at § 680.20(h)(3)(vii) and (viii) of the proposed rule, is not clear. It may be that antitrust concerns dictate that IFQ holders that are not part of an FCMA cooperative should not participate in a joint meeting. If that is the case, a provision should be added to that effect.

*Response:* The commenter is correct in that the intent of this provision is to ensure that IFQ holders who are not members of an FCMA should not participate in a joint meeting regarding Last Best Offers. Such joint meetings could increase participant’s risk of antitrust violations. The regulations have not been modified, but this response provides the rationale for the structure of the regulations.

*Comment 159:* The provisions at § 680.20(h)(3)(viii), (ix), and (x) should make it clear that the arbitration will apply to all committed IFQ of the IFQ holder and the corresponding committed IPQ of the IPQ holder. The arbitration outcome should decide the delivery terms of all shares that the parties have committed to one another. Revise to make arbitration apply to and fully binding on all deliveries of committed shares of the parties.

*Response:* The regulations have been modified to more explicitly state that the arbitration decision will apply to all committed IFQ of the IFQ holder and the corresponding committed IPQ of the IPQ holder. This modification is made in the final rule at § 680.20(h)(3)(x).

*Comment 160:* Under the provision at § 680.20(h)(5), information flow in binding arbitration is limited to the information submitted by parties and market report and formula. The broad availability of data to IFQ holders under notice requirements and FCMA cooperatives could be argued to create an imbalance in the proceedings.

*Response:* The flow of information in this program is intended to provide both parties to an arbitration adequate access to information. Information being provided to the Arbitration IFQ holders is intended to facilitate their ability to make a last best offer to that IPQ holder within the time frame required and under the limitations that all IFQ holders would be required to make their

last best offer to the IPQ holder at the same time. The exchange of information does not imbalance the information available to either party to make an adequate last best offer. The regulation has not been modified.

*Comment 161:* The provision at § 680.20(h)(8) makes reference to (h)(6)(v), which does not exist.

*Response:* The citation at § 680.20(h)(8) is incorrect and should be a reference to (h)(6). This is corrected in the final rule.

*Comment 162:* At § 680.20(h)(11)(ii) in the proposed rule, using the same procedure for performance disputes as for other arbitration is not possible because of the timing of arbitration and the timing of performance disputes. The specific process should be defined by industry in the contract with the contract arbitrator. The contract with the Contract Arbitrator should define the process for resolution of performance disputes through arbitration.

*Response:* The regulation at § 680.20(h)(10)(ii) has been clarified that applicable procedures in the binding arbitration process would apply to a performance dispute arbitration. The regulation clarifies that the contract with the contract arbitrator would specify the time frame for the process. Due to renumbering of this section, the pertinent regulation is now found at § 680.20(h)(10)(ii).

*Comment 163:* At § 680.20(h)(11)(iii) in the proposed rule, it is unclear how arbitration can be “unsuccessful”. The reference to “unsuccessful” arbitration should be removed or explained.

*Response:* NMFS agrees and has removed the reference to unsuccessful arbitration at § 680.20(h)(10)(iii). It does not affect the ability of parties to pursue contract remedies if the contract is not met.

*Comment 164:* Fleetwide arbitration was considered and rejected by the Council in favor of a last-best-offer system built on distinct, independent arbitrations. Yet, the proposed rule § 680.20(h)(3)(i)(D) allows a binding arbitration system that mirrors fleetwide arbitration by violating Council intent concerning the sharing of confidential data. The proposed rule permits a framework in which confidential cost data may be gathered by one harvester Arbitration Organization and shared across all harvester Arbitration Organizations and thus, all harvesters. A single, omnibus FCMA cooperative is allowed to form multiple Arbitration Organizations (AOs), each under the leadership of member(s)—or representative(s)—in-common with the FCMA cooperative. Data pertinent to a

bilateral price dispute could be shared back to the FCMA cooperative. The entire membership of the FCMA cooperative would be allowed to see the cost data from all processors. Furthermore, the Contract Arbitrator “*must receive and consider all data submitted by the parties*” (see § 680.20(h)(4)(iii)), including data that are not germane to the bilateral dispute. Each AO may invoke Binding Arbitration to collect processor cost data rather than resolve price disputes.

There are compelling economic incentives for harvesters to structure such a fleetwide system of mandatory Binding Arbitration in order to capture cost of production data from all processors. This possibility poses a serious antitrust/anti-competitiveness risk. It also clearly violates Council intent that Binding Arbitration is the last resort to resolve failed price disputes.

Sharing of Binding Arbitration data in violation of Council intent is manifest in the proposed rule. For example the Contract Arbitrator is also allowed to share information with parties other than those engaged in the Binding Arbitration, violating the Council’s confidentiality requirements. The proposed rule, at § 680.20(h)(6)(iii) requires the contract arbitrator to provide NMFS with confidential information. Yet, Amendment 18 unambiguously stipulates the contrary.

In sum, the proposed rule allows and promotes: (a) Fleetwide Binding Arbitration that was rejected by the Council, (b) sharing of proprietary and confidential data that poses serious antitrust and anti-competitiveness risks, and (c) dispute resolution between two parties based on information regarding disputes between other parties. To resolve this problem, no member common to an FCMA cooperative may be involved in more than two arbitrations (two because of the 50 percent matching rule). This requirement would mean the language at § 680.20(h)(3)(i)(D) must be eliminated or revised to prevent sharing and collecting cost data from multiple processors. More generally, information sharing should be restricted only to the specific parties of the Binding Arbitration, per the Council intent.

*Response:* The Arbitration System is designed to permit members of an FCMA cooperative to participate cooperatively. Amendments 18 and 19 provide “[a]ny parties eligible for collective bargaining under the FCMA will be eligible to participate collectively as a member of that FCMA cooperative in binding arbitration.” Amendments 18 and 19 also provide

that “[a]ll participants to an arbitration shall sign a confidentiality agreement stating that they will not disclose any information received from the arbitrator.” The rule establishes that members of an FCMA cooperative that are engaged in an arbitration may arbitrate collectively as part of the FCMA cooperative (see § 680.20(h)(3)(i)). The Program does not amend the FCMA or existing antitrust laws of the United States. Under the FCMA, cooperative negotiation is permissible. The regulations also require that the contract among the Arbitration Organizations and the Contract Arbitrator require that members of different FCMA cooperatives shall not participate collectively (see § 680.20(h)(3)(i)(B)). Of course, if otherwise consistent with the FCMA, two cooperatives could combine to form one cooperative and thereby act collectively. The Arbitration Organizations are not directly parties to a negotiation and therefore would not receive information on particular arbitration proceedings during their negotiation. They would be permitted access to arbitration decisions and on the amount of uncommitted IPQ available to facilitate the ability of uncommitted IFQ holders to access data.

Cooperatives may negotiate with several IPQ holders, as may individual IFQ holders and a person may enter multiple arbitrations subject to the limitations of the Arbitration System. This type of negotiation is not prohibited under Amendment 18. NMFS disagrees that the rule permits a framework in which confidential cost data may be gathered by one harvester Arbitration Organization and shared across all harvester Arbitration Organizations and thus, all harvesters. Section 680.20(h)(5) establishes limits on the release of data obtained in an arbitration and limits the release of data. Specifically, § 680.20(h)(5)(iv) limits the release of data by persons in an arbitration proceeding to persons who were not party to that proceeding. The proposed rule has not been modified under this particular comment.

*Comment 165:* The entire Arbitration System in the proposed rule is set up as though it is mandatory, rather than the path of last resort to resolve “failed price negotiations”, as specified in Amendment 18. As such, it is set up as an analog to harvester-only pricing because everyone is forced in. It is unclear what oversight NMFS will have in this process or why it will or should have any oversight of private arbitrations.

*Response:* The Arbitration System is established as a mechanism that is

available to IFQ and IPQ holders if open negotiation fails. The Arbitration System requires contractual arrangements among the various parties that may choose to use the Arbitration System. The requirement that QS holders to join an Arbitration Organization is intended to facilitate cost sharing for the program and provide all fishery participants with a market report and non-binding price formula prior to the start of the season. Once a binding arbitration proceeding is entered, the participants are bound to the contractual requirements for the system. These requirements would be enforced through civil contracts. NMFS would be able to receive information on specific arbitration proceedings for purposes of oversight should concerns arise about the potential antitrust implications of particular proceedings or the Arbitration System as a whole. The rule has not been modified.

*Comment 166:* The binding arbitration procedure described in the proposed rule allows for and provides an incentive for harvesters to join one omnibus FCMA that uses multiple Arbitration Organizations, that could invoke Binding Arbitration for the purpose of securing confidential cost information across all processors, and exert monopoly power, rather than to resolve failed price negotiations. Harvesters would extract maximum rents because they would be able to see all arbitration information across all processors, whereas processors would not be accorded the same privilege. This asymmetry is inconsistent with the zero-risk antitrust concerns expressed throughout the document. Most importantly, such behavior by harvesters would be an antitrust violation.

*Response:* The Arbitration System limits the release of information received during a particular arbitration proceeding to the parties to that arbitration proceeding (see § 680.20(h)(5)). The limit on the release of data ensures that only the parties to an arbitration, that is the Arbitration IFQ holders and IPQ holders that are in an arbitration proceeding, have access to data submitted to the Contract Arbitrator as part of that proceeding. Section 680.20(h)(5) has been modified to explicitly state that persons who are not parties to an arbitration shall not have access to information from that arbitration proceeding, other than the result of an arbitration decision which will be released. This provision is required so that uncommitted IFQ holders would be able to participate in post-arbitration opt-in. Under this revision, an "omnibus" FCMA

cooperative would not have access to an arbitration proceeding unless the omnibus cooperative was directly party to an arbitration proceeding.

If a single FCMA cooperative formed and all members of the cooperative participated in all arbitration proceedings with all IPQ holders, it could be possible for the members of that FCMA cooperative to have access to information from all IPQ holders. If this circumstance did arise, DOJ would have the ability to review the potential antitrust implications of this situation and pursue enforcement actions if necessary. Nothing in Amendment 18 prohibits a cooperative from forming and initiating multiple arbitration proceedings with different IPQ holders. As noted in comment 164, the Program is not intended to amend the FCMA, or other antitrust laws of the United States that permit cooperative negotiations. This is clearly stated in the authorizing language in section 313(j) of the Magnuson-Stevens Act. The rule is not being modified at this time to limit the ability of an FCMA cooperative to participate in multiple binding arbitration proceedings.

*Comment 167:* Mandatory membership in an Arbitration Organization seems OK if the purpose is solely to initiate timely collection of relevant data that would be needed in the event of an arbitration. It should not be the springboard to easy arbitration. Nothing beyond choosing a Contract Arbitrator should be mandatory, unless a party initiates binding arbitration.

*Response:* In order for the Arbitration System to function the Market Report and Non-Binding Price Formula must be generated prior to the start of the season. These documents are intended for use both during the open negotiation stage and during any binding arbitration proceedings. The rule has not been modified.

*Comment 168:* Amendments 18 and 19 give no authority to NMFS to collect confidential, proprietary information. And contrary to the justification given in the preamble, DOJ has no authority to oversee private negotiations. Their authority only arises in the event that one of the parties claims an antitrust violation. Amendments 18 and 19 clearly state that binding arbitration is between private parties and enforced through civil damages. Furthermore Amendment 18 states "Oversight and administration of the binding arbitration should be conducted in a manner similar to the AFA cooperative administration and oversight." There is no similar DOJ oversight under AFA.

*Response:* The provision of information to NMFS, under

§ 680.20(h)(6), is not inconsistent with Amendments 18 and 19 and is consistent with the legislation that enacted the Program. Section 313(j)(6) of the Magnuson-Stevens Act provides that NMFS, in consultation with the DOJ and FTC shall develop a data collection program necessary "to determine whether any illegal acts of anti-competition, anti-trust, or price collusion have occurred among persons receiving individual processing quota under the program." This provision has been interpreted to allow the agency to gather information that may be required to assist DOJ and the FTC in their review process. The final rule has not been modified.

*Comment 169:* The "fleetwide" arbitration system was considered and rejected by the Council in favor of the "last best offer" system, which is built on distinct, independent arbitrations. Each arbitration is between one IPQ Holder Arbitration Organization and one or more IFQ Holders in an Arbitration Organization, to determine the price and delivery terms for the specific IFQ Shares committed between those quota holders in the share-matching period. Amendment 18 requires information used and exchanged in an arbitration to be kept confidential to the parties and must not be shared outside the arbitration, even within a cooperative. The Council's confidentiality requirement and its rejection of fleetwide Binding Arbitration can be subverted by the data verification standards § 680.20(h)(6)(iii) and (iv) and by allowing multiple Arbitration Organizations to negotiate on behalf of an Omnibus FCMA bargaining cooperative § 680.20(h)(3)(i)(D).

The proposed rule, at § 680.20(h)(5), not only: (a) Allows a fleetwide arbitration by organizing a fleetwide FCMA cooperative that forms multiple Arbitration Organizations, but (b) allows those Arbitration Organizations to negotiate separately with all IPQ Holders. Such a possibility has antitrust implications by allowing the FCMA to collect cost data from all processors involved in binding arbitration. The proposed rule needs to be rewritten to prevent antitrust risk stemming from binding arbitration design/organization.

*Response:* This comment has been addressed in the responses to comments 164 and 166.

*Comment 170:* Why are open negotiations, in the proposed rule at § 680.20(h)(3)(ii), limited to the period prior to the season? Why can't negotiations on price and delivery terms occur anytime throughout the season? And why are they limited to

uncommitted IFQ/IPQ? Surely disputes could arise mid-season? Suppose wholesale prices rose dramatically mid-season. Surely all crew would want to re-negotiate contracts, unless the original contract stipulated an automatic adjustment mechanism.

*Response:* This comment has been addressed in response to comment 148. While it is possible that mid-season disputes could arise and parties would want to renegotiate terms, those terms could be addressed by stipulating that adjustment mechanisms, retroactive payments and the like could be part of the original contract. The rule has not been modified.

*Comment 171:* The proposed rule language at § 680.20(h)(3)(ii)(B) needs to be revised and clarified. It states “party to the contract” may initiate arbitration, yet, no “contract” is identified. The proposed rule at § 680.20(h)(1) refer to the bilateral (IFQ and IPQ holders) contract with the Arbitrator. Yet, only an IFQ Holder may initiate arbitration. Does this allow IPQ Holders to do so, and with which IFQ shares? Also, the language “with all Arbitrators in that fishery” is confusing. We presume this phrase means that the IFQ and IPQ Arbitration Organizations must choose one Arbitrator from the set of all Arbitrators. If this is the intent, it is unclear. Alternatively, this language could imply fleetwide arbitration, which violates Council intent.

*Response:* The regulation at § 680.20(h)(3)(ii)(B) has been modified to more clearly state that only the Arbitration IFQ holder may initiate arbitration. An IPQ holder cannot initiate an arbitration proceeding. The regulations at § 680.20(h)(3)(v) have been modified to more clearly state that an Arbitration IFQ holder can select “a Contract Arbitrator.” The intent is that only one Contract Arbitrator would participate in each arbitration proceeding.

*Comment 172:* Revisions are needed to § 680.20(h)(3)(iv)(B) of the proposed rule because the 50 percent share matching requirement was intended to limit frivolous and repeated arbitrations. Under the proposed rule, an omnibus FCMA cooperative can form, which may in turn form multiple Arbitration Organizations, each satisfying the 50 percent matching rule. Then, the omnibus FCMA would enter Binding Arbitration with EVERY processor. This structure would allow every harvester in the FCMA to see every processor's data, thus creating a serious antitrust risk. Furthermore, it creates an incentive to violate the Council intent that Binding Arbitration is the option of last resort to resolve failed price disputes.

*Response:* The response to this comment was addressed in comment 166.

*Comment 173:* The proposed rule at § 680.20(h)(3)(iv)(D) suggests there would be two Contract Arbitrators, one for the IFQ holders and one for the IPQ holders? If so, how is one picked to conduct mediation/binding arbitration, if the parties cannot agree? How are bilateral disputes between two contract arbitrators to be resolved? This language needs to stipulate a single Contract Arbitrator is mutually chosen to comply with Amendment 18.

*Response:* The choice of the Contract Arbitrator(s) is addressed under § 680.20(e)(4) and is conducted prior to the start of the season. The Contract Arbitrator(s) selected for a fishery must be chosen by mutual agreement of the PQS holders and QS holders in the fishery. NMFS has determined that 50 percent of the PQS holders and 50 percent of the QS holders must agree to select the Contract Arbitrator(s). This process is intended to ensure that a pool of mutually acceptable Contract Arbitrator(s) is available for selection if a binding arbitration proceeding begins. The regulations at § 680.20(h)(3)(v) do not state how the Contract Arbitrator for a specific binding arbitration proceeding is selected. The regulations at § 680.20(h)(3)(v) have been modified to establish that the Arbitration IFQ holder would select the Contract Arbitrator subject to terms established in the contract among the Arbitration Organizations and the Contract Arbitrator. Because the Arbitration IFQ holder initiates the binding arbitration process by notifying the IPQ holder and the Contract Arbitrator, the choice of the Contract Arbitrator most appropriately lies with the Arbitration IFQ holder. Otherwise, the initiation of an arbitration proceeding could be delayed.

*Comment 174:* The proposed rule at § 680.20(h)(3)(v) states that Arbitration initiation must occur more than 15 days pre-season and that either an IFQ Holder or an IPQ Holder may initiate arbitration. Does this occur only after “share-matching” has occurred under § 680.20(h)(3)(iv)? If not, how are the IFQ and IPQ shares identified?

*Response:* The regulations at § 680.20(h)(3)(v) have been modified to state that the Arbitration IFQ holder initiates the binding arbitration proceeding. The timing of a binding arbitration proceeding is after the share matching process. Under the regulations at § 680.20(h)(3)(iv), share matching may begin at any point after 25 days prior to the start of the crab fishing season. The revised regulations at § 680.20(e)(2)(v) establish an

information release mechanism that requires uncommitted IPQ holders to notify Arbitration IFQ holders of the availability of uncommitted IPQ shares. This regulation has been modified to indicate that this notification must occur beginning not later than 25 days prior to the start of the crab fishing season so that the process is in place for share matching. The arbitration process described at § 680.20(h)(3)(v) establishes that the binding arbitration must begin not earlier than 15 days prior to the start of the season. The share matching process would begin first, if the Arbitration IFQ holder and IPQ holder agree on terms then binding arbitration is not necessary, if not then the process established under binding arbitration would begin. The rule stipulates that there would be one arbitration proceeding per crab QS fishery during this initial phase of the arbitration.

*Comment 175:* The proposed rule at § 680.20(h)(3)(vi) should be revised and clarified to conform to Council intent. It states that any IFQ holder may join an arbitration. How are IFQ holders notified? When may they join—only at the beginning? Does a joining IFQ holder receive any information on the failed price negotiations? From whom? Can a cooperative IFQ holder commit more QS to that arbitration once it has begun? An IFQ holder in failed price negotiations must be limited in an arbitration to the shares it submitted in the share-matching period. The purpose of the share-matching period was to link IFQ holders with IPQ holders so that further negotiations (after the open period) or mediation could take place after the number of IFQ and IPQ were committed. Arbitration would then occur for those shares if mediation failed. The purpose of the requirement at § 680.20(h)(3)(iv)(B) for an IFQ holder to submit at least 50 percent of its shares when doing share-matching was to prevent gaming the system. A cooperative IFQ holder must be limited in share-matching, mediation, and arbitration to the IFQ that it submits to share-matching.

The Council concept is that specific IFQ holders would commit shares to a specific IPQ holder and that those shares were committed to the entire process of share matching, mediation, and arbitration. None of the shares could be removed from that process and no additional shares could join that process. The share-matching period begins only twenty-five days prior to the season opening, and the last day for an arbitration decision is five days before the season. In a twenty-day period, there is no time for adding or subtracting shares from the process. No additional

shares should be added after the share-matching period.

*Response:* NMFS has modified the final rule at § 680.20(h)(3)(v) based on several other comments to clarify that there is one arbitration process per crab QS fishery prior to the start of the season for each IPQ holder, that an Arbitration IFQ holder with uncommitted IFQ may join a Binding Arbitration proceeding, and that an Arbitration IFQ must commit shares in order to participate in the share matching process. The process for an Arbitration Organization or third party to notify the Arbitration IFQ holder of uncommitted IPQ shares that are available for matching is provided at § 680.20(e)(3)(v).

Based on a previous response to comment, NMFS has revised the final rule at § 680.20(h)(3)(x) to require that the arbitration decision is binding on all the committed shares that are applied in the binding arbitration proceeding. The regulations have been modified at § 680.20(h)(3)(vi) to note that once Arbitration IFQ or IPQ are committed to a binding arbitration proceeding they cannot be uncommitted to that arbitration. The time frame established under the binding arbitration process limits the ability of Arbitration IFQ shares and IPQ shares to enter this initial arbitration proceeding. Once this binding arbitration proceeding has been completed, uncommitted IFQ holders may choose to opt-in and commit their IFQ to the IPQ holder if uncommitted IPQ is available under the provisions established at § 680.20(h)(9).

*Comment 176:* Data confidentiality at § 680.20(h)(3)(iv)(B) is problematic. There is an inconsistency between § 680.20(h)(4)(ii), which says "The Contract Arbitrator's decision may rely on any relevant information available. \* \* \*", and § 680.20(h)(4)(iii), which says "The Contract Arbitrator must receive and consider all data submitted by the parties." This broad provision allows submission and mandatory consideration of information about other arbitrations from participants in those other arbitrations. That must not be allowed. It is a clear violation of Council intent that arbitrations are bilateral. The fact that an Arbitration Organization can be engaged in more than one BA, or that one FCMA may be involved in as many binding arbitrations as there are processors in each fishery, implies that the Binding Arbitration might not be based solely on information germane to the bilateral dispute. Under this scenario, an IFQ holder could provide the results of a different arbitration or the information used in a different arbitration (an IFQ holder apparently

may participate in more than one arbitration since it could commit 50 percent of its shares to two different processors). An IFQ holder could secure and provide to the Arbitrator any IPQ holder cost data discovered during a different arbitration. There is no justification a Contract Arbitrator is to receive and consider information about other arbitrations or participants in those other arbitrations.

Assurance that data/information used in an arbitration remains confidential to the Binding Arbitration parties is essential but not guaranteed by the proposed rule. Sharing any of that information/data outside the arbitration or within a cooperative must not be allowed. Prevention of this possibility requires that no party invoking Binding Arbitration may be party to more than two binding arbitrations, directly or indirectly (50 percent rule). The proposed rule improperly suggests the Contract Arbitrator may share information and data with other parties § 680.20(h)(4)(iii). This allowance needs to be removed.

*Response:* Amendments 18 and 19 authorize the Contract Arbitrator to consider information received from the parties to an arbitration proceeding. Amendments 18 and 19 state that "The [Contract] Arbitrator will also receive and consider all data submitted by the IFQ holders and the IPQ holder." The Contract Arbitrator may consider other relevant data as well as data received directly from the parties to the arbitration proceeding as is noted in Amendment 18, the Contract Arbitrator "may gather additional data on the market and on completed arbitrations." The provision in the rule is consistent with Amendments 18 and 19.

Amendments 18 and 19 do not contain specific provisions that limit the ability of FCMA cooperatives to collectively negotiate. In fact, Amendments 18 and 19 state that "[a]ny parties eligible for collective bargaining under the Fishermen's Cooperative Marketing Act of 1934 (FCMA) will be eligible to participate collectively as a member of that FCMA cooperative in binding arbitration." This language indicates the Council intended to allow FCMA cooperative members to negotiate collectively. FCMA cooperatives may share information internally in order to collectively negotiate as an FCMA cooperative in a binding arbitration proceeding.

As noted in previous responses, § 680.20(e)(2)(iii) notes that each member of an Arbitration Organization is required to establish a contract with that Arbitration Organization that requires them to sign a confidentiality

agreement with any party with whom they are arbitrating stating they will not disclose at any time to any person any information received from the Contract Arbitrator or another person during the course of a binding arbitration proceeding. This requirement limits the ability of a party to an arbitration to share information gathered during one arbitration proceeding and use it in subsequent arbitrations. This requirement does not restrict an FCMA cooperative or another individual that has uncommitted IFQ from entering into multiple binding arbitration proceedings with multiple IPQ holders. Amendments 18 and 19 do not appear to limit the ability for an IFQ holder to enter into multiple binding arbitration proceedings.

*Comment 177:* The agency has specifically invited comment on the feasibility of basing the structure of the Arbitration System upon intra-industry contracts. I have strong reservations about whether this system has enough governance structure that it will be capable of making the decisions on selecting Market Analysts, Formula Arbitrators and Contract Arbitrators in a timely fashion. There appear to be too many decision points that require collective decision making on a constrained timely, and no safety net in the event that the necessary governance does not develop spontaneously. Reading the proposed rule, I was left confused and skeptical about how it is all supposed to come together.

*Response:* The Arbitration System was designed to meet the guidance in Amendments 18 and 19 that would leave many of the specific decisions about the Arbitration System to be established by contractual arrangements. There is the possibility under this Arbitration System that certain elements could not be implemented if parties do not agree. Specifically, the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrators require an agreement of at least 50 percent of the PQS and 50 percent of the QS holders. If this agreement does not occur, then the Arbitration System could not be used by IFQ or IPQ holders. Because this Arbitration System is considered to be an essential component of the Program as a whole, the final rule at § 680.20(e)(7) stipulates that CVO IFQ, CVC IFQ after June 30, 2008, and IPQ will not be issued for a fishery until the Market Analyst, Formula Arbitrator, and Contract Arbitrators have been selected. This provision would encourage resolution of potential conflicts. The Market Analyst, Formula Arbitrator, and Contract Arbitrators are intended to be



impartial third parties that can analyze fishery conditions and mediate disputes, and mutual agreement of qualified personnel should be possible by cooperative agreements.

*Comment 178:* The provisions § 680.20(e)(2)(v)(B)(1) and (2) create a paradox under which the persons (or organizations) required to deliver the notices are unlikely to be able to deliver the notices, because no person would be in a position to receive the information that needs to be disseminated or know the identities of the persons that need to receive the information. The provisions should be revised so that persons required to deliver notices (1) have access to the names of those required to receive the notice, (2) have access to the information required to be delivered, and (3) are required to maintain confidentiality.

*Response:* This comments has been previously addressed in response to comment 145.

*Comment 179:* The ability to initiate arbitration should rest exclusively with harvester IFQ holders at §§ 680.20(h)(2)(ii)(B), 680.20(h)(3)(iii)(C), 680.20(h)(3)(iv)(D), and 680.20(h)(3)(v). Section 680.20(h)(3)(ii) limits negotiations to "prior to the date of the first crab fishing season". Negotiation should be permitted at any time, including after the season opens, as long as participants are not committed to another share holder.

*Response:* This comment has been previously addressed in response to comment 139.

*Comment 180:* There are two problems with § 680.20(h)(3)(iv)(B).

(1) This provision requires an arbitration IFQ holder to commit at least 50 percent of the IFQ held to an IPQ holder to make a unilateral commitment. The provision should provide for the commitment of the lesser of 50 percent of the IFQ held and an amount of IFQ that results in the commitment of all of the processor's IPQ. In the absence of this provision, a harvester may be unable to commit any IFQ to a processor under the provision because the processor does not hold sufficient IPQ to take most of the harvester's IFQ.

(2) The regulation should consider a lower level than 50 percent for a cooperative to make a unilateral commitment, since a cooperative represents several share holders. It is quite likely that a cooperative may hold more IFQ than a processor may hold uncommitted IPQ. Further, in attempting to define "substantial" there is no grounds for creating a standard that results in a higher absolute quantity for

cooperative participants than for individuals. A more appropriate threshold would be 50 percent of the average share holding in the cooperative or the average share holding in the fishery.

*Response:* This comment has been previously addressed in response to comment 152.

*Comment 181:* Section 680.20(h)(3)(i)(A) and (B) should refer to "FCMA crab harvesting cooperatives". As written it could be interpreted to narrow the otherwise legal ability of more than one FCMA cooperative to act collectively under the shelter of the FCMA. This ability should not be restricted. It should also be recognized that harvesters are eligible to join an "FCMA marketing cooperative" whether they are in or out of a "FCMA crab harvesting cooperative" and may chose to join an umbrella "FCMA marketing cooperative" which holds no IFQ. Such a marketing cooperative simply engages in collective bargaining to the degree allowed by the FCMA, and its ability to do so should not be restricted by these regulations.

*Response:* NMFS agrees in part. The regulations are not intended to limit the ability of individuals to join FCMA cooperatives to serve different functions. IFQ holders are limited to joining one crab harvesting cooperative for a given fishery, but this is not intended to limit participation in FCMA cooperatives. The limits on FCMA cooperatives participating collectively in a Binding Arbitration proceeding is intended to reduce potential antitrust risks for participants. These restrictions would not limit the ability of a person to participate in an FCMA cooperative for purposes of marketing and still participate in an FCMA cooperative for collective negotiation as long as those two FCMA cooperatives were not collectively negotiating in a Binding Arbitration proceeding. NMFS has modified the regulations at § 680.20(h)(3)(i)(A) and (B) to clarify this point.

*Comment 182:* The proposed regulation should be amended to provide for separate Arbitration Organizations to be formed by unaffiliated holders of QS; holders of PQS; and affiliated holders of QS. The administrative obligations and responsibilities should be detailed in one location and must be material terms in the binding arbitration agreements.

The terms should require the following;

(1) Select and contract with a market analyst, formula arbitrator, and contract arbitrators;

(2) Establish a fund to pay expenses of these persons which are common to all;

(3) Agreement that IPQ shares and IFQ shares committed during the share matching period or during the arbitration cannot be withdrawn; and

(4) Agreement that all information gathered for the arbitration is strictly confidential to the arbitration and participants may not share any information received from the contract arbitrator with anyone.

*Response:* The regulations do require the formation of separate Arbitration Organizations by unaffiliated holders of QS; holders of PQS; and affiliated holders of QS (see § 680.20(d)(1)). The administrative obligations of the Arbitration Organizations are described under § 680.20(d) and § 680.20(e). These provisions stipulate that contractual agreements must be established among the members of the Arbitration Organization.

*Comment 183:* Arbitration Organizations should be given the ability to hire a third party for the delivery of notices regarding uncommitted IPQ for Share-Matching, uncommitted IPQ available for arbitration, and notification to uncommitted IFQ holders of the results of arbitrations involving IPQ holders with remaining uncommitted shares.

*Response:* This comment has been addressed in the response to comment 139.

*Comment 184:* The proposed regulations provide that a contract arbitrator may receive information from any holder of QS, PQS, IFQ, or IPQ on current ex-vessel prices, market prices, for any products, innovations or other matters, but may not share that information with the participants. The contract arbitrator has access to the Market Report for the fishery, which is essential, and should have access to the non-binding price formula. The non-binding price formula is based on the historic data needed to understand the historic division of revenues between harvesters and processors. These two data sources are adequate supplements to the information provided by the arbitration participants. The contract arbitrator should not have access to information from any sources other than the Market Report, the Non-Binding Price Formula, and the information submitted by the parties. Arbitration decisions based on information unknown or unavailable to the parties will completely undercut trust in the arbitration system and may allow arbitrary information into the proceeding.

*Response:* The Contract Arbitrator does have access to the information described under this comment. The ability of the Contract Arbitrator to have access to other data is not limited by this rule, but the Contract Arbitrator is required to consider certain standards during the evaluation of the offers made by IFQ and IPQ holders. This approach is supported by Amendments 18 and 19 which state that the Contract Arbitrator "will gather relevant independently and from the parties," and "will receive and consider all data submitted by the IFQ holders and the IPQ holder."

*Comment 185:* Section 680(e)(2)(iii) requires that each party to an arbitration sign a confidentiality agreement with the other party in the arbitration stating they will not disclose to any other person any information exchanged in the arbitration. If one party is a cooperative, the regulation should also require that the information not be disclosed to other members of the cooperative.

On May 18, 2004, Arnold & Porter provided an antitrust memorandum to NOAA recommending several significant changes in the arbitration program. On May 25, NOAA GC forwarded the memorandum and proposed changes to the Council motion for action in June 2004, which was taken. On pp. 26–30 of the Arnold & Porter memorandum, the authors cited strong concerns with information flow in arbitration. They recommended that the arbitrator be prohibited from sharing with the parties any information that he received from persons outside the arbitration. They also recommended a new requirement for a confidentiality agreement which they noted is standard in commercial arbitrations. The recommendations were based on a concern that sensitive pricing and cost information might be shared with or available to competitors.

In the NOAA GC recommended changes to the Council motion, the confidentiality agreement requirement was added. Part of the rationale states that there is a " \* \* \* risk of antitrust liability if cooperative or members of a cooperative share sensitive competitive information \* \* \* ". Both the Arnold & Porter memorandum and the NOAA GC recommendations point to the possibility of the sharing of sensitive information as a significant antitrust concern. Since it is possible that cooperatives will be formed with large numbers of participants, a single cooperative may be involved in several arbitrations, either in a single year or in succeeding years.

The confidentiality agreement should require that a cooperative protect and

partition confidential information within the cooperative so that only those members affected by a specific arbitration receive information from that arbitration. Although an FCMA cooperative is allowed under the antitrust laws to negotiate prices collectively, the FCMA does not condone all activity that might otherwise be in violation of the antitrust statutes. In the crab program's binding arbitration, an IPQ Holder is required by statute and regulation to participate in an arbitration at the sole discretion of an IFQ Holder. As a practical matter, the IPQ Holder must justify its price and delivery offer with cost data if it hopes to win an arbitration. Since the submission of such data is compelled by the program, in practice, every effort must be made to protect the confidentiality of that sensitive data and information.

*Response:* As the commenter notes, an FCMA cooperative is allowed under existing antitrust laws to negotiate collectively. The ability for an FCMA cooperative to negotiate collectively would be limited if information among members of a cooperative were further limited. The regulations have been modified based on previous comments to clarify that information gained from one arbitration proceeding may not be used in other arbitrations. These regulations are not intended to limit existing antitrust laws. As with all aspects of this program, NMFS, DOJ, and FTC retain the ability to review the conduct of parties and investigate any possible antitrust violations.

*Comment 186:* Some of the regulations in § 680.20 may be seen as limiting the ability of a non-IFQ holding FCMA Coop to act in behalf of other IFQ holding cooperatives and individual harvesters. Clarification should be given so the legal rights of fishermen provided under the FCMA are not truncated by the regulations of this section. The following text should be inserted: "Types of cooperatives governed under this section: The regulations in this section pertaining to non-affiliated harvester cooperatives apply only to crab harvesting cooperatives that have formed for the purpose of applying for and of fishing under a crab cooperative IFQ fishing permit issued by NMFS". Inclusion of this language is consistent with § 680.21 and would help to clarify activities permitted under the FCMA for collective bargaining cooperatives.

*Response:* The final rule at § 680.20(f), (g), and (h) has been modified throughout those paragraphs to note that the ability of IFQ holders to participate collectively is intended to be limited to those persons who are members of

FCMA cooperatives, distinct from the non-FCMA cooperatives that can form for purposes of harvesting IFQ crab.

*Comment 187:* Arbitration Organizations will incur some cost, perhaps substantial cost, preparing for and executing an arbitration proceeding. The proposed rule at § 680.20(e)(2)(vi)(A)(4) provides payment for analysts and arbitrators but does not provide for the sharing of the expenses of the Arbitration Organization initiating the action. Non-member IFQ holders may opt-in to an arbitration result without sharing the full cost of the arbitration. The result is a negative incentive for IFQ holders to support a professional, informed and useful Arbitration Organization. The burden of maintaining such an organization will fall to responsible IFQ holders while freeloaders wait for the smoke to clear and opt-in to the result.

One solution to this problem would be that the opt-in provision would only apply to IFQ holders who belong to the arbitration association directly involved in an arbitration proceeding. IPQ holders can notify other Arbitration Organizations of a proceeding and those organizations can do their own work and bring their own information and price ideas to the table at that time. Their members can then opt-in if they want to. Another alternative would be to allow an opt-in fee set by the arbitrator for IFQ holders who are not members of participant Arbitration Organizations. This alternative may also include opt-ins by affiliated vessels.

*Response:* The costs for engaging in an arbitration could be significant and NMFS agrees that it would be appropriate to consider fees for any post arbitration opt-in. The regulations at § 680.20(h)(9)(A) note that IFQ holders that opt-in do so under the terms of the arbitrated contract. The arbitrated contract could include a provision that requires a proportional payment of fees for any IFQ holder that opts-in to a completed arbitration contract. Limiting the ability of certain IFQ holders to opt-in based solely on their participation in a specific Arbitration Organization would run counter to the overall intent of the opt-in provisions. The regulations at § 680.20(h)(9) have been modified to state that the Contract Arbitrator may set the fees for the IFQ holder opting-in if those fees have not been determined in the Binding Arbitration contract.

*Comment 188:* The provision at § 680.20(2)(e)(vii) is important to avoid antitrust violations for Processors, but why is this provision extend to harvester Arbitration Organizations organized as FCMA collective bargaining associations? It is my

understanding that individual IFQ entities may form an Arbitration Organization with one member. Is that member then prohibited from forming a contract on his own behalf? This provision should apply to processor and affiliated Arbitration Organizations only.

*Response:* The Arbitration Organizations are not permitted to negotiate on behalf of their members to avoid potential complications of allowing associations that are not FCMA cooperatives, and therefore not accorded the antitrust protections of that Act, to negotiate collectively. In the case of an individual who wishes to form his own Arbitration Organization, that individual could still participate in contracts, but the roles of the Arbitration Organization under each contract would be considered separate. If a group of IFQ holders joins an FCMA cooperative and an Arbitration Organization, they could collectively bargain under the name of the FCMA cooperative, but not as the Arbitration Organization. The rule has not been modified.

*Comment 189:* Under § 680.20(e)(4), can Affiliated QS Arbitration Organizations also select “one Market Analyst, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery” or are they lumped with either harvesters or processors? Since affiliated vessels cannot participate in arbitrations, should they have a voice in the matter? Define role of affiliated vessels in selection of analysts and arbitrators at § 680.20(e)(4).

*Response:* Affiliated QS holders are not permitted to participate in the selection of the Market Analyst, Formula Arbitrator, or Contract Arbitrator(s) as established under § 680.20(e)(4). Those regulations stipulate that only Arbitration QS holders and PQS holders can participate in the selection of these experts. A PQS holder who also holds QS could not participate in this selection process as a QS holder, but could participate as a PQS holder.

*Comment 190:* Because an FCMA collective bargaining association may not be a “harvesting” entity or an IFQ holder, and QS/IFQ holders are allowed to belong to both a harvesting and non-harvesting cooperative, the arbitrator, at § 680.20(g)(2)(iv), should be allowed to meet with representatives (employees and professional advisors) of the collective bargaining association cooperative or with members of that association.

*Response:* The regulations require that the contract with the Formula Arbitrator must specify that the Formula Arbitrator

may meet with members of any FCMA cooperative collectively and shall meet with distinct FCMA cooperatives separately. These requirements are intended to limit the ability of the Formula Arbitrator to meet with members of more than one FCMA cooperative simultaneously. Nothing in the contract requirements would limit the ability of a Formula Arbitrator to meet with members of the same FCMA cooperative and their representatives (employees and professional advisors) at the same time.

*Comment 191:* Under § 680.20(3)(i)(b), members of different crab harvesting cooperatives shall not participate collectively unless they are also members of the same non-IFQ holding FCMA collective bargaining association.

*Response:* NMFS agrees. The regulations have not been modified.

*Comment 192:* At § 680.20(3)(iv) in the proposed rule, a distinction should be made between individual IFQ and cooperative IFQ share matching commitment. I think the idea here is to disincentive frivolous share matching and “fishing expedition” arbitrations, however this provision would restrict the inner machinations of cooperatives whose members wish to harvest “their own” IFQ and to match their shares with traditional markets. It is a disincentive to cooperative and the provision should be modified to exclude harvesting cooperatives.

*Response:* The requirement to commit shares to the IPQ holder has been modified in response to previous comments. Twenty-five percent of the IFQ held by a cooperative would have to be matched. This requirement should permit cooperative members to negotiate internal arrangements adequate for them to establish markets with multiple partners if desired.

*Comment 193:* Independent harvesters who fail to match shares and form a contract or initiate arbitration prior to the arbitration initiation deadline (15-days before the season) may want to “cherry-pick” arbitration results for the highest price. However, if a processor has uncommitted IPQ but did not engage in an arbitration proceeding, this “last man” harvester is at the mercy of the processor and without recourse. This situation can be avoided by a share matching deadline prior to an arbitration initiation deadline or by eliminating the “15-day before the season” deadline for initiating arbitration.

*Response:* This comment has been addressed in response to comment 153.

*Comment 194:* How does one initiate a performance dispute arbitration 15 days prior to the season if there hasn’t

yet been any performance to dispute? Remove deadline for initiating arbitration. In addition, a “statute of limitations” restricting performance dispute arbitrations to a reasonable time frame should be included.

*Response:* The time frame for performance disputes has been addressed in response to comment 155. NMFS agrees, that a time frame may be appropriate, but the specific timing of such a limitation is difficult to determine at this time. The contract terms with the Contract Arbitrator can establish a time-frame for an opt-in provision but that does not require a specific regulatory requirement in the regulations. The regulations at § 680.20(h)(9) have been modified to note that the Contract Arbitrator may specify a time-frame by which opt-in may be exercised for a particular arbitration decision.

*Comment 195:* A problem with the opt-in provision is that a single arbitration proceeding may result in multiple arbitration results. The opt-ins will want to join the arbitration with the best result. Again, there is disincentive to participate in the process, as it would be beneficial to sit back and select the highest result. In addition, the processor may not be able to accommodate the delivery terms extended to all the opt-ins (for example the plant capacity may not be adequate to handle the amount of crab required to be delivered between two specific dates). In addition, because affiliated vessels are left without recourse to arbitration, they should be allowed to opt in to an arbitration result provided an appropriate fee determined by the arbitrator goes to the harvester Arbitration Organization conducting the arbitration. Restrict opt-in provision to non-affiliated IFQ holders in the same Arbitration Organization. Allow some flexibility for delivery and perhaps other terms as determined by the arbitrator.

*Response:* The ability of an uncommitted Arbitration IFQ holder to opt-in to the best result is precisely what the opt-in provision is intended to allow. As noted in the response to comment 187, the Contract Arbitrator may establish fees for any opt-in contract. Affiliated IFQ holders are specifically excluded from the opt-in provisions based on concerns about increased risks of antitrust violations that may arise if affiliated members participate in price setting negotiations that could result in information being shared among harvesters and processors.

*Comment 196:* The quality specialist should only determine the quality of the crab, not the price. The quality

specialist may be eminently qualified to make judgments on the quality of crab and at the same time know nothing of crab prices. Section 680.20(h)(12)(ii) should be modified, appropriately.

*Response:* NMFS agrees. The quality specialist should determine the quality of the crab, but would likely be limited on his ability to comment on prices. NMFS has modified the final rule at § 680.20(h)(11) modified to limit the tasks of the quality specialist to that of determining the quality of the crab. Due to renumbering of this section the proposed § 680.20(h)(12)(ii) is renumbered § 680.20(h)(11)(ii).

*Comment 197:* The binding arbitration process should be strictly construed to give full effect to applicable antitrust law, and as a result, processor-affiliated harvesters should be prohibited from participating in the arbitration process. Though the Council motion did not prohibit processors and processor affiliates from participating in the binding arbitration process as IFQ holders, it did acknowledge that there were substantial antitrust concerns with such participation and authorized its prohibition to the extent necessary to comport with antitrust laws. The DOJ has already opined that participation by affiliated IFQ holders would violate applicable antitrust law because the binding arbitration process acts as a collaborative price setting mechanism. The prohibition in the proposed rule is therefore appropriate, both as a matter of complying with the mandate of the Council motion and as a preservation of the binding arbitration objectives.

*Response:* NMFS agrees. Affiliated IFQ holders will not participate in the arbitration process in the final rule.

*Comment 198:* To the extent the proposed rule restricts the ability of cooperatives to collaborate in the binding arbitration process, it does so inappropriately. Throughout § 680.20, cooperatives are restricted from collectively negotiating and sharing pricing information. Nothing in Amendment 18 prohibits cooperation between FCMA cooperatives. To the extent that the post-arbitration opt-in right is meaningful, it would presumably require knowledge of the arbitration decision, and in many cases, this knowledge will only be acquired on an inter-cooperative basis. Blocking the exchange of information under the guise of antitrust protection only serves to limit the negotiation power of unaffiliated harvesters that have formed FCMA cooperatives to counterbalance the pricing leverage granted to IPQ processors under the Program framework. Under applicable antitrust law, however, cooperatives formed

under the FCMA are permitted to engage in marketing activity, both individually and collectively. It is likely that the arbitration process will be deemed marketing activity within the scope of the FCMA cooperative antitrust exemption. Therefore, any prohibition on inter-cooperative negotiation and information sharing contained in the proposed rule should be replaced with a standard that permits such activity to the extent permitted by applicable antitrust law.

*Response:* The limitations on data exchanges is intended to reduce the potential increased risks of antitrust violations that could occur if information is freely traded among cooperatives that are not engaged in the same negotiations. While it may be the case that inter-cooperative information exchange among IFQ holders that are parties to different arbitration proceedings may not be a violation of antitrust laws, the risk of inappropriate information exchange is increased if this activity is specifically condoned. NMFS has adopted a risk averse policy as it pertains to Binding Arbitration. Information on the availability of uncommitted IPQ shares and the results of any arbitration decisions are made available through provisions at § 680.20(e)(2)(iv). This information exchange mechanism should provide an adequate mechanism to ensure that Arbitration IFQ holders with uncommitted shares are apprised of decisions in a timely fashion.

*Comment 199:* Membership in an Arbitration Organization should be permissive, not mandatory, and those who opt not to join should be required to remit their portion of the arbitration expense directly to NMFS. Membership on an Arbitration Organization should be permissive because many stakeholders in the Program cannot participate in binding arbitration or may opt not to do so. Eliminating the mandatory membership in Arbitration Organizations will decrease the overall cost of binding arbitration to the fishery, likely resulting in fewer price disputes.

*Response:* NMFS Disagrees. Amendments 18 and 19 clearly provide that the costs of arbitration are meant to be split among QS and PQS holders. Regulations at § 680.20(e)(2)(vi) establish Arbitration Organizations as a mechanism to ensure that the QS/IFQ and PQS/IPQ holders coordinate in the selection and the payment of the Market Analyst, Formula Arbitrator, and Contract Arbitrator. These costs are shared by all QS/IFQ and PQS/IPQ holders because the results of the Market Report, Non-Binding Price Formula, and the Contract Arbitrator are

available to all fishery participants. The costs of entering a lengthy season approach, share matching, Binding Arbitration, quality and performance disputes are established through the Arbitration Organizations. The Arbitration Organizations may establish methods for assessing increased fees to IFQ or IPQ holders that use a lengthy season approach, share matching, Binding Arbitration, quality and performance dispute mechanisms relative to other IFQ or IPQ holders that do not use those mechanisms. The specific method for sharing fees among the IFQ and IPQ holders may be determined by negotiation among the various Arbitration Organizations.

*Comment 200:* Consistent with the assertion that membership in Arbitration Organizations should be voluntary, the requirement at § 680.20(e)(vii) that transfer of QS, PQS, IFQ or IPQ be conditioned on the transferee's membership in an Arbitration Organization should be eliminated. This provision creates a condition to transfer eligibility that is dependent on resolution of private contract negotiations. To the extent negotiation of Arbitration Organization documents are contentious, this requirement diminishes the negotiating power of individuals in a position to receive QS or IFQ by transfer. Moreover, because this provision conditions the transfer of a Federal harvesting privilege on acts beyond the control of either the applicant or the agency, it is fundamentally unreasonable and unfair.

*Response:* The intent behind this provision was to ensure that if QS/IFQ or PQS/IPQ is transferred after the Annual Arbitration Organization Report or the start of the season that the recipient of that QS/IFQ or PQS/IPQ has fulfilled the requirements necessary in order to participate in the Arbitration System, including the payment of fees. The commenter is correct in that this requirement could limit the ability of transfers to occur and does condition the transfer on the transferee meeting certain private contractual arrangements. If a person receives QS/IFQ or PQS/IPQ by transfer, there is no requirement that they are members of an Arbitration Organization. NMFS agrees that this transfer restriction as a contract term is not well-suited to meeting these goals. NMFS is revising the regulations to delete this provision and adding a provision at § 680.20(c)(4) that requires that if a person receives QS/IFQ or PQS/IPQ by transfer they are required to join an Arbitration Organization upon transfer. Payment of fees or other cost sharing measures could be established

by the Arbitration Organization for any new members.

*Comment 201:* For the purpose of share matching under § 680.20(h)(3)(iv)(B), a cooperative's offer to match up uncommitted Arbitration IFQ should be deemed substantial if it is 50 percent or more of the average individual IFQ holder's remaining uncommitted Arbitration IFQ, not 50 percent or more if the cooperative's total uncommitted Arbitration IFQ. The proposed rule required that a cooperative seeking to commit Arbitration IFQ make an offer of at least 50 percent of that cooperative's uncommitted Arbitration IFQ. Because this requirement is beyond that expressed in the Council's motion, and because it would decrease the marketability of a cooperatives IFQ and its ability to take advantage of the arbitration process, the proposed rule should be modified to better comport with the Council's intent. And, because the Council's motion focuses on the substantiality of an individual's offer to match up uncommitted Arbitration IFQ, the proposed rule should permit cooperatives to meet this substantiality requirement by making an offer to commit Arbitration IFQ in an amount that is equal to 50 percent or more of an average individual IFQ holder's uncommitted Arbitration IFQ.

*Response:* This response has been addressed in the response to comment 152.

*Comment 202:* In the case of binding arbitration at § 680.20, there is good reason to apply greater restrictions on processor interest than apply elsewhere. The reason is that the exchange of information contemplated by the arbitration process is necessary to its effectiveness, but also an invitation to abuse, if made open to processors.

*Response:* The regulations regarding information exchange in the Arbitration System are intended to minimize antitrust risks to participants in the system while facilitating the exchange of information.

#### *Monitoring and Enforcement*

*Comment 203:* The additional requirements for CPs at § 680.23 will add undue costs to a system that already works. Finding additional space aboard a CP for larger floor scales in the observer area will be problematic, if not impossible. NMFS should adopt the following procedure:

Each day the observer on board the vessel will periodically take a sample and this crab will be held separately. The observer will record the number and total weight of the crab. This crab will be processed separately each day

and the observer and foreman will be available to verify the actual recovery rate of finished product. After 75 percent of the trip is complete, the observer and foreman will agree on an overall recovery percentage and both will sign a statement noting this rate and the process used to arrive at this rate. The final round weight to apply against the IFQ can be determined by taking the total net box weight and dividing it by the agreed upon recovery rate.

*Response:* NMFS disagrees. The method described by the commenter would put additional burden on the observer and would require NMFS to specify observer duties in regulations. Because the State of Alaska is responsible for setting levels of observer coverage and training, NMFS is not able to base a catch accounting system on presumed levels of observer coverage, nor does NMFS believe it is appropriate to specify observer duties in regulation.

*Comment 204:* The requirement for CPs to have internet connectivity at § 680.5(b) as part of interagency electronic reporting system is unreasonably burdensome on CPs for two reasons. First, the technology for reliable at-sea internet connectivity is not yet perfected and may not work in certain sea conditions. These vessels are relatively small by comparison to large trawl vessels and are not well suited to reliable data transfer by satcom internet due to the ship's motion. Second, there is a well tested and reliable data transfer system in place by text over satellite communications systems, and weekly production reports are now transferred in this fashion. Considering the expense and potential for unreliability, CPs should be allowed to report catch data using existing sat-com systems as used in WRPs.

*Response:* NMFS agrees. It was not NMFS' intent to require CPs to submit catch reports over the internet. This final rule amends the regulations at § 679.5(d)(2)(ii) to clarify that CPs are not required to use the Interagency Electronic Reporting System and may use other, NMFS approved, means of reporting catch.

*Comment 205:* The requirement at § 680.5(c)(2) to report daily catch for CPs is unreasonably burdensome and without good purpose. Daily reporting of crab catch is not required of the catcher vessel component of the fleet, reporting is at delivery or landing. Managers will not be using daily catch reports from CPs to manage the fishery but will assume that individual CP catch will be limited to the amount of IFQ they hold. WPRs, offload reports, and transfer logs will be required at the

point of delivery. These will be sufficient for managers and regulators to monitor the activity of the CP sector. Replace a daily catch reporting requirement for the CP fleet with a requirement for weekly report as required in other federal fisheries.

*Response:* NMFS agrees and has amended the final rule at § 680.5(d)(4) to require weekly, rather than daily, catch reporting for CPs. NMFS notes, however, that this change does not relieve the burden upon CPs to accurately account for catch internally on an ongoing basis.

*Comment 206:* The Council Motion recognized that onboard observer requirements for the BSAI crab fisheries should remain deferred to the Alaska Board of Fisheries, as prescribed in the FMP. Therefore, descriptive and regulatory language at § 680.23(h) of the proposed rule, regarding requirements for the provision of observer work stations, should be removed. If these provisions of the regulations, as written, are adopted into regulation, then every time the Alaska Board of Fisheries makes a regulatory change through its cyclic public process, a duplicative or parallel complimentary Council action would be required.

*Response:* NMFS disagrees that Amendment 18 prevents NMFS from implementing standards for observer work areas. While Amendment 18 does defer observer coverage to the State of Alaska, NMFS is responsible for ensuring that quotas are adequately monitored and reported. NMFS does not believe that Amendment 18 prevents NMFS from implementing regulations to adequately monitor and account for catch simply because they benefit or involve the observer.

However, NMFS agrees that duplicative regulations could be confusing and create potential regulatory conflict and such duplicative regulations could be created in the event that the State of Alaska implements regulations governing working facilities for observers on CPs. Further, catch accounting for CPs is based on not only on the round weight of crab as verified by the observer at-sea, but also upon a full accounting of product when the crab is landed. Although NMFS believes that catch accounting accuracy could be improved by implementing standards for the observers' work areas, NMFS concurs that the State should have the opportunity to address this issue. NMFS will revisit the situation in the future to determine whether additional regulations governing observer's work areas are necessary.

*Comment 207:* The requirement to land product processed on board at a

shoreside location in the U.S. accessible by road or regularly scheduled air service should be modified to specifically identify the port of Adak as a designated port. While Adak has regularly scheduled air service at this time, that may change. It is important to golden king crab CPs to have the ability to off-load product at the Adak port, rather than being forced to travel to Dutch Harbor to off-load.

*Response:* NMFS disagrees. There is no reason to suppose that Adak is any more likely to lose regularly scheduled air service than other small communities, such as Akutan, Sand Point, King Cove, or Saint Paul where crab product may be offloaded. All of these communities have received essential air service determinations from the Department of Transportation and are eligible to receive subsidized air service. In the unlikely event that a community where crab product had been offloaded for accounting were to lose regularly scheduled air service, NMFS would work closely with the affected vessels to ensure accurate and affordable catch accounting.

*Comment 208:* A product recovery rate should be an option instead of scales to weigh the catch. This is particularly true for smaller CPs that will have difficulty in installing the scales, due to space constraints and cost. The initial estimated cost of \$100,000 or more will be a significant financial hardship for the small vessel to absorb. The ability to have a product recovery rate established is available and NMFS should move forward with an analysis of this important issue.

*Response:* NMFS intends to further investigate recovery rate based accounting. However, at this time NMFS does not believe that a recovery rate accounting system is appropriate for several reasons. First, recovery rate data exist only for very short periods of the year and only for certain areas. Under a rationalized fishery, NMFS anticipates that fishing will take place during a much longer season and data are not available to predict the extent to which a change in fishing time or area will affect recovery rates. Second, recovery rates vary among vessels for numerous reasons. Most importantly, some vessels glaze crab prior to final packaging while others dry freeze the crab. NMFS would need to either develop seasonal rates, vessel specific glaze rates, or publish rates based on an absence of glaze. Such rates would unfairly debit quota from those boats that do glaze their finished product. Third, any recovery rate based accounting system would require observer coverage levels designed to ensure accurate accounting and an

observer training program. Finally, a rate-based accounting system would require development and specification of product recovery rates. Such a process would needlessly delay implementation of this action.

*Comment 209:* Where are the provisions to catch violators, fine them and jail them? Measures are necessary to prevent harvesters from catching more than they report to NMFS.

*Response:* NMFS agrees that enforcement is an important component of ensuring compliance with fishery regulations, and, therefore, NMFS has implemented monitoring and enforcement measures for this Program. NMFS believes the fines and other sanctions available under the Magnuson-Stevens Act are sufficient to deter unlawful activity.

*Comment 210:* The definition of Processing at § 680.2 should specifically state that deliveries for the purposes of live shipping are allowed. Crab delivered for the purpose of live shipment are not suitable for consumption or storage. In addition, live shipping is not considered "processing" as defined by the USCG. The intent is to continue to allow all typical pre-rationalization product forms.

*Response:* None of the regulations in this rule preclude any crab product form, including live crab, from being produced or shipped. The regulations require that all crab harvested by catcher vessels be landed at, and accounted for by, an RCR. This accounting must take place at the time of offloading and before any processing has taken place. After accounting, the receiver of the crab may ship the crab on in their unprocessed form or produce any product they wish. NMFS' definition of processing is designed to prevent a harvesting vessel from producing a crab product that is suitable for long term storage or whose weight would be different than live, whole crab before that crab has been properly accounted for at the time of landing or, for CPs, reporting.

*Comment 211:* The current proposed harvest overage cap of 3 percent is too low and places harvesters at a disadvantage. The overage cap should be increased to 5 percent.

*Response:* The harvest overage provision of 3 percent is a provision of Amendment 18. Section 313(j) of the Magnuson-Stevens Act requires NMFS to implement the Program provisions in Amendment 18. NMFS does not possess the discretion to alter the harvest overage provision as it exists in statute. Any change to the harvest overage provision requires an amendment to the

Program and should be addressed with the Council.

*Comment 212:* Concerning fishing overages, any overage of three percent or less of the "last trip" should be forfeited, with the proceeds to be dedicated to the observer program. Additional sanctions for overages above three percent may be necessary. Further a post-delivery harvester QS transfer process should be developed to accommodate in-season overages.

*Response:* See Response to comment 18 (post-delivery transfers) and 213 (IFQ overages). Amendment 18 does not direct how penalties will be administered or resolved for any IFQ overages. Nonetheless, NOAA does not have the authority to provide proceeds from any seizures resulting from a violation to any agency other than NOAA. Therefore, NOAA cannot forward any proceeds from IFQ overage seizures to the State of Alaska observer program.

*Comment 213:* The Council motion provides for the forfeiture of any overage from the last trip from a fishery and for penalties for any overage in excess of three percent of the unused IFQ on the last trip. These provisions appear to be missing from the regulation. The final rule should clarify that all overages are forfeited and that overages in excess of three percent are a violation.

*Response:* See Response to Comment 18 on post-delivery transfers. NMFS agrees that Amendment 18 states, "Overages up to 3 percent will be forfeited. Overages above 3 percent results in a violation and forfeiture of all overages." However, as a general policy, NMFS does not include penalties schedules in regulation. Therefore, NMFS has not included any regulatory language addressing overages and this discussion serves to inform the public of their rights and obligations regarding overages that occur during the last fishing trip.

The Council did not provide a carryover provision in this Program similar to the halibut and sablefish IFQ program and harvesters are prohibited from exceeding their IFQ. Thus, NMFS interprets that any overage of any allocation under the program is a violation. This means that NMFS will address any overage through an enforcement action. The is necessary because the Magnuson-Stevens Act requires that a violation must exist in order for NMFS to seize any crab or the proceeds from any crab.

NMFS also interprets the 3 percent statutory provision as a minimum standard by which penalties would be levied under the Program and additional

penalties may be imposed depending on the facts of each case. This means that a crab fisherman will always forfeit any overage as part of any enforcement action, and may or may not receive an additional monetary penalty depending on the facts and circumstances surrounding the violation. Absent any aggravating or other factors, the penalty will be based on the penalty schedule developed by NOAA. Under all circumstance, NOAA reserves the right to evaluate each overage case on its own merits.

*Comment 214:* Overages and shortfalls present important issues. There should be a grace period in which there is an opportunity, without forfeiture or penalty, to find available, unutilized IFQ to cover harvesting overages. Forfeiture and a penalty would only apply where there remained an overage in excess of 3 percent after the grace period. If there is IFQ to cover an overage, there is no conservation impact, any overage less than three percent would likely have no such impact. There should also be a grace period in which there is an opportunity, without forfeiture or penalty, to find available, uncommitted IPQ to cover shortfalls for deliveries of harvested crab. The Council, at its December 2004 meeting, heard numerous witnesses testify in support of these positions.

*Response:* See Response to Comment 18 (post-delivery transfers) and 213 (IFQ overages). Amendment 18 clearly directs that IPQ holders may not receive any Class A IFQ in excess of the amount of IPQ they possess. Amendment 18 does not provide for any overage or underage of IPQ, nor does it include a 3 percent forfeiture provision for IPQ similar to that for IFQ overages. Therefore, any Class A IFQ purchased by an IPQ holder in excess of their IPQ constitutes a violation.

Since any overage of IPQ constitutes a violation, NMFS would issue IPQ holders who exceed their IPQ a notice of enforcement action for any overage. Penalties for IPQ overages would be handled at the discretion of NOAA based on penalty schedules developed independent of this final rule.

Similar to IFQ overages, Amendment 18 does not provide any provisions for IPQ overages or the ability to undertake post-delivery transfers of IPQ. Therefore, NMFS cannot accommodate a "grace period" to allow post-delivery transfers of IPQ at this time. Any change addressing IPQ overages or post-delivery transfers of IPQ requires an amendment to the Program and should be addressed with the Council.

*Comment 215:* The Council motion provides that deadloss would be

counted against QS. This provision appears to be missing from the regulation. Include provision providing for deadloss accounting.

*Response:* NMFS has added provisions for deadloss accounting to the final rule at § 680.5(b)(5) and (6). NMFS also recognized a related problem with accounting for personal use crab after publication of the proposed rule and has included the personal use accounting provision in this response.

Amendment 18 clearly directs that all landings including deadloss will be counted against IFQs. Amendment 18 also directs that any Class A IFQ crab received by a processor must be deducted from that processor's IPQ. NMFS interprets these two statements to mean that deadloss and personal use crab must always be debited from the harvester's IFQ, but are to be counted against the receiving processor's IPQ only if they are Class A IFQ crab received by the IPQ holder. NMFS revised the final rule at § 680.5(b)(5) and (6) to clarify that deadloss and personal use crab will be debited from IFQ, but will not be debited from the receiving processor's IPQ unless the crab is purchased. NMFS also added a definition of "retain", in § 680.2 of the final rule, to aid in enforcement of the recordkeeping and reporting requirements involving deadloss and personal use crab.

#### *Economic Data Collection*

*Comment 216:* The time for providing the completed submission of historic data at § 680.6(c)(2), (e)(2) and (g)(2) is limited to 60 days after final rule becomes effective. Given the historic nature of these data and the complexity of consolidating information into reports, the 60 day interval provided for submitters of the EDR from the publishing of the final rule in the **Federal Register** is not a sufficient amount of time to submit accurate and complete historical EDR data. The commenter requests that the number of days available to respond to the EDR be extended.

*Response:* NMFS agrees with the comment that the 60-day period to provide data for the historic EDR should be extended. In response to this public comment, the final rule at §§ 680.6(a)(2), 680.6(c)(2), 680.6(e)(2), and 680.6(g)(2) is modified to provide 90 days after the effective date of the FR notice for submission of the historic EDR. The proposed rule provided notice to the affected industry that data collection for historical crab fisheries will be required. Many operations may be preparing records for submitting the historic EDR in the period following the proposed

rule. For an IFQ permit application to be considered valid, an EDR must be submitted to the DCA in time for the DCA to review the form, verify certain data, and notify RAM that a submitter has responded to the requirement. The 90-day interval will provide sufficient time for submitters of the historic EDR to gather records, fill out, and submit the historic EDR forms in time to be issued IFQ or IPQ for the 2005 crab fisheries.

*Comment 217:* The commenter notes that once the Data Collection Agent receives a data form, the submitter has 15 days to respond to a contact by the Data Collection Agent. In the active and longer fishing seasons under the Program, this may not be a sufficient interval of time for persons who may be on the fishing grounds to respond. Also the commenter requests that the daily notice should not be based on the 'issuance' of a request, but rather on certified receipt of the request.

*Response:* NMFS agrees with the comment that the 15 day period to provide a response to an inquiry by the DCA should be extended. NMFS has provided submitters several ways to facilitate communication, including use of a representative to respond to questions. While it should be feasible for persons to respond to verification questions on the EDR in 15 days, we are providing a greater amount of time to respond by extending the number of days noted at § 680.6(i)(2) to 20 days. We cannot start counting the time period for responding to verification questions on the EDR on the date of a certified receipt of the request. NMFS is unable to legally verify that contact to request verification has been received if someone refuses to sign a return receipt. Also, each submitter will have previously provided an address and other contact information on the EDR, and they have the option of identifying a representative for responding to EDR questions if they will be difficult to reach.

*Comment 218:* The commenter asks that data from not less than 2 years prior to the implementation of the Program be used for estimating rationalization impacts. The proposed rule at § 680.6(c)(3), (e)(3) and (g)(3), also provides for the submission of information concerning the 2004 crab fishery. The 2004 crab fishery would be used as a baseline for estimating the economic impacts of the Program on the fishery. The commenter requests that the final rule remove the provision requiring submission of data from the 2004 fisheries. The commenter asserts that the year 2004 should not be used as a representative year for historical



data because it would not be a representative baseline for the crab fisheries prior to rationalization.

*Response:* Section 313(j) of the Magnuson Stevens Act authorizes a mandatory data collection system “to study the impacts of the Crab Rationalization Program” and to ensure that the program would achieve “equity between the harvesting and processing sectors” and to monitor the “economic stability for harvesters, processors and coastal communities”. It also requires that we evaluate the before and after effects of the program at an 18-month and 3-year interval. A number of transitions in the BSAI crab fisheries have occurred during 2004 and 2005, including consolidation of BSAI crab vessel and processing plant ownership. To capture those changes and display the economic effects of the CR fishery program for the required 18-month review of the crab program, including year 2004 in the mandatory data collection is necessary to generate economic estimates of efficiency and distributional effects. As the 18-month review will consist of only one full year of data from the mandatory EDR, data collected during 2004 will be an important indicator of directional change in the fishery.

We agree that the year 2004 should not be used as a single baseline to compare an entire sector's economic status as it uses that year in combination with other years to define the pre-Program state. No data from a single historic year is intended to be used in isolation of other historic years as each EDR for a sector will be made up of data from at least three years between 1998 and 2004.

*Comment 219:* The data collection agent, Pacific States Marine Fisheries Commission, should be required to negotiate a confidentiality agreement with any party the Council gives review authority, which may or may not include NMFS. That confidentiality agreement should include penalties for individuals who divulge data. The proprietary economic data being collected are highly sensitive because of competition.

*Response:* In compliance with NOAA administrative orders an existing regulation regarding confidentiality of data, and when appropriate, confidentiality agreements will be required for recipients of data.

*Comment 220:* The proposed rule provides an optimal approach to the disclosure of commercially sensitive data, having due regard to the antitrust laws, the relevant provisions of the enabling statute for the rationalization program, and the Council's intent. The

proposed rule should not be altered to restrict disclosure of data beyond the extent necessary to comply with antitrust laws. Any changes to the proposed rule should be based on the objectives of maximum transparency of data to industry participants, consistent with antitrust law, the enabling statute for the program, and the Council's intent, and maximum availability of data to NMFS, the Council, the DOJ and FTC for the purposes of review, monitoring, and enforcement, as the case may be.

*Response:* NMFS concurs with the comment.

#### *Cost Recovery and Fee Collection*

*Comment 221:* Why would CP ex-vessel price proxies be lagged a year when real-time ex-vessel values are collected shoreside, especially with the IERS. A weighted average could be computed daily, weekly or monthly across shoreside crab buyers? One-year lagged proxies should not be allowed.

*Response:* NMFS explored several different methods for calculating CP standard prices. NMFS based the CP standard prices for ex-vessel values based on the current method used to calculate standard prices under the halibut and sablefish IFQ regulations. The halibut and sablefish IFQ standard price regulations were developed recognizing that the ex-vessel value of a CP product often possesses a value added cost that would be subject to a fee liability that substantially exceeds the fee liability for shoreside deliveries of unprocessed fish. Therefore, NMFS developed an ex-vessel value methodology that calculated, as closely as possible by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings based on information provided by shoreside buyers which included: (1) Landed pounds by IFQ species, port-group, and month; (2) total ex-vessel value by IFQ species, port-group, and month; and (3) price adjustments, including IFQ retro-payments. This method provides for a more equitable fee distribution between the CP and shoreside sectors. Because the rationalized crab fishery will function similarly to the halibut and sablefish IFQ fisheries, NMFS adopted a similar methodology to accommodate CP ex-vessel price calculation that bases standard prices on the preceding year's values.

NMFS recognizes that information will be available through the Interagency Electronic Reporting System (IERS) on a real time basis, which could allow for daily, weekly, or quarterly standard price calculations. NMFS

cannot implement more frequent standard price calculations than annually due to confidentiality issues and administrative constraints. However, NMFS agrees that CP standard prices should be based on information available at the time a CP harvests crab. Therefore, NMFS revised the language of the regulation at § 680.44(b) to indicate that CPs will be responsible for calculating their fee liability at the end of a crab fishing year based on the current year's CP standard prices as provided to them by RAM. Each CP would be responsible for retaining their own estimated fees up to 3 percent of their estimated ex-vessel value until the end of the crab fishing year and submitting their actual fees based on the CP standard prices provided by NMFS. CP standard prices would be based on the current year's shoreside ex-vessel value thereby minimizing any disparity between the fee liability paid by shoreside processors and CPs.

#### *Loan Program*

*Comment 222:* The proposed rule contains no provision for the crew loan program that is intended to support purchase of shares by captains and crew. This program is a critical component that should be implemented simultaneously with all other aspects of the program. In addition, the provision of seed money to fund the program from its inception would substantially increase the effectiveness of the loan program.

*Response:* NMFS recognizes the importance of crab QS loans for crab vessel captains and crew. If Congress enacts the necessary loan ceiling, NMFS intends to make crab QS loans available in time to finance captains and crew purchasing crab QS when it first begins to trade.

Under the Federal Credit Reform Act, Federal loans are available only in accordance with annually enacted loan ceilings. Congress has not yet enacted a loan ceiling for crab QS loans, but crab industry representatives advise us that they are working to ensure timely enactment of the necessary loan ceiling.

#### *General Comments*

*Comment 223:* We are sure that for the years 2002–3 the NMFS' budget was in the billions of dollars. We are also sure that there are people who think that the NMFS programs are failing miserably. NMFS is not only responsible for the management and conservation of our marine resources but also fishing industry jobs. NMFS does not seem to be very good at its job description. What did NMFS do with our fish, what happened to our jobs?

*Response:* NMFS regrets that the commentator has such a negative perception of the agency. It is unclear to which programs the commentator is specifically referring. Thus, NMFS is unable to respond to the sufficiency of the budget or the relative success of the program the commentator addresses. However, NMFS would like to note that the North Pacific fisheries continue to be recognized as the most productive and sustainable in U.S. waters, due in part to the extensive management measures undertaken by NMFS.

NMFS is responsible for the management, conservation and protection of living marine resources within the United States Exclusive Economic Zone. NMFS also plays a supportive and advisory role in the management of living marine resources in coastal areas under state jurisdiction, provides scientific and policy leadership in the international arena and implements international conservation and management measures as appropriate.

Under this mission, the goal is to optimize the benefits of living marine resources to the Nation through sound science and management. This requires a balancing of multiple public needs and interests in the sustainable benefits and use of living marine resources, without compromising the long-term biological integrity of coastal and marine ecosystems.

Many factors, both natural and human-related, affect the status of fish stocks, protected species and ecosystems. Although these factors cannot all be controlled, available scientific and management tools enable the agency to have a strong influence on many of them. Maintaining and improving the health and productivity of these species is the heart of NMFS' stewardship mission. These activities will maintain and enhance current and future opportunities for the sustainable use of living marine resources as well as the health and biodiversity of their ecosystems.

NMFS continues to believe that the Crab Rationalization Program is consistent with NMFS mission and goals. NMFS also believes that the Program will increase resource conservation, improve economic efficiency, and improve safety. NMFS continues to work diligently to ensure the needs and interests in the sustainable benefits and use of the crab resources remain properly balanced with the long-term biological integrity of the crab stocks.

*Comment 224:* Giving away resources for free is an important public policy and needs independent public scrutiny.

*Response:* NMFS agrees that the Program is important public policy and requires independent public scrutiny. NMFS believes that the public has had ample opportunity for independent scrutiny throughout the development of the Program. The Council developed this Program over a 6-year period through its public process, starting with an ad hoc industry committee, which was formalized into the Council's BSAI Crab Rationalization Committee. The Council appointed members to the BSAI Crab Rationalization Committee, which included representatives from harvesters, processors, skippers and crew, communities, and environmental organizations. The BSAI Crab Rationalization Committee was tasked with developing elements and options for analysis and reporting to the Council. Also, the Council, the Advisory Panel (AP), and Scientific and Statistical Committee (SSC) have discussed rationalization at a number of meetings since October 1999. The Council, AP, and SSC accepted public testimony, written and oral, at each of these meetings.

During the period from February 2002 to August 2004, the Council and NMFS developed the EIS. The Preliminary draft EIS for Council review was published November 2003 and distributed to the Council family and posted on the NMFS Alaska Region and Council web pages. The Council then recommended releasing the draft EIS for public review, along with some revisions to the analysis. The Draft EIS was filed with the Environmental Protection Agency and released for public review on March 19, 2004. The 45-day public comment period closed on May 3, 2004. The Comment Analysis Report, in Chapter 8 of the Final EIS, provides the public comments received during the comment period and presents the agency's response to the public comments. NMFS released the Final EIS in August 2005. These EIS documents were distributed to the Council and available to the public at the Council meetings and on the NMFS web page. The Council heard public testimony on the EIS at its meetings.

In January 2004, the U.S. Congress amended section 313 of the Magnuson-Stevens Act to require the Secretary to approve the Program developed by the Council. NMFS is publishing notice and comment rule making to implement this Program, which allows for additional public review.

*Comment 225:* NMFS reports contain worthless data that are never verified.

*Response:* NMFS disagrees. First, in accordance with National Standard 2 of the Magnuson-Stevens Act, NMFS must

use the best available scientific information in developing fishery conservation and management measures. NMFS ensures compliance with National Standard 2 by using the highest quality scientific information collected from agency, industry, academic, and public resources. Second, in accordance with the Data Quality Act, NMFS must provide for and maximize the quality, objectivity, utility, and integrity of any information it disseminates. NMFS ensures compliance with the Data Quality Act by ensuring transparency of data, reproducibility of information, and an appropriate level of peer review. Therefore, through compliance with the Magnuson-Stevens Act and the Data Quality Act, NMFS ensures that the information used in developing the Crab Rationalization Program, as well as all other NMFS reports, is not only initially high-quality, but also is subjected to several significant independent verification steps.

*Comment 226:* Marine sanctuaries should be established now.

*Response:* Marine sanctuaries are not part of the Program and, therefore, are not addressed in this rule. However, as discussed in the Final EIS (*see ADDRESSES*), existing closed areas protect crab and their habitat from the effects of fishing. Trawl fishing is prohibited in the Pribilof Islands Habitat Conservation Zone established to protect crab habitat in the Pribilof Islands area. The Red King Crab Savings Area in the Bering Sea and the Nearshore Bristol Bay Closure protect female and juvenile red king crab and their habitat from trawl fishing. The State of Alaska established a no-fishing zone to protect blue king crab in state waters around the St. Matthew, Hall, and Pinnacles Islands.

*Comment 227:* NMFS should reconsider the LLP's exemption for vessels under 32 foot in the Norton Sound king crab fishery because this exemption reduces the value of the LLP licenses, jeopardizes investments made in the fishery, and results in overcapitalization of a very limited resource.

*Response:* This final rule does not address reducing capacity in the Norton Sound king crab fishery. As discussed in the Final EIS, the Council determined that inclusion of the Norton Sound king crab fishery in the Crab Rationalization Program was unwarranted at this time. We encourage you to petition the Council to make these changes in the LLP for this fishery.

*Comment 228:* NMFS has issued too many LLP licenses for the Norton Sound king crab fishery because it is a very

small fishery with a limited resource and value. NMFS should consider revoking the LLP licenses that are not being used to restore the value of the remaining LLP licenses and protect the fishery from overcapitalization.

*Response:* See response to comment 227.

*Comment 229:* In the proposed rule, § 679.4(k)(1)(ii)(B) and (D) refer to the U.S. Russian Convention line of 1867. This line is no longer recognized as the Maritime Boundary line between the U.S. and Russia.

*Response:* NMFS agrees and has changed references to the U.S. Russian Convention line of 1867 in the final rule to the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).

*Comment 230:* The proposed rule does not contain specific measures to improve the safety of the BSAI crab fisheries. Specific measure are necessary to achieve the stated goals of the Program. Specific measures should include requiring vessels to be better built and equipped, mandatory USCG inspections, crew training, and pot limits to ensure vessel stability. QS holders not interested in complying with these safety measures could join a cooperative or lease or sell their QS/IFQ. NMFS should include language in the proposed rule ordering the Council to consult with the Coast Guard to develop an amendment that specifically addresses vessel and crew safety in the rationalized crab fishery. NMFS should publish the implementing regulations for the amendment to coincide with the sunset of the QS leasing option for QS holders.

Although the Agency clearly states in the summary of the proposed action that "The proposed action is necessary to increase resource conservation, improve economic efficiency and *improve safety*." (emphasis added by commenter), in the proposed rule there is virtually no discussion of precisely how—or whether—the crab rationalization program will actually improve the safety for fisherman in the Bering Sea (other than the discussion in rule that rationalization will end the race for fish and likely lead to more measured fisheries thus decreasing the dangers inherent in being forced to fish in dangerous weather and that a smaller,

consolidated fleet with fewer participants will lead to fewer accidents). Nowhere in the rule is the protection of life and limb directly addressed, despite the rule's stated goal of improving safety.

*Response:* Improved vessel safety is one of the goals of the Program for NMFS, the U.S. Congress, and the Council. As explained in the Final EIS, the safety benefits provided by the Program include improved opportunity for vessel owners to invest in safety, improved opportunity for captains to take weather and other considerations into account when making decisions, and more professional crews. NMFS agrees that the regulations do not contain specific measures to regulate how a participant improves vessel safety. NMFS believes that the Program, as mandated by the Magnuson-Stevens Act, is sufficient to improve safety and that no additional measures or changes to the regulations are required at this time. However, the Council, working with the Coast Guard, may develop recommendations to amend the Program with specific measures to improve safety.

*Comment 231:* The Council motion provides that AFA crab harvesting and processing sideboards would be removed on implementation of the program. The regulation does not appear to contain a provision concerning the removal of AFA sideboards. Include provisions removing the AFA crab harvesting and processing sideboards.

*Response:* The regulations do remove the AFA crab harvesting and processing sideboards, consistent with Amendment 18. The final rule removes the requirement for AFA crab sideboard endorsements at § 679.4(l)(3)(ii)(D) and § 679.7(k)(4)(ii), and the crab processing sideboard limits at § 679.7(k)(8) and § 679.65.

#### **Additional Changes From Proposed Rule**

NMFS made the following changes from the proposed rule to the final rule to clarify regulatory language or correct mistakes in the proposed rule.

At § 680.41(l)(2)(ii)(C) a typographical error was corrected to change 3 days to 30 days.

*Crab Harvesting Cooperatives.* At § 680.21 the crab harvesting cooperative IFQ permit deadline was changed from July 1 to August 1 to conform with the IFQ application deadline.

NMFS has removed the provision in the proposed rule at § 680.21(g)(2) that allowed crab harvesting cooperatives to acquire individually held IFQ. Amendment 18 does not provide for crab harvesting cooperatives to acquire

individually held IFQ. NMFS has determined that allowing crab harvesting cooperatives to acquire individually held IFQ could be a disincentive for QS holder to join crab harvesting cooperatives and a disincentive for crab harvesting cooperatives to acquire members, thus undermining the Program. Without this provision, the total amount of crab harvesting cooperative IFQ will be set at the start of the season, facilitating crab harvesting cooperative management. Removing this provision does not effect the ability of crab harvesting cooperatives to conduct intercooperative transfers.

*Permits.* In § 680.4, NMFS substituted the requirement in the proposed rule that each company obtain a separate RCR permit for each facility with a requirement in the final rule that each IPQ holder must hold an RCR permit. And, the application for an RCR permit is also changed accordingly to delete unnecessary information. At the time the proposed rule was prepared, development work on the IERS had not progressed to the point where the data collection organization and structure was defined. It is now clear that providing a single, unequivocal match between the holder of the IPQ permit(s) to be debited for a landing with the RCR receiving crab accomplishes several important results: it relieves the burden for an IPQ holder to obtain multiple RCR permits; it greatly simplifies landings reporting and eliminates need to enter data multiple times for a landing; it clarifies which entity is responsible for crab landings reporting; and it simplifies cost recovery statements and payments.

*Table 14.* Tables 14a–14c have been updated to provide a corresponding NMFS port code for each ADF&G port code in the tables. Tables 14a–14c were provided for groundfish reporting, and there were several ports where groundfish were not customarily delivered. No NMFS port code was necessary from these locations for groundfish reporting. The ADF&G list of port codes in Tables 14a–14c was assembled to accommodate all fisheries including groundfish and shellfish. NMFS is populating the table with the necessary codes to provide reporting capabilities for any port from which shellfish as well as groundfish could be reported.

*IFQ overages.* NMFS added language to address how accounting must occur for IFQ overages in relation to IPQ. Under Amendment 18, harvesters must forfeit any IFQ overages. NMFS believes that IFQ overages should not be debited from IPQ for two reasons. First,

processors should not be penalized for overages by the harvesters. Second, and more importantly, once crab is forfeited or seized it is no longer classified as "IFQ." For instance, a harvester will be required to bring in their crab and have that crab weighed at a processor. If an overage of any amount occurs, NMFS would seize the overage (the harvester would forfeit) and debit the harvester's account only to the full amount of the offending harvester's IFQ. The processor would purchase the seized crab from NMFS without debiting their IFQ.

**Economic Data Collection.** To reduce the burden to submitters and improve the quality of responses for the historic and annual EDRs for CVs, CPs, stationary floating crab processors-, and inshore processors, NMFS conducted pretests of the draft EDRs prepared for the proposed rule with industry experts. The industry expert reviews were used to evaluate the EDR for comprehension, clarity of instructions, form layout, as well as the probability of soliciting the most accurate response possible for each data field in the survey. From the industry expert review, changes to § 680.6 are included in the final rule to improve the quality, comprehension, and reduce burden for submitters of the EDR. These changes consist of three types: Editorial changes, changes that eliminate or modify a data field, or substantive changes that would extend the reporting response time for submission of the EDR.

NMFS has reorganized and renamed several data fields at § 680.6 of the final rule to organize the requested data in a manner that is consistent with the records kept by the submitters and to rename data fields to make it clearer to the submitters by using a term that is familiar to the fishing industry. NMFS also edit a portion of the instructions for a data field that is listed in a data form to provide an accurate explanation. Examples include the change of "owner name" to "name of company," the change of "pounds processed" to "finished pounds processed" clarifying the interval of time during a year for reporting costs as observed payments for which a record may be verified as opposed to estimates of costs from operator guesses. These changes occur in several paragraphs of § 680.6 and do not constitute addition or removal of any data fields.

NMFS removed data fields in the annual EDR related to the season interval at §§ 680.6(b)(4)(i), 680.6(d)(4)(i), 680.6(f)(4)(i) and 680.6(h)(4)(i), because they conflicted with the approach used by submitters to retain and organize historical vessel data, processing data and other records

by crab fishery. The use of a season interval was conceived of to allow for collection of data by time interval, where multiple fisheries may occur at the same point in time. Industry expert reviews of draft data forms revealed that most of these fisheries will still occur with minimal overlap in the early years and that the operators can adequately parse out fishing or processing costs and activities at the fishery level. This modification will have the added advantage of reducing reporting burden to the respondents.

NMFS added a new data field to the historical and annual CP EDR at § 680.6(c)(5)(x), and § 680.6(d)(5)(x) "BSAI crab-specific vessel costs", called "gear storage". Pretesting identified this as a significant cost category that was not reported in the EDR prepared at the time of the proposed rule, and is typically available in historical and annual records. Including this data field avoids confusion regarding where to locate these costs in the EDR.

NMFS added Table 3c, Crab Product Codes for Economic Data Reports, in the final rule because Tables 3a and 3b do not include information needed for the EDR for purposes of recording production information in the processor EDRs. Table 3c is added to differentiate descriptions of processed crab products from descriptions of delivery, condition, and disposition codes at the point of landing.

**Administrative Appeals.** The following explanation of revisions to § 679.43(a) was inadvertently left out of the preamble to the proposed rule although the proposed regulatory changes were published. The administrative appeals regulations at § 679.43 currently apply to IADs issued under 50 CFR part 679 and part 300. The final rule adds part 680 to the applicability statement so that the same administrative appeals process that applies to IADs issued for the halibut/sablefish IFQ program and other programs established in part 679 will apply to any IADs issued for the Crab Rationalization Program. The final rule also specifically excludes IADs issued for approval or disapproval of CDQ allocations and Community Development Plans under § 679.30(d) from the administrative appeals process at § 679.43. CDQ allocations are made every three years through a lengthy administrative process that includes the CDQ groups, the State of Alaska, the Council, and NMFS. The crab CDQ allocations provided for under this Program are among the species that must be allocated among the CDQ groups using this CDQ allocation process. As a result of an evolving

understanding of NMFS's legal responsibilities for the CDQ allocation decision, NMFS will provide an opportunity for the CDQ groups to administratively appeal NMFS' IAD to approve or disapprove the State's CDQ allocation recommendations. However, the deadlines and process described at § 679.43 for IADs issued primarily for permits and QS fisheries are not appropriate for the CDQ allocation process. Therefore, NMFS will develop specific procedures for administrative appeals of the IAD issued about CDQ allocations in 2005 through a letter from the Regional Administrator to the CDQ groups. The administrative appeals procedure also would be made available to the State, the Council, and the public at the time it is provided to the CDQ groups. This procedure for administrative appeals of the CDQ allocations will be done this way one time. After completion of the 2006–2008 CDQ allocation decision process, NMFS will propose regulations to either revise the procedure for making CDQ allocations or codify an appropriate administrative appeals process at § 679.43.

#### Classification

This final rule has been determined to be significant for the purposes of Executive Order 12866.

**Congressional Review Act:** The Office of Information and Regulatory Affairs has determined that this rule is major under 5 U.S.C. 801 *et seq.* Under 5 U.S.C. 808, the minimum 60-day delay in effectiveness required for major rules is not applicable because this rule establishes a regulatory program for a commercial activity related to fishing.

A Draft Environmental Impact Statement (EIS) (dated March 2004) was prepared for this rule and made available to the public for comment (69 FR 13036, March 19, 2004). The Final EIS was prepared and made available to the public on September 3, 2004 (69 FR 53915). Copies of the Final EIS for this action are available from NMFS (*see ADDRESSES*). On November 19, 2004, NMFS issued the Record of Decision for the Final EIS. The EIS contains as appendices the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Social Impact Assessment (SIA) prepared for this action.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA). The FRFA incorporates the IRFA, response to public comments received on the IRFA, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (*see ADDRESSES*). The FRFA did not

reveal any Federal rules that duplicate, overlap, or conflict with the action. The following summarizes the FRFA.

The FRFA evaluates the impacts of the Crab Rationalization Program for the king and Tanner fisheries in the BSAI on small entities. The FRFA addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601–612). It specifically addresses the requirements at section 604(a).

#### *Issues Raised by Public Comments on the IRFA*

The proposed rule for the Program was published in the **Federal Register** on October 29, 2004 (69 FR 63200). An IRFA was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. The public comment period ended on December 13, 2004. NOAA Fisheries Service received 49 letters of public comment on the proposed rule. NOAA Fisheries Service summarized these letters into 234 separate comments. Of these, three comments were on the IRFA and are presented below. No changes were made to the final rule from the proposed rule in response to the comments on the IRFA. Several comments directly or indirectly dealt with economic impacts to small entities resulting from the management measures presented in the proposed rule. These comments and responses are under Response to Comments in this preamble.

*Comment 1:* The IRFA incorrectly states the number of small entities. The ownership affiliation standard in the proposed rule surely reduces the number of small businesses to far less than 223. The EIS Appendix identifies approximately 39 processor-affiliated vessels, including CPs. So, this statement seems to presume all non-processor-affiliated vessels are unique, small entities. Application of the affiliation standard in the proposed regulations makes this number highly suspect, especially in light of CDQ ownership affiliations.

*Response:* As stated in the IRFA, the SBA establishes the principles of affiliation for defining small entities in an IRFA. The analysis in the IRFA used these principles of affiliation to define the number of small entities, and not the proposed rule's affiliation standard for the Program. Additionally, NOAA Fisheries Service has limited information on vessel ownership, therefore, the analysis is based on the best available information. The estimation of the number of small

entities under the IRFA is likely over inclusive because of the lack of better ownership information. NOAA Fisheries Service has determined that the extensive economic data collection that is part of this Program will enable the agency to better determine the small business status of participants in the Program.

*Comment 2:* This statement in the IRFA concerning entry of new processors is not complete. They may also buy or lease IPQ in order to purchase and process Class A IFQ. This means of entry should be added to the text.

*Response:* NOAA Fisheries Service agrees and has added this means of entry to the FRFA. NOAA Fisheries Service points out that this means of entry discussed in the preamble to the proposed rule.

*Comment 3:* NOAA Fisheries Service expressed interest in receiving comments regarding the definition of crab catcher processor in the IRFA. For the most part, crab catcher processors should be classified as small business size entities.

*Response:* Comment noted. The commenter did not provide any information supporting the statement that catcher/processor vessels should be considered small business entities. The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses and these criteria are also included in NOAA Fisheries Service guidelines for RFA. NOAA Fisheries Service considers catcher/processors to be small entities for the analysis in the IRFA and this FRFA. NOAA Fisheries Service has determined that the extensive economic data collection that is part of this Program will enable the agency to better determine the small business status of catcher/processors.

#### *Need for and Objectives of This Action*

The BSAI crab fisheries are currently managed under the LLP. Under current management, the fisheries are prosecuted in an economically inefficient manner with significant amounts of the capital idle between seasons. The race to fish also creates incentives for participants to compromise safety to increase catch. The Council developed the Program which slows the race for fish, minimizes bycatch and associated mortalities, provides for conservation to increase the efficacy of crab rebuilding strategies, and addresses the social and economic concerns that have arisen under current management. The U.S. Congress mandated NOAA Fisheries Service

approve and implement the Program by amending section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801).

#### *Number and Description of Small Entities Affected by the Rule*

Approximately 238 small entities own crab harvest vessels or crab catcher/processors. They are directly regulated by the final rule. Eight small entities appear to qualify for processor allocations. Thirteen communities, which are considered small government jurisdictions, could be directly impacted by the community protection provisions under consideration. The six non-profit CDQ groups are small entities directly regulated by the final rule.

#### *Recordkeeping and Reporting Requirements*

Implementation of the final rule will change the overall reporting structure and recordkeeping requirements of the participants in the BSAI crab fisheries. Under the final rule, all participants will be required to provide additional reporting. Each harvester will be required to track harvests to avoid exceeding his or her allocation. As in other North Pacific rationalized fisheries, processors will provide catch recording data to managers to monitor harvest of allocations. Processors will be required to record deliveries and processing activities to aid in Program administration.

To participate in the Program, persons will be required to complete application forms, transfer forms, EDR forms, reporting requirements, and other collections-of-information. These forms are either required by the Magnuson-Stevens Act or required for the administration of the Program. These forms impose costs on small entities in gathering the required information and completing the forms. Persons will be required to complete most of the forms at the start of the Program, like applications for initial issuance of QS and PQS and the historic EDR. Persons will be required to complete some forms every year, like applications for IFQ/IPQ and annual EDRs. Participation in the Arbitration System will be also be annual. Additionally, catch reporting will be completed more frequently.

#### *Description of Significant Alternatives and Description of Steps Taken To Minimize the Significant Economic Impacts on Small Entities*

The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated the potential for

rationalization of the BSAI crab fisheries, including the “no action” alternative. The RIR presents the complete set of alternatives, in various combinations with the complex suite of options. The EIS presents four alternative programs for management of the BSAI crab fisheries, namely, Status Quo/No Action (Alternative 1); the Crab Rationalization Program (Alternative 2); an Individual Fisherman’s Quota (IFQ) Program (Alternative 3); and a Cooperative Program (Alternative 4). These alternatives constitute the suite of “significant alternatives”, under the action, for RFA purposes. Each is addressed briefly below. Please refer to the EIS and its appendices for more detail. The following is a summary of the contents of those more extensive analyses, specifically focusing on the aspects which pertain to small entities, the reasons why each alternative to the action was rejected, and the reasons why the Crab Rationalization Program was selected.

In January 2004, the U.S. Congress amended section 313 of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801), by adding paragraph (j). As amended, section 313(j)(1) requires the Secretary to approve and implement by regulation the Crab Rationalization Program, as it was approved by the North Pacific Fishery Management Council (Council) between June 2002 and April 2003, and all trailing amendments, including those reported to Congress on May 6, 2003.

Under the status quo (no action), the BSAI crab fisheries have followed the well known pattern associated with managed open access. Enticed by the prospect of capturing 100 percent of the benefits, while externalizing all but a very small “common” share of the cost of an individual fishing decision (*i.e.*, no enforceable ownership rights to ration access) these BSAI crab fisheries have been characterized by a “race-for-fish”, capital stuffing behavior, excessive risk taking, and a dissipation of potential rents. In the face of substantial stock declines, participants in these fisheries are confronted by significant surplus capacity (in both the harvesting and processing sectors), financial distress (for some, failure), and widespread economic instability, all contributing to resource conservation and management difficulties.

In response to worsening biological, economic, social, and structural conditions in many of the BSAI crab fisheries, the Council and NMFS found that the status quo management structure was causing significant adverse impacts to the participants in

these fisheries, as well as the communities that depend on these fisheries. As indicated in the IRFA, many small entities, as defined under RFA, are negatively impacted under current managed open access rules. The management tools in the existing FMP (*e.g.*, time/area restriction, LLP, pot limits) do not provide managers with the ability to effectively solve these problems, thereby making Magnuson-Stevens Act goals difficult to achieve and forcing reevaluation of the existing FMP. For these reasons, the Council and NMFS rejected the status quo alternative as a means to rationalize the crab fisheries.

In an effort to alleviate the problems caused by excess capacity and the race for fish, the Council and NMFS determined that the institution of some form of rationalization program is needed to improve crab fisheries management in accordance with the amended Magnuson-Stevens Act.

The IFQ alternative would, as the name implies, allocate individual shares of the crab TAC to harvesters, imparting a “quasi-private property interest” (*i.e.* a transferrable access privilege) in a share of the TAC, thus removing the undesirable “common property” attributes of the status quo on qualifying harvesters. The rationalization of the BSAI crab fisheries would likely benefit the approximately 223 businesses that own harvest catcher vessels and are considered small entities. In recent years these entities have competed in the race to fish against larger businesses. The IFQ alternative would allow these operators to slow their rate of fishing and give more attention to efficiency. Some of these operations and the vessels they use could be negatively impacted if the allocations they qualify for are small and cannot be fished economically. The participants, however, would be permitted to lease or sell their allocations, and could obtain some return from their allocations. Differences in efficiency implications of rationalization by business size cannot be predicted. Some participants believe that smaller vessels could be more efficient than larger vessels in a rationalized fishery because a vessel only needs to be large enough to harvest the IFQ. Conversely, under open access, a vessel has to be large enough to outcompete the other fishermen and, hence, the overcapacity problems under the race for fish. If that is true, it is possible that some of the smaller participants in the fishery could increase their activity (by purchasing or leasing QS/IFQ) in a rationalized fishery.

Council and NMFS rejected the IFQ alternative because the IFQ alternative would fail to protect the economic and social interests of other participants, also dependent on these crab fisheries, namely, processor and community entities. As the analysis in the RIR demonstrates, while harvesters clearly benefit, the IFQ alternative likely would increase the negative economic impacts relative to status quo on processor and community small entities. Specifically, as discussed in the RIR and SIA, harvesters may deliver crab to new processors in locations with more access to the outside world, forcing the closing of processing facilities in remote areas that are dependent on the crab fisheries, such as Saint Paul, Saint George, and Unalaska/Dutch Harbor.

The Cooperative alternative yields many of the positive economic, social, and structural results cited above for the IFQ alternative. In addition, however, the Cooperative alternative holds out the promise of providing efficiency gains to both small entity harvesters and the processors. Data on cost and operating structure within each sector are unavailable, so a quantitative evaluation of the size and distribution of these gains, accruing to each sector under this management regime, cannot be provided. Nonetheless, it appears that the Cooperative alternative offers all of the same “improvements” over the status quo as does the IFQ alternative (*e.g.*, institution of “rights-based-management” structure, reduction in uncertainty) while including another population of participants, the crab processors, that the Council expressed explicit concern about protecting in its problem statement and objectives for this action.

While on the basis of available information, the Cooperative alternative appears to minimize negative economic impacts on small entities to a greater extent than does an IFQ alternative, and both appear to minimize negative economic impacts compared to the Status Quo, it is apparent, on the basis of the EIS and RIR analyses, that the Cooperative alternative does not extend the benefits of rationalization to the third population of small entities, fishery dependent communities. Therefore, the Council and NMFS rejected the Cooperative alternative.

After an exhaustive public process, spanning several years, the Council and NMFS selected the Crab Rationalization Program alternative because it concluded that the Crab Rationalization Program best accomplishes the stated objectives articulated in the problem statement and applicable statutes, and minimizes to the extent practicable

adverse economic impacts on the universe of directly regulated small entities; harvesters, processors, and communities. This final rule will implement the Program.

The Program contains many provisions to minimize significant negative impacts on small entities, consistent with stated objectives of applicable statutes. The Program makes three separate allocations; one to the harvest sector, one to the processing sector, and one to defined regions. All three allocations are based on historic participation, to protect investment in and reliance on the fisheries. Harvesters will receive harvest allocations, processors will receive processing allocations, and regions will receive allocations of landings and processing activity. These three separate allocations are also intended to mitigate the negative effects of the transition from a regulated open access race-for-fish to rationalized fisheries, burdens which tend to fall most heavily on small entities.

The competing interests of harvesters and processors, many of which are small entities, are balanced by allocating different portions of the total harvest to the two sectors. Harvesters will be allocated harvest shares for 100 percent of the TAC, minus the community allocations. Processors will be allocated processing shares for 90 percent of the TAC. To ensure corresponding allocations to the two sectors, 90 percent of the harvest allocation is allocated as Class A IFQ that require delivery to a processor that holds IPQ. The remaining 10 percent will be Class B IFQ shares that can be delivered to any processor. Under the Program, harvesters (many of whom, as noted, are small entities) will be permitted to form cooperatives to achieve efficiencies and reduce transaction costs through the coordination of harvest activities and deliveries to processors.

Small harvester entities that receive allocations large enough to support their participation could benefit from not needing to participate in the race for fish, as with the IFQ alternative. The portion of the fishery allocated as Class B IFQ, also known as open delivery IFQ, will also impact the effects of the Program on small harvesters, since Class B IFQ are likely to provide harvesters with additional power in their delivery negotiations with processors.

Small processors appear to have been exiting the crab fishery in recent years as the harvest levels have declined and seasons have been compressed. The final rule will allocate PQS to processors that participated in the fishery in either 1998 or 1999. "Small"

processors that plan to enter or reenter the crab fisheries (but did not participate during the qualifying years) will be allowed to process crab harvested with Class B IFQ and CDQ crab, or lease IPQ to process crab caught with Class A IFQ. Class B IFQ and CDQ crab will provide a mechanism for small processors to enter the fishery without large capital outlays to purchase PQS or IPQ. Class B IFQ, however, will reduce the allocation of PQS to the small and large processors that qualify for the Program. Class B IFQ therefore may negatively impact small processors, if they are unable to compete with large processors in the marketplace for the Class B IFQ.

To resolve impasses in price negotiations, a potentially crippling occurrence for the smaller operators, the Program will include a mandatory binding arbitration program for the settlement of price disputes between harvesters and processors. Historically, prices have been settled by protracted, often contentious negotiations, from time to time resulting in harvesters delaying fishing (*i.e.*, strikes), which can be detrimental to all concerned. An effective system of binding arbitration could protect the interests of both sectors in negotiations, while avoiding costly delays in fishing due to strikes.

A number of small governmental jurisdictions will be directly regulated by, and therefore could be impacted by, this final rule. All communities benefitting from these special provisions of the final rule are "small", under SBA criteria. Community interests have been explicitly considered in the Program, and special provisions have been included to minimize (to the extent practicable) adverse impacts on these small entities. Under these provisions, the degree of protection will likely vary community-to-community.

The allocation to regions is accomplished by regionally designating all Class A IFQ (delivery restricted) and all corresponding IPQ to be delivered and processed in a designated region. In most fisheries, regionalized IFQ and IPQ are either North or South, with North IFQ designated for delivery in areas on the Bering Sea north of 56°20' north latitude and South IFQ designated for any other areas, including Kodiak and other areas on the Gulf of Alaska. IFQ and IPQ designations are based on the historic location of the landings and processing that gave rise to the shares. The final rule will also increase the allocation of crab to CDQ groups from 7.5 percent to 10 percent, providing additional aid to the 65 CDQ communities (all small entities).

Community processing requirements in the first two years of the Program and ROFR will benefit communities with history supporting initial allocations and are intended to protect community interests. The ROFR provisions are likely to benefit communities that are more capable of exercising the right. Under the more general regional protection, processing activity could move between communities in a region. This is likely to benefit those communities able to attract additional processing activity from other communities in the region and harm communities that processing activity leaves. IPQ caps will benefit communities able to attract processing in years of high total harvest. Additionally, CDQ groups will be able to purchase QS and PQS to increase their participation in the BSAI crab fisheries above the CDQ allocation.

The final rule also contains several additional measures to protect various interests. Eligible crew will receive 3 percent of the initial allocation of QS. Sideboards will limit the activity of crab vessels in other fisheries (such as the GOA groundfish fisheries) to protect participants in those fisheries from a possible influx of activity that could arise from vessels that exit the crab fisheries, or are able to time activities to increase participation in other fisheries. While these benefactors of this provision are not directly regulated, and therefore not counted among the entities addressed in this IRFA, they are predominantly small entities.

Fish taxes will likely be redistributed with any redistribution of processing activity. In addition, the provision of support services and associated sales taxes will likely be redistributed to some extent by redistribution of landings in a rationalized fishery. Increased efficiency in the fisheries arising from the Program could reduce the demand for support services, impacting sales tax revenues, if the fleet is able to reduce their overall costs. These impacts may occur in large and small communities. Since the redistribution of activity and the increased efficiency cannot be predicted, these effects cannot be fully characterized.

NMFS made a series of changes in issuing the final rule from measures included in the proposed rule in response to public comments, as explained in this preamble. NMFS determined these changes were necessary to meet the requirements of Amendment 18 and 19. Many of these changes were designed to further mitigate the cost of the Program on small entities. These changes mitigate



the impact of the Program on small entities in the following ways. The changes for the harvester, crew, and processor sectors mitigate the effects on small entities by improving clarity in the regulations to ensure compliance, providing additional harvest opportunities to small entities affiliated with processors, and refining the application of use caps to reduce the effects of excessive QS/PQS consolation on small entities. The changes for Crab Harvesting Cooperatives mitigate the effects on small entities by providing additional opportunities for economic efficiencies for small entities affiliated with processors while ensuring compliance with anti-trust laws, maintaining the owner on board requirements for crew QS/IFQ to ensure entry level access into the crab fisheries, and applying the use caps to crab harvesting cooperatives to reduce the effects of excessive QS consolation on small entities. The changes for ROFR mitigate the effects on small entities by reducing potential confusion for small entities in compliance with civil contract terms required under section 313(j) of the Magnuson-Stevens Act. NMFS made changes to the Arbitration System that mitigate the effects on small entities by clarifying requirements for small entities to participate in the Arbitration System, and ensuring improved compliance with the Arbitration System to improve its ability to resolve price disputes while complying with anti-trust law.

Additionally, NMFS made a number of changes as a result of public comments to the Program's compliance requirements to mitigate impacts on small entities. In response to public comment requesting additional time to prepare and submit the historic EDRs, NMFS increased the submission interval for the historic EDR from 60 days to 90 days to provide both the time to gather records and complete an accurate EDR. Also in response to public comment, NMFS extended the time interval allowed for verification of data by all submitters in the final rule to 20 days from the 15-day interval identified in the proposed rule. NMFS made two major changes to requirements for catcher/processors as a result of public comment. Both changes reduce the burden on small entity participants in the crab fishery. NMFS reduced the required reporting interval for crab catch by catcher/processors from once every twenty-four hours to weekly. NMFS also clarified regulations governing the use of the IERS to ensure that vessels that are unable to use the Internet may report catch using an

alternative, NMFS approved method such as an e-mail attachment to report catch. NMFS made one change to the cost recovery fee system in response to public comment by adjusting the methodology by which catcher/processors must calculate and submit fees to reduce any disparity between fees paid by catcher/processors and shoreside processors.

#### *Collection-of-Information*

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB. Public reporting burden per response for these requirements are listed by OMB control number.

#### *OMB No. 0648-0213*

Requirements for recordkeeping and reporting forms and their associated burden estimates per response are: 14 minutes for Vessel activity report, 20 minutes for Product transfer report, 28 minutes for Catcher vessel longline and pot gear daily fishing logbook, and 41 minutes for Catcher/processor longline and pot gear daily cumulative production logbook.

#### *OMB No. 0648-0272*

Requirements for crab IFQ forms and their associated burden estimates per response are: 6 minutes for Application for replacement of certificates, permits, or cards; 6 minutes for Transshipment authorization; 6 minutes for Departure report; 6 minutes for Administrative waiver, and 18 minutes for Application for Registered Buyer permit.

#### *OMB No. 0648-0330*

Requirements for scales and catch weighing and their associated burden estimates per response are: 6 minutes for At-sea inspection request, 45 minutes for Record of daily scale tests, 45 minutes for printed output of at-sea scale weight, 45 minutes for printed output of State of Alaska scale weight, 80 hours for scale type evaluation, 6 minutes for at-sea scale approval report/sticker, 2 hours for Observer sampling station inspection request, 2 minutes for prior notice to Observers of scale tests, and 40 hours for Crab catch monitoring plan.

#### *OMB No. 0648-0445*

Requirements for a VMS and their associated burden estimates per response are: 12 minutes for VMS check-in form, 6 hours for VMS installation, 4 hours for VMS annual maintenance, and 6 seconds for each VMS transmission.

#### *OMB No. 0648-0503*

Requirements for crab arbitration reports and their associated burden estimates per response are: 4 hours for Annual Arbitration Organization Report, 1 hour for Arbitration Organization miscellaneous reporting, 40 hours for Market Report, 40 hours for Non-binding Price Formula Report, and 45 minutes to establish price for arbitration negotiations.

#### *OMB No. 0648-0504*

Requirements for applications for crab permits, transfers, and submittal of fees and their associated burden estimates per response are: 2 hours for Annual Application for Crab IFQ/IPQ Permit; 2 hours for Application for Crab QS or PQS; 2 hours for Application for annual crab harvesting cooperative IFQ permit; 30 minutes for Application for Crab IFQ Hired Master permit; 30 minutes for Application for RCR Permit; 20 minutes for Application for Federal crab vessel permit; 2 hours for Application for eligibility to receive Crab QS/IFQ or PQS/IPQ by transfer; 2 hours for Application to Become an ECCO; 2 hours for Application for transfer of crab QS/IFQ or PQS/IPQ; 2 hours for Application for transfer of crab QS/IFQ to or from an ECCO; 2 hours for Application for Inter-cooperative Transfer; 30 minutes for RCR fee submission form; and 4 hours for a letter of appeal, if denied a permit.

#### *OMB No. 0648-0505*

Requirements for crab reports and their associated burden estimates per response are: 35 minutes to electronically submit crab landing report and print receipts, 35 minutes to submit crab landing report paper backup (ADF&G fish ticket), 15 minutes for application for user ID, 20 minutes for CP offload report, 40 hours for ECCO annual report for an ECC.

#### *OMB No. 0648-0506*

Requirements for crab EDRs and their associated burden estimates per response are: 25 hours for Catcher processor historical EDR, 25 hours for Catcher processor annual EDR, 15 hours for Catcher vessel historical EDR, 15 hours for Catcher vessel annual EDR, 15 hours for Catcher vessel annual EDR, 15 hours for Stationary crab floating processor historical EDR, 15 hours for Stationary crab floating processor annual EDR, 15 hours for Shoreside crab processor historical EDR, 15 hours for Shoreside crab processor annual EDR, and 3 hours for verification of data by DCA.

Response times include the time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these burden estimates, including suggestions for reducing the burden, or any other aspect of these data collections-of-information to NMFS, Alaska Region (see ADDRESSES) and e-mail to [DRostker@omb.eop.gov](mailto:DRostker@omb.eop.gov), or facsimile to (202) 395-7285.

Notwithstanding any other provision 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.

#### Small Entity Compliance Guide

NMFS will post a small entity compliance guide on the Internet at <http://www.fakr.noaa.gov/sustainablefisheries/crab/crfaq.htm> to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hardtop of the guide (see ADDRESSES).

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Parts 679 and 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR part 902 is amended as follows:

##### 15 CFR Chapter IX

#### PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding in numerical order entries for § 679.5(l)(3)(i), § 679.5(l)(4), § 679.28(f) and (g), § 680.4, § 680.5, § 680.6, § 680.20, § 680.21, § 680.23(d)(1), § 680.23(d)(2), § 680.23(e), (f), (g) and (h), § 680.40(f), (g), (h), (i), (j), (k), (l), and (m), § 680.41, § 680.42, § 680.43, and § 680.44(a) through (f) to read as follows:

#### § 902.1 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

* * * *				
(b) * * *				
CFR part or section where the information collection requirement is located				Current OMB control number (all numbers begin with 0648-)
* * * *				*
50 CFR.				*
* * * *				*
679.5(l)(3)(i), (l)(4) .....				-0272
* * * *				*
679.28(f) .....				-0445
679.28(g) .....				-0330
* * * *				*
680.4 .....				-0504
680.5 .....				-0505
680.6 .....				-0506
680.20 .....				-0503
680.21 .....				-0504
680.23(d)(1) and (d)(2) .....				-0445
680.23(e), (f), (g) and (h) .....				-0330
680.40(f), (g), (h), (i), (j), (k), (l), and (m) .....				-0504
680.41 .....				-0504
680.43 .....				-0504
680.44(a), (b), (c), (d), (e) .....				-0505
680.44(f) .....				-0504
* * * *				*

#### 50 CFR Chapter VI

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

#### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

■ 2. In § 679.1, revise paragraphs (g) and (j) to read as follows:

#### § 679.1 Purpose and scope.

(g) *Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs.* Regulations in this part govern commercial fishing for king and Tanner crab in the Bering Sea and Aleutian Islands Area by vessels of the United States, and supersede State of Alaska regulations applicable to the commercial king and Tanner crab fisheries in the Bering Sea and Aleutians Islands Area EEZ that are determined to be inconsistent with the FMP (see subpart A, B, and E of this part). Additional regulations governing

commercial fishing for, and processing of, king and Tanner crab managed pursuant to section 313(j) of the Magnuson-Stevens Act and the Crab Rationalization Program are codified at 50 CFR part 680.

\* \* \* \*

(j) *License Limitation Program (LLP).* (1) Regulations in this part implement the LLP for the commercial groundfish fisheries in the EEZ off Alaska and the LLP for the commercial crab fisheries in the Bering Sea and Aleutians Islands Area.

(2) Regulations in this part govern the commercial fishing for groundfish under the LLP by vessels of the United States using authorized gear within the GOA and the Bering Sea and Aleutians Islands Area and the commercial fishing for crab species under the LLP by vessels of the United States using authorized gear within the Bering Sea and Aleutians Islands Area.

\* \* \* \*

■ 3. In § 679.2, revise the definitions of “Alaska local time,” and “Shoreside processor,” revise paragraphs (2) and (3) of the “Directed fishing” definition, and add a definition of “Registered crab receiver” in alphabetical order to read as follows:

#### § 679.2 Definitions.

\* \* \* \*

*Alaska local time (A.l.t.)* means the time in the Alaska time zone.

\* \* \* \*

*Directed fishing* means:

\* \* \* \*

(2) With respect to license limitation groundfish species, directed fishing as defined in paragraph (1) of this definition.

(3) With respect to crab species under this part, the catching and retaining of any crab species.

\* \* \* \*

*Registered crab receiver (RCR)* means a person issued an RCR permit, described under 50 CFR part 680, by the Regional Administrator.

\* \* \* \*

*Shoreside processor* means any person or vessel that receives, purchases, or arranges to purchase, unprocessed groundfish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving groundfish for personal consumption or bait.

\* \* \* \*

■ 4. In § 679.3, revise paragraph (d) to read as follows:

#### § 679.3 Relation to other laws.

\* \* \* \*

(d) *King and Tanner crabs*. Additional regulations governing conservation and management of king crabs and Tanner crabs in the Bering Sea and Aleutian Islands Area are contained in 50 CFR part 680 and in Alaska Statutes at A.S. 16 and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39.

\* \* \* \* \*

■ 5. In § 679.4, revise paragraph (k)(1)(ii), remove and reserve paragraphs (l)(3)(ii)(D), (l)(4)(i), and (l)(5)(ii), and remove paragraphs, (l)(4)(ii)(D), (l)(4)(ii)(E), (l)(5)(iv)(E), and (l)(5)(iv)(F), to read as follows:

#### § 679.4 Permits.

\* \* \* \* \*

(k) \* \* \*  
(1) \* \* \*

(ii) Each vessel must have a crab species license, defined in § 679.2, issued by NMFS on board at all times it is engaged in fishing activities for the crab fisheries identified in this paragraph. A crab species license may be used only to participate in the fisheries endorsed on the license and on a vessel that complies with the vessel designation and MLOA specified on the license. NMFS requires a crab species license endorsed for participation in the following crab fisheries:

(A) Aleutian Islands red king crab in waters of the EEZ with an eastern boundary the longitude of Scotch Cap Light (164°44' W. long.) to 53°30' N. lat., then west to 165° W. long., a western boundary of 174° W. long., and a northern boundary of a line from the

latitude of Cape Sarichef (54°36' N. lat.) westward to 171° W. long., then north to 55°30' N. lat., and then west to 174° W. long.;

(B) Aleutian Islands Area *C. opilio* and *C. bairdi* in waters of the EEZ with an eastern boundary the longitude of Scotch Cap Light (164°44' W. long.) to 53°30' N. lat., then west to 165° W. long., a western boundary of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and a northern boundary of a line from the latitude of Cape Sarichef (54°36' N. lat.), with a southern boundary of 54°30' N. lat. to 171° W. long., and then south to 54°36' N. lat.;

(C) Norton Sound red king and Norton Sound blue king in waters of the EEZ with a western boundary of 168° W. long., a southern boundary of 62° N. lat., and a northern boundary of 65°36' N. lat.;

(D) Minor Species endorsement includes:

(1) Bering Sea golden king crab (*Lithodes aequispinus*) in waters of the EEZ east of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement

between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), with a southern boundary of 54°36' N. lat. to 171° W. long., and then south to 54°30' N. lat.

(2) Scarlet or deep sea king crab (*Lithodes couesi*) in the waters of the Bering Sea and Aleutian Islands Area;

(3) Grooved Tanner crab (*Chionoecetes tanneri*) in the waters of the Bering Sea and Aleutian Islands Area; and

(4) Triangle Tanner crab (*Chionoecetes angulatus*) in the waters of the Bering Sea and Aleutian Islands Area.

\* \* \* \* \*

■ 6. In § 679.5, revise paragraphs (a)(7)(i) table only, (a)(15) introductory text, (c)(1), (g), (k), and (l)(4); revise introductory paragraph (l), introductory paragraph (l)(2)(iii)(M), introductory paragraph (l)(2)(iv), paragraph (l)(2)(iv)(C), paragraph (l)(2)(iv)(D), paragraph (l)(3)(i); remove paragraphs (a)(15)(i) through (viii), including the table; and remove and reserve (l)(2)(iv)(A) to read as follows:

#### § 679.5 Recordkeeping and reporting (R&R).

(a) \* \* \*  
(7) \* \* \*  
(i) \* \* \*

If participant is . . .	And fishing activity is . . .	An active period is . . .	An inactive period is . . .
(A) CV <sup>1</sup> .....	Harvest or discard of groundfish ..	When gear remains on the grounds in a reporting area (except 300, 400, 550, or 690), regardless of the vessel location.	When no gear remains on the grounds in a reporting area.
(B) SS, SFP .....	Receipt, purchase or arrange to purchase, or processing of groundfish.	When checked in or processing ..	When not checked in or processing.
(C) MS .....	Receipt, discard, or processing of groundfish.	When checked in or processing ..	When not checked in or not processing.
(D) CP .....	Harvest, discard, or processing of groundfish.	When checked in or processing ..	When not checked in or not processing.
(E) BS .....	Receipt, discard, or delivery of groundfish.	When conducting fishing activity for an associated processor.	When not conducting fishing activity for an associated processor.

<sup>1</sup> CV = Catcher vessel; SS = Shoreside processor; SFP = stationary floating processor; MS = mothership; Catcher/processor = CP; BS = Buying station.

\* \* \* \* \*

(15) *Transfer comparison*. The operator, manager, Registered Buyer, or Registered Crab Receiver must refer to Table 13 to this part for paperwork submittal, issuance, and possession requirements for each type of transfer activity of non-IFQ groundfish, IFQ

halibut, IFQ sablefish, CDQ halibut, and crab rationalization (CR) crab.

\* \* \* \* \*

(c) *Catcher vessel DFL and catcher/processor DCPL*—(1) *Longline and pot gear catcher vessel DFL and catcher/processor DCPL*. (i) In addition to information required at paragraphs (a) and (b) of this section:

(A) *Groundfish fisheries*. (1) The operator of a catcher vessel using longline or pot gear to harvest groundfish and that retains any groundfish from the GOA, or BSAI, must maintain a longline and pot gear DFL.

(2) The operator of a catcher/processor using longline or pot gear to

harvest groundfish and that retains any groundfish from the GOA, or BSAI, must maintain a longline and pot gear DCPL.

(B) *IFQ halibut, CDQ halibut, and IFQ sablefish fisheries.* (1) The operator of a catcher vessel using longline or pot gear to harvest IFQ sablefish, IFQ halibut, or CDQ halibut from the GOA, or BSAI, must maintain a longline and pot gear DFL.

(2) The operator of a catcher/processor using longline or pot gear to harvest IFQ sablefish, IFQ halibut, or CDQ halibut from the GOA, or BSAI, must maintain a longline and pot gear DCPL.

(C) *CR fisheries.* (1) The operator of a catcher vessel using pot gear to harvest CR crab from the BSAI, must maintain a longline and pot gear DFL.

(2) The operator of a catcher/processor using pot gear to harvest CR crab from the BSAI, must maintain a longline and pot gear DCPL.

(ii) *Required information.* The operator of a catcher vessel or catcher/processor identified in paragraph (c)(1)(i) of this section must record in the DFL or DCPL, the following information:

(A) *Federal reporting area.* Federal reporting area code (see Figures 1 and 3 to this part) where gear retrieval (see § 679.2) was completed, regardless of where the majority of the set took place. Use a separate logsheet for each reporting area.

(B) *Crew size.* If a catcher vessel, the number of crew, excluding observer(s), on the last day of a trip. If a catcher/processor, the number of crew, excluding observer(s), on the last day of the weekly reporting period.

(C) *Gear type.* Use a separate logsheet for each gear type.

(1) Circle gear type used to harvest the fish. If gear is other than those listed, circle "Other" and describe. If using hook-and-line gear, enter the alphabetical letter that coincides with gear description.

(2) If gear information is the same on subsequent pages, mark the box instead of re-entering the gear type information.

(3) *Pot gear.* If you checked pot gear, enter the number of pots set and the number of pots lost (if applicable).

(4) *Hook-and-line gear.* If you checked hook-and-line gear:

(i) Indicate whether gear is fixed hook (conventional or tub), autoline, or snap (optional, but may be required by IPHC regulations).

(ii) *Skates.* Indicate length of skate to the nearest foot (optional, but may be required by IPHC regulations), number of skates set, and number of skates lost

(optional, but may be required by IPHC regulations).

(iii) *Hooks.* Indicate size of hooks, hook spacing in feet, number of hooks per skate (optional, but may be required by IPHC regulations).

(iv) *Seabird avoidance gear code.* Record seabird avoidance gear code(s) (see § 679.24(e) and Table 19 to this part).

(D) *Permit numbers.* Enter the permit number(s) for the applicable fishery in which you participated.

(1) IFQ permit number of the operator and of each IFQ permit holder aboard the vessel.

(2) CDQ group number (if applicable).

(3) Halibut CDQ permit number (if applicable).

(4) Federal crab vessel permit number (if applicable).

(E) *Observer information.* Record the number of observers aboard, the name of the observer(s), and the observer cruise number(s).

(F) *Management program.* Use a separate logsheet for each management program. Indicate whether harvest occurred under one of the following management programs. If harvest is not under one of these management programs, leave blank:

(1) *Exempted Fishery.* Record exempted fishery permit number (see § 679.6).

(2) *Research Fishery.* Record research program permit number (see § 600.745(a) of this chapter).

(3) *Aleutian Islands Pollock (AIP)* (see paragraph (a)(7)(xv)(F) of this section).

(G) *Catch by set.* (See § 679.2 for definition of "set"). The operator must record the following information for each set, if applicable:

(1) If no catch occurred for a day, write "no catch;"

(2) Set number, sequentially by year;

(3) Gear deployment date (month-day), time (in military format, A.L.T.), and begin position coordinates (in lat and long to the nearest minute);

(4) Gear retrieval date (month-day), time (in military format, A.L.T.), and end position coordinates (in lat and long to the nearest minute);

(5) *Begin and end buoy or bag numbers* (optional, but may be required by IPHC regulations);

(6) *Begin and end gear depths,* recorded to the nearest fathom (optional, but may be required by IPHC regulations);

(7) *Target species code.* Enter the species code of the species you intend to catch;

(8) *Estimated haul weight.* Enter the total estimated haul weight of all retained species. Indicate whether to the nearest pound or to the nearest 0.001 mt (2.20 lb);

(9) *IR/IU Species* (see § 679.27). If a catcher/processor, enter species code of IR/IU species and estimated total round weight for each IR/IU species; indicate whether to the nearest pound or the nearest 0.001 mt (2.20 lb);

(10) Estimated total round weight of IFQ halibut and CDQ halibut to the nearest pound;

(11) Number and estimated total round weight of IFQ sablefish to the nearest pound;

(12) Circle to indicate whether IFQ sablefish product is Western cut (WC), Eastern cut (EC), or round weight (RD); and

(13) Number and scale weight of raw CR crab to the nearest pound.

(H) *Data entry time limits.* (1) The operator must record in the DFL or DCPL within 2 hours after completion of gear retrieval: Set number; time and date gear set; time and date gear hauled; begin and end position; CDQ group number, halibut CDQ permit number, halibut IFQ permit number, sablefish IFQ permit number, crab IFQ permit number, and/or Federal crab vessel permit number (if applicable), number of pots set, and estimated total haul for each set.

(2) If a catcher vessel, the operator must record all other required information in the DFL within 2 hours after the vessel's catch is off-loaded, notwithstanding other time limits.

(3) If a catcher/processor, the operator must record all other required information in the DCPL by noon of the day following completion of production.

(4) If a catcher/processor, the operator must record product information in the DCPL by noon each day to record the previous day's production information.

\* \* \* \* \*

(g) *Product transfer report (PTR)*—(1) *General requirements.* Except as provided in paragraph (g)(1)(i) through (vi) of this section:

(i) *Groundfish.* The operator of a mothership or catcher/processor or the manager of a shoreside processor or SFP must complete and submit a separate PTR for each shipment of groundfish and donated prohibited species caught in groundfish fisheries. A PTR is not required to accompany a shipment.

(ii) *IFQ halibut, IFQ sablefish, and CDQ halibut.* A Registered Buyer must submit a separate PTR for each shipment of halibut or sablefish for which the Registered Buyer submitted an IFQ landing report or was required to submit an IFQ landing report. A PTR is not required to accompany a shipment.

(iii) *CR crab.* A Registered Crab Receiver (RCR) must submit a separate

PTR for each shipment of crab for which the RCR submitted a CR crab landing report or was required to submit a CR crab landing report. A PTR is not required to accompany a shipment.

(2) *Exceptions*—(i) *Bait sales (non-IFQ groundfish only)*. During one calendar day, the operator or manager may aggregate and record on one PTR the individual sales or shipments of non-IFQ groundfish to vessels for bait purposes during the day recording the amount of such bait product shipped from a vessel or facility that day.

(ii) *Retail sales*—(A) *IFQ halibut, IFQ sablefish, CDQ halibut, and non-IFQ groundfish*. During one calendar day, the operator, manager, or Registered Buyer may aggregate and record on one PTR the amount of transferred retail product of IFQ halibut, IFQ sablefish, CDQ halibut, and non-IFQ groundfish if each sale weighs less than 10 lb or 4.5 kg.

(B) *CR crab*. During one calendar day, the RCR may aggregate and record on one PTR the amount of transferred retail product of CR crab if each sale weighs less than 100 lb or 45 kg.

(iii) *Wholesale sales (non-IFQ groundfish only)*. The operator or manager may aggregate and record on one PTR, wholesale sales of non-IFQ groundfish by species when recording the amount of such wholesale species leaving a vessel or facility in one calendar day, if invoices detailing destinations for all of the product are available for inspection by an authorized officer.

(iv) *Dockside sales*. (A) A person holding a valid IFQ permit, IFQ card, and Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish with a person who has not been issued a Registered Buyer permit after all IFQ halibut and IFQ

sablefish have been landed and reported in accordance with paragraph (I) of this section.

(B) A person holding a valid halibut CDQ permit, halibut CDQ card, and Registered Buyer permit may conduct a dockside sale of CDQ halibut with a person who has not been issued a Registered Buyer permit after all CDQ halibut have been landed and reported in accordance with paragraph (I) of this section.

(C) A Registered Buyer conducting dockside sales must issue a receipt to each individual receiving IFQ halibut, CDQ halibut, or IFQ sablefish in lieu of a PTR. This receipt must include:

- (1) Date of sale;
- (2) Registered Buyer permit number;
- (3) Weight by product of the IFQ halibut, CDQ halibut or IFQ sablefish transferred.

(D) A Registered Buyer must maintain a copy of each dockside sales receipt as described in paragraph (I) of this section.

(v) *Transfer directly from the landing site to a processing facility (CDQ halibut, IFQ halibut, IFQ sablefish, or CR crab only)*. A PTR is not required for transportation of unprocessed IFQ halibut, IFQ sablefish, CDQ halibut, or CR crab directly from the landing site to a facility for processing, provided the following conditions are met:

(A) A copy of the IFQ landing report receipt (Internet receipt) documenting the IFQ landing accompanies the offloaded IFQ halibut, IFQ sablefish, or CDQ halibut while in transit.

(B) A copy of the CR crab landing report receipt (Internet receipt) documenting the IFQ landing accompanies the offloaded CR crab while in transit.

(C) A copy of the IFQ landing report or CR crab landing report receipt is

available for inspection by an authorized officer.

(D) The Registered Buyer submitting the IFQ landing report or RCR submitting the CR crab landing report completes a PTR for each shipment from the processing facility pursuant to paragraph (g)(1) of this section.

(3) *Time limits and submittal*. The operator of a mothership or catcher/processor, the manager of a shoreside processor or SFP, the Registered Buyer, or RCR must:

(i) Record all product transfer information on a PTR within 2 hours of the completion of the shipment.

(ii) Submit a PTR by facsimile or electronic file to OLE, Juneau, AK (907-586-7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the shipment occurred.

(iii) If any information on the original PTR changes prior to the first destination of the shipment, submit a revised PTR by facsimile or electronic file to OLE, Juneau, AK (907-586-7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the change occurred and indicate the confirmation number of the original PTR.

(4) *Required information*. The operator of a mothership or catcher/processor, the manager of a shoreside processor or SFP, the Registered Buyer, or RCR must include the following information on a PTR:

(i) *Original or revised PTR*. Whether a submittal is an original or revised PTR. If revised, record the confirmation number of the original PTR.

(ii) *Shipper information*. Name, telephone number, and facsimile number of the representative. According to the following table:

If you are shipping . . .	Enter under "Shipper" . . .
(A) Non-IFQ groundfish .....	Your processor's name, Federal fisheries or Federal processor permit number.
(B) IFQ halibut, CDQ halibut or IFQ sablefish .....	Your Registered Buyer name and permit number.
(C) CR crab .....	Your RCR name and permit number.
(D) Non-IFQ groundfish, IFQ halibut, CDQ halibut or IFQ sablefish, and CR crab on the same PTR.	(1) Your processor's name and Federal fisheries permit number or Federal processor permit number, (2) Your Registered Buyer's name and permit number, and (3) Your RCR name and permit number.

(iii) *Transfer information*. Using descriptions from the following table, enter receiver information, date and

time of product transfer, location of product transfer (e.g., port, position

coordinates, or city), mode of transportation, and intended route:

If you are the shipper and . . .	Then enter . . .			
	Receiver	Date & time of product transfer	Location of product transfer	Mode of transportation and intended route
(A) Receiver is on land and transfer involves one van, truck, or vehicle.	Receiver name and Federal fisheries, Federal processor, or Federal crab vessel permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer.	Name of the shipping company; destination city and state or foreign country.
(B) Receiver is on land and transfer involves multiple vans, trucks or vehicles.	Receiver name and Federal fisheries, Federal processor, or Federal crab vessel permit number (if any).	Date and time when loading of vans or trucks, is completed each day.	Port or city of product transfer.	Name of the shipping company; destination city and state or foreign country.
(C) Receiver is on land and transfer involves one airline flight.	Receiver name and Federal fisheries, Federal processor, or Federal crab vessel permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer.	Name of the airline company; destination airport city and state.
(D) Receiver is on land and transfer involves multiple airline flights.	Receiver name and Federal fisheries, Federal processor, or Federal crab vessel permit number (if any).	Date and time of shipment when the last airline flight of the day leaves.	Port or city of product transfer.	Name of the airline company(s); destination airport(s) city and state.
(E) Receiver is a vessel and transfer occurs at sea.	Vessel name and call sign	Start and finish dates and times of transfer.	Transfer position coordinates in latitude and longitude, in degrees and minutes.	The first destination of the vessel.
(F) Receiver is a vessel and transfer takes place in port.	Vessel name and call sign	Start and finish dates and times of transfer.	Port or position of product transfer.	The first destination of the vessel.
(G) Receiver is an agent (buyer, distributor, shipping agent) and transfer is in a containerized van(s).	Agent name and location (city, state).	Transfer start and finish dates and times.	Port, city, or position of product transfer.	Name (if available) of the vessel transporting the van; destination port.
(H) You are aggregating individual retail sales for human consumption. (see paragraph (g)(2) of this section).	"RETAIL SALES" .....	Date of transfer. ....	Port or city of product transfer.	N/A.
(I) You are aggregating individual bait sales during a day onto one PTR (non-IFQ groundfish only).	"BAIT SALES" .....	Date of transfer. ....	Port or city of product transfer.	N/A.
(J) <i>Non-IFQ Groundfish only.</i> You are aggregating wholesale non-IFQ groundfish product sales by species during a single day onto one PTR and maintaining invoices detailing destinations for all of the product for inspection by an authorized officer.	"WHOLESALE SALES" ....	Time of the first sale of the day; time of the last sale of the day.	Port or city of product transfer.	N/A.

(iv) *Products shipped.* The operator, manager, Registered Buyer, or RCR must record the following information for each product shipped:

(A) *Species code and product code.*

(1) For non-IFQ groundfish, IFQ halibut, IFQ sablefish, and CDQ halibut, the species code and product code (Tables 1 and 2 to this part).

(2) For CR crab, the species code and product code (Tables 1 and 2 to 50 CFR part 680).

(B) *Species weight.* Use only if recording 2 or more species with 2 or

more product types contained within the same production unit. Enter the actual scale weight of each product of each species to the nearest kilogram or pound (indicate which). If not applicable, enter "n/a" in the species weight column. If using more than one line to record species in one carton, use a brace "{" to tie the carton information together.

(C) *Number of units.* Total number of production units (blocks, trays, pans, individual fish, boxes, or cartons; if

iced, enter number of totes or containers).

(D) *Unit weight.* Unit weight (average weight of single production unit as listed in "No. of Units" less packing materials) for each species and product code in kilograms or pounds (indicate which).

(E) *Total weight.* Total weight for each species and product code of shipment less packing materials in kilograms or pounds (indicate which).

(F) *Total or partial offload.* (1) If a mothership or catcher/processor, the

operator must indicate whether fish or fish products are left onboard the vessel (partial offload) after the shipment is complete.

(2) If a partial offload, for the products remaining on board after the transfer, the operator must enter: Species code, product code, and total product weight to the nearest kilogram or pound (indicate which) for each product.

\* \* \* \* \*

(k) *U.S. Vessel Activity Report (VAR)*—(1) *Fish or fish product other than crab onboard*. Except as noted in paragraph (k)(4) of this section, the operator of a catcher vessel greater than 60 ft (18.3 m) LOA, a catcher/processor, or a mothership required to hold a Federal fisheries permit issued under this part and carrying fish or fish product onboard must complete and submit a VAR by facsimile or electronic file to OLE, Juneau, AK (907-586-7313) before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.

(2) *Combination of non-IFQ groundfish with IFQ halibut, CDQ halibut, IFQ sablefish or CR crab*. If a vessel is carrying non-IFQ groundfish and IFQ halibut, CDQ halibut, IFQ sablefish or CR crab, the operator must submit a VAR in addition to an IFQ Departure Report required by paragraph (l)(4) of this section.

(3) *Revised VAR*. If fish or fish products are landed at a port other than the one specified on the VAR, the operator must submit a revised VAR showing the actual port of landing before any fish are offloaded.

(4) *Exemption: IFQ Departure Report*. A VAR is not required if a vessel is carrying only IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab onboard and the operator has submitted an IFQ Departure Report required by paragraph (l)(4) of this section.

(5) *Information required*. (i) Whether original or revised VAR.

(ii) Name and Federal fisheries permit number of vessel or RCR permit number.

(iii) Type of vessel (whether catcher vessel, catcher/processor, or mothership).

(iv) Name, daytime telephone number (including area code), and facsimile number and COMSAT number (if available) of representative.

(v) *Return report*. "Return," for purposes of this paragraph, means returning to Alaska. If the vessel is crossing the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary

between Alaska and British Columbia into U.S. waters, indicate a "return" report and enter:

(A) Intended Alaska port of landing (see Table 14a to this part);

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross the boundary; and

(C) The estimated position coordinates in latitude and longitude where the vessel will cross.

(vi) *Depart report*. "Depart" means leaving Alaska. If the vessel is crossing the seaward boundary of the EEZ off Alaska and moving out of the EEZ or crossing the U.S.-Canadian international boundary between Alaska and British Columbia and moving into Canadian waters, indicate a "depart" report and enter:

(A) The intended U.S. port of landing or country other than the United States (see Table 14b to this part);

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross the boundary; and

(C) The estimated position coordinates in latitude and longitude where the vessel will cross.

(vii) *The Russian Zone*. Indicate whether the vessel is returning from fishing in the Russian Zone or is departing to fish in the Russian Zone.

(viii) *Fish or fish products*. For all fish or fish products (including non-groundfish) on board the vessel, enter:

(A) Harvest zone code;

(B) Species codes;

(C) Product codes; and

(D) Total fish product weight in lbs or to the nearest 0.001 mt (2.20 lb).

(1) *IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab R&R*. In addition to the R&R requirements in this section, in 50 CFR part 680 with respect to CR crab, and as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title, the following reports and authorizations are required, when applicable: IFQ Prior Notice of Landing, Product Transfer Report (see § 679.5(g)), IFQ landing report, IFQ Transshipment Authorization, and IFQ Departure Report.

\* \* \* \* \*

(2) \* \* \*

(iii) \* \* \*

(M) After the Registered Buyer enters the landing data in the Internet submission form(s) and receipts are printed, the Registered Buyer, or his/her representative, and the IFQ cardholder or CDQ cardholder must sign the receipts to acknowledge the accuracy of the IFQ landing report.

(iv) *Submittals*. Except as indicated in paragraph (1)(2)(iv)(C) of this section,

IFQ landing reports must be submitted electronically to OLE, Juneau, AK by using the Internet as follows:

\* \* \* \* \*

(C) *Manual landing report*. Waivers from the Internet reporting requirement can only be granted in writing on a case-by-case basis by a local clearing officer. If a waiver is granted, manual landing instructions must be obtained from OLE, Juneau, AK, (800-304-4846, Select Option 1). Registered Buyers must complete and submit manual landing reports by facsimile to OLE, Juneau, AK, (907-586-7313). When a waiver is issued, the following additional information is required: Whether the manual landing report is an original or revised; and name, telephone number, and facsimile number of individual submitting the manual landing report.

(D) *Properly debited landing*. A properly concluded printed Internet submission receipt or a manual landing report receipt which is sent by facsimile from OLE to the Registered Buyer, and which is then signed by both the Registered Buyer and cardholder constitutes confirmation that OLE received the landing report and that the cardholder's account is properly debited. A copy of each receipt must be maintained by the Registered Buyer as described in § 679.5(l).

(3) \* \* \*

(i) No person may transship processed IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab between vessels without authorization by a local clearing officer. Authorization from a local clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence.

\* \* \* \* \*

(4) *IFQ departure report*—(i) *General requirements*—(A) *Time limit and submittal*. A vessel operator who intends to make a landing of IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab at any location other than in an IFQ regulatory area for halibut and sablefish or in a crab fishery for CR crab (see Table 1 to part 680) in the State of Alaska must submit an IFQ Departure Report, by telephone, to OLE, Juneau, AK, (800-304-4846 or 907-586-7163) between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(B) *Completion of fishing*. A vessel operator must submit an IFQ Departure Report after completion of all fishing and prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska when IFQ



halibut, CDQ halibut, IFQ sablefish, or CR crab are on board.

(C) *Permit—(1) Registered Crab Receiver permit.* A vessel operator submitting an IFQ Departure Report for CR crab must have a Registered Crab Receiver permit.

(2) *Registered Buyer permit.* A vessel operator submitting an IFQ Departure Report for IFQ halibut, CDQ halibut, or IFQ sablefish must have a Registered Buyer permit.

(D) *First landing of any species.* A vessel operator submitting an IFQ Departure Report must submit IFQ landing reports for all IFQ halibut, CDQ halibut, and IFQ sablefish on board at the same time and place as the first landing of any IFQ halibut, CDQ halibut, or IFQ sablefish.

(E) *Permits on board.* (1) A vessel operator submitting an IFQ Departure Report to document IFQ halibut or IFQ sablefish must have one or more IFQ cardholders on board with a combined IFQ balance equal to or greater than all IFQ halibut and IFQ sablefish on board the vessel.

(2) A vessel operator submitting an IFQ Departure Report to document CDQ halibut must ensure that one or more CDQ cardholders are on board with enough remaining CDQ halibut balance to harvest amounts of CDQ halibut equal to or greater than all CDQ halibut on board.

(3) A vessel operator submitting an IFQ Departure Report to document CR crab must have one or more permit holders on board with a combined CR balance equal to or greater than all CR crab on board the vessel.

(ii) *Required information.* When submitting an IFQ Departure Report, the vessel operator must provide the following information:

(A) Intended date, time (A.l.t.), and location of landing;

(B) Vessel name and ADF&G vessel registration number;

(C) Vessel operator's name and Registered Buyer permit or Registered Crab Receiver permit number;

(D) Halibut IFQ, halibut CDQ, sablefish IFQ, and CR crab permit numbers of IFQ and CDQ cardholders on board;

(E) *Area of harvest.* (1) If IFQ or CDQ halibut, then halibut regulatory areas (see Figure 15 to this part).

(2) If IFQ sablefish, then sablefish regulatory areas (see Figure 14 to this part).

(3) If CR crab, then the crab rationalization fishery code (see Table 1 to part 680).

(F) Estimated total weight as appropriate of IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab on board (lb/kg/mt).

(iii) *Revision to Departure Report.* A vessel operator who intends to make an IFQ landing at a location different from the location named on the IFQ Departure report must submit a revised report naming the new location at least 12 hours in advance of the offload. Revisions must be submitted by telephone, to OLE, Juneau, AK, (800-304-4846 or 907-586-7163) between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

\* \* \* \* \*

■ 7. In § 679.7, revise paragraph (a)(15) and (k)(1)(iii), remove and reserve paragraphs (k)(2)(ii), (k)(3)(iii), (k)(4)(ii), and remove paragraph (k)(8) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(15) *Federal processor permit.*

Receive, purchase or arrange for purchase, discard, or process groundfish harvested in the GOA or BSAI by a shoreside processor or SFP that does not have on site a valid Federal processor permit issued pursuant to § 679.4(f).

\* \* \* \* \*

(k) \* \* \*

(1) \* \* \*

(iii) *Processing BSAI crab.* Use a listed AFA catcher/processor to process any crab species harvested in the BSAI.

\* \* \* \* \*

■ 8. In § 679.28, add a new paragraph (b)(1)(v) and revise paragraph (f)(4)(i) to read as follows:

**§ 679.28 Equipment and operational requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) *Exceptions.* A scale manufacturer or their representative may request that NMFS approve a custom built automatic hopper scale under the following conditions:

(A) The scale electronics are the same as those used in other scales on the Regional Administrator's list of scales eligible for approval;

(B) Load cells have received Certificates of Conformance from NTEP or OIML;

(C) The scale compensates for motion in the same manner as other scales made by that manufacturer which have been listed on the Regional Administrator's list of scales eligible for approval;

(D) The scale, when installed, meets all of the requirements set forth in paragraph 3 of appendix A to this part, except those requirements set forth in paragraph 3.2.1.1.

\* \* \* \* \*

(f) \* \* \*

(4) \* \* \*

(i) Contact the OLE by Facsimile (907-586-7703) and provide: the VMS transmitter ID, the vessel name, the Federal Fisheries Permit number or Federal crab vessel permit number.

\* \* \* \* \*

■ 9. In § 679.31, revise paragraph (d) to read as follows:

**§ 679.31 CDQ reserves.**

\* \* \* \* \*

(d) *Crab CDQ reserves.* Crab CDQ reserves for crab species governed by the Crab Rationalization Program are specified at § 680.40 (a)(1). For Norton Sound red king crab, 7.5 percent of the guideline harvest level specified by the State of Alaska is allocated to the crab CDQ reserve.

■ 10. In § 679.43, revise paragraph (a) to read as follows:

**§ 679.43 Determinations and appeals.**

(a) *General.* This section describes the procedure for appealing initial administrative determinations made under parts 300, 679, 680, and subpart E, of this title. This section does not apply to initial administrative determinations made under § 679.30(d).

\* \* \* \* \*

**§ 679.65 [Removed and Reserved]**

■ 11. Remove and reserve § 679.65.

■ 12. In part 679, Tables 14a, 14b, and 15 are revised; and Tables 13 and 14c are added to read as follows:

TABLE 13 TO PART 679.—TRANSFER FORM SUMMARY

If participant type is . . .	And has . . . Fish product on-board	And is involved in this activity	Submit				Issue	Possess
			VAR (\$ 679.5(k))	PTR (\$ 679.5(g))	Trans-ship (\$ 679.5(l)(3))	Departure report (\$ 679.5(l)(4))	Dockside sales receipt (\$ 679.5(g)(1)(v))	Landing receipt (\$ 679.5(g)(1)(vi))
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor.	Only non-IFQ groundfish . . . . .	Vessel leaving or entering Alaska.	X	.....	.....	.....	.....	.....

TABLE 13 TO PART 679.—TRANSFER FORM SUMMARY—Continued

If participant type is . . .	And has . . . Fish product on-board	And is involved in this activity	Submit				Issue	Possess
			VAR (\$ 679.5(k))	PTR (\$ 679.5(g))	Trans-ship (\$ 679.5(l)(3))	Departure report (\$ 679.5(l)(4))	Dockside sales receipt (\$ 679.5(g)(1)(v))	Landing receipt (\$ 679.5(g)(1)(vi))
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor.	Only IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab.	Vessel leaving Alaska.				X		
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor.	Combination of IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab and non-IFQ groundfish.	Vessel leaving Alaska.	X			X		
Mothership, catcher/processor, shoreside processor, or SFP.	Non-IFQ groundfish	Transfer of product.		X				
Registered Buyer	IFQ sablefish, IFQ halibut or CDQ halibut.	Transfer of product.		X				
Registered Crab Receiver	CR crab	Transfer of product.		X				
A person holding a valid IFQ permit, IFQ card, and Registered Buyer permit.	IFQ sablefish, IFQ halibut or CDQ halibut.	Transfer of product.					XXX	
Registered Buyer	IFQ sablefish, IFQ halibut or CDQ halibut.	Transfer from landing site to Registered Buyer's processing facility.						XX
Registered Crab Receiver	CR crab	Transfer from landing site to RCR's processing facility.						XX
Vessel operator	Processed IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab.	Transshipment between vessels.			XXXX			

"X" indicates under what circumstances each report is submitted.

"XX" indicates that the document must accompany the transfer of IFQ species from landing site to processor.

"XXX" indicates receipt must be issued to each receiver in a dockside sale.

"XXXX" indicates authorization must be obtained 24 hours in advance.

TABLE 14A TO PART 679.—PORT OF LANDING CODES<sup>1</sup>: ALASKA

Port name	NMFS code	ADF&G code
Adak	186	ADA
Akutan, Akutan Bay	101	AKU
Alitak	103	ALI
Anchorage	105	ANC
Angoon	106	ANG
Aniak	300	ANI
Anvik	301	ANV
Atka	107	ATK
Auke Bay	136	JNU
Beaver Inlet	119	DUT
Bethel	302	BET
Captains Bay	119	DUT
Cheformak	189	CHF
Chignik	113	CHG
Cordova	115	COR
Craig	116	CRG
Dillingham	117	DIL
Douglas	136	JNU
Dutch Harbor/Unalaska.	119	DUT
Egegik	122	EGE
Eruk	303	EKU
Elfin Cove	123	ELF
Emmonak	304	EMM
Excursion Inlet	124	XIP
False Pass	125	FSP
Fairbanks	305	FBK
Galena	306	GAL
Glacier Bay	307	GLB
Glennallen	308	GLN
Gustavus	127	GUS
Haines	128	HNS
Halibut Cove	130	HBC
Homer	132	HOM
Hoonah	133	HNH
Hydaburg	309	HYD
Hyder	134	HDR
Juneau	136	JNU
Kake	137	KAK
Kaltag	310	KAL

TABLE 14A TO PART 679.—PORT OF LANDING CODES<sup>1</sup>: ALASKA—Continued

Port name	NMFS code	ADF&G code
Kasilof	138	KAS
Kenai	139	KEN
Kenai River	139	KEN
Ketchikan	141	KTN
King Cove	142	KCO
King Salmon	143	KNG
Kipnuk	144	KIP
Klawock	145	KLA
Kodiak	146	KOD
Kotzebue	311	KOT
Mekoryuk	147	MEK
Mellakatlak	148	MET
Moser Bay	312	MOS
Naknek	149	NAK
Nenana	313	NEN
Nikiski (or Nikishka)	150	NIK
Ninilchik	151	NIN
Nome	152	NOM
Nunivak Island	314	NUN
Old Harbor	153	OLD
Other Alaska <sup>1</sup>	499	UNK
Pelican	155	PEL
Petersburg	156	PBG
Port Alexander	158	PAL
Port Armstrong	315	PTA
Port Bailey	159	PTB
Port Graham	160	GRM
Port Lions	316	LIO
Port Moller	317	MOL
Port Protection	161	PRO
Quinhagak	187	QUK
Sand Point	164	SPT
Savoonga	165	SAV
Selawik	326	SWK
Seldovia	166	SEL
Seward	167	SEW
Sitka	168	SIT
Skagway	169	SKG
Soldotna	318	SOL

TABLE 14A TO PART 679.—PORT OF LANDING CODES<sup>1</sup>: ALASKA—Continued

Port name	NMFS code	ADF&G code
St. George	170	STG
St. Mary	319	STM
St. Paul	172	STP
Tee Harbor	136	JNU
Tenakee Springs	174	TEN
Togiak	176	TOG
Toksook Bay	177	TOB
Tununak	178	TUN
Ugashik	320	UGA
Unalakleet	321	UNA
Valdez	181	VAL
Wasilla	322	WAS
Whittier	183	WHT
Wrangell	184	WRN
Yakutat	185	YAK

<sup>1</sup>To report a landing at a location not currently assigned a location code number, use the code for "Other Alaska" code "499" "OAK".

TABLE 14B TO PART 679.—PORT OF LANDING CODES: NON-ALASKA  
[California, Oregon, Canada, Washington]

Port name	NMFS code	ADF&G code
CALIFORNIA		
Eureka	500	EUR
Other California <sup>1</sup>	1599	OCA
CANADA		
Other Canada <sup>1</sup>	899	OCN
Port Edward	802	PRU
Prince Rupert	802	PRU
OREGON		
Astoria	600	AST
Newport	603	NPT
Other Oregon <sup>1</sup>	699	OOR

TABLE 14B TO PART 679.—PORT OF LANDING CODES: NON-ALASKA—Continued

[California, Oregon, Canada, Washington]

Port name	NMFS code	ADF&G code
Portland .....	323	POR
Warrenton .....	604	WAR
WASHINGTON		
Anacortes .....	700	ANA
Bellingham .....	702	BEL
Blaine .....	717	BLA

TABLE 14B TO PART 679.—PORT OF LANDING CODES: NON-ALASKA—Continued

[California, Oregon, Canada, Washington]

Port name	NMFS code	ADF&G code
Everett .....	704	EVT
La Conner .....	708	LAC
Olympia .....	324	OLY
Other Wash- ington <sup>1</sup> .....	799	OWA
Seattle .....	715	SEA

TABLE 14B TO PART 679.—PORT OF LANDING CODES: NON-ALASKA—Continued

[California, Oregon, Canada, Washington]

Port name	NMFS code	ADF&G code
Tacoma .....	325	TAC

<sup>1</sup> To report a landing at a location not currently assigned a location code number, use the code for "Other" for the state or country at which the landing occurs.

TABLE 14C TO PART 679.—AT-SEA OPERATION TYPE CODES TO BE USED AS PORT CODES FOR VESSELS MATCHING THIS TYPE OF OPERATION

Description of code		
Code	NMFS Alaska region	ADF&G
FCP .....	Catcher/processor .....	Floating catcher processor.
FLD .....	Mothership .....	Floating domestic mothership.
IFP .....	Stationary Floating Processor .....	Inshore floating processor—processing in State of Alaska waters only.

TABLE 15 TO PART 679.—GEAR CODES, DESCRIPTIONS, AND USE

[X indicates where this code is used]

Name of gear	Use alphabetic code to complete the following:			Use numeric code to complete the following:				
	Alpha gear code	NMFS logbooks & paper forms <sup>1</sup>	Electronic WPR & check-in/check-out code <sup>1</sup>	Numeric gear code	Shoreside electronic logbook (SSPELR)	IFQ Internet & forms	CR crab	ADF&G COAR
Diving .....	OTH	X	X	11	X	.....	.....	X
Dredge .....	OTH	X	X	22	X	.....	.....	X
Dredge, hydro/mechanical	OTH	X	X	23	X	.....	.....	X
Fish wheel .....	OTH	X	X	08	X	.....	.....	X
Gillnet, drift .....	OTH	X	X	03	X	.....	.....	X
Gillnet, herring .....	OTH	X	X	34	X	.....	.....	X
Gillnet, set .....	OTH	X	X	04	X	.....	.....	X
Gillnet, sunken .....	OTH	X	X	41	X	.....	.....	X
Hand line/jig/troll (IFQ name: hand troll).	n/a	.....	.....	05	X	X	.....	X
Handpicked .....	OTH	X	X	12	X	.....	.....	X
Hatchery .....	n/a	.....	.....	77	X	.....	.....	X
Hook-and-line .....	HAL	X	X	61	X	X	.....	X
Jig, mechanical (IFQ name: jigs).	JIG	X	X	26	X	X	.....	X
Net, dip .....	OTH	X	X	13	X	.....	.....	X
Net, ring .....	OTH	X	X	10	X	.....	.....	X
Other/specify .....	OTH	X	X	99	X	.....	.....	X
Pair trawl .....	( <sup>1</sup> )	.....	.....	37	.....	.....	.....	X
Pot .....	POT	X	X	91	X	X	X	X
Pound .....	OTH	X	X	21	X	.....	.....	X
Seine, purse .....	OTH	X	X	01	X	.....	.....	X
Seine, beach .....	OTH	X	X	02	X	.....	.....	X
Shovel .....	OTH	X	X	18	X	.....	.....	X
Trap .....	OTH	X	X	90	X	.....	.....	X
Trawl, beam .....	( <sup>1</sup> )	.....	.....	17	X	.....	.....	X
Trawl, double otter .....	( <sup>1</sup> )	.....	.....	27	X	.....	X	X
Trawl, nonpelagic/bottom ..	NPT	X	X	07	X	.....	.....	X
Trawl, pelagic/midwater .....	PTR	X	X	47	X	.....	.....	X
Troll, dinglebar .....	TROLL	X	X	25	X	X	.....	X
Troll, power gurdy .....	TROLL	X	X	15	X	X	.....	X
Weir .....	OTH	X	X	14	X	.....	.....	X

<sup>1</sup> For groundfish logbooks, forms, electronic WPR, electronic check-in/out reports: all trawl gear must be reported as either nonpelagic trawl (NPT) or pelagic trawl (PTR).

For the reasons set out in the preamble, a new 50 CFR part 680 is added as follows:

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

### **Subpart A—General**

Sec.

- 680.1 Purpose and scope.
- 680.2 Definitions.
- 680.3 Relation to other laws.
- 680.4 Permits.
- 680.5 Recordkeeping and reporting (R&R).
- 680.6 Crab economic data report (EDR).
- 680.7 Prohibitions.
- 680.8 Facilitation of enforcement.
- 680.9 Penalties.

### **Subpart B—Management Measures**

- 680.20 Arbitration System.
- 680.21 Crab harvesting cooperatives.
- 680.22 Sideboard protections for GOA groundfish fisheries.
- 680.23 Equipment and operational requirements.
- 680.30 [Reserved]

### **Subpart C—Quota Management Measures**

- 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) Issuance.
- 680.41 Transfer of QS, PQS, IFQ and IPQ.
- 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.
- 680.43 Determinations and appeals.
- 680.44 Cost recovery.
- Table 1 to Part 680—Crab Rationalization (CR) Fisheries
- Table 2 to Part 680—Crab Species Codes
- Table 3a to Part 680—Crab Delivery Condition Codes
- Table 3b to Part 680—Crab Disposition or Product Codes
- Table 3c to Part 680—Crab Product Codes for Economic Data Reports
- Table 4 to Part 680—Crab Process Codes
- Table 5 to Part 680—Crab Size Codes
- Table 6 to Part 680—Crab Grade Codes
- Table 7 to Part 680—Initial Issuance of Crab QS by Crab QS Fishery
- Table 8 to Part 680—Initial QS and PQS Pool for Each Crab QS Fishery
- Table 9 to Part 680—Initial Issuance of Crab PQS by Crab QS Fishery

**Authority:** 16 U.S.C. 1862.

### **Subpart A—General**

#### **§ 680.1 Purpose and scope.**

Regulations in this part implement policies developed by the North Pacific Fishery Management Council and approved by the Secretary of Commerce in accordance with the Magnuson-Stevens Fishery Conservation and Management Act. In addition to part 600 of this chapter, these regulations implement the following:

(a) *Fishery Management Plan (FMP) for Bering Sea and Aleutian Islands King and Tanner Crabs.* Regulations in

this part govern commercial fishing for, and processing of, king and Tanner crabs in the Bering Sea and Aleutian Islands Area pursuant to section 313(j) of the Magnuson-Stevens Act, including regulations implementing the Crab Rationalization Program for crab fisheries in the Bering Sea and Aleutian Islands Area, and supersede State of Alaska regulations applicable to the commercial king and Tanner crab fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Area that are determined to be inconsistent with the FMP.

(b) *License Limitation Program.* Commercial fishing for crab species not included in the Crab Rationalization Program for crab fisheries of the Bering Sea and Aleutian Islands Area remains subject to the License Limitation Program for the commercial crab fisheries in the Bering Sea and Aleutian Islands Area under part 679 of this chapter.

#### **§ 680.2 Definitions.**

In addition to the definitions in the Magnuson-Stevens Act, in 50 CFR part 600, and § 679.2 of this chapter, the terms used in this part have the following meanings:

*Adak community entity* means the non-profit entity incorporated under the laws of the state of Alaska that represents the community of Adak and has a board of directors elected by the residents of Adak.

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

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

(i) Quota share (QS), processor quota share (PQS), individual fishing quota (IFQ), or individual processing quota (IPQ); or,

(ii) For purposes of the economic data report (EDR), a vessel or processing plant operating in CR fisheries.

(2) *Indirect interest.* An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in

a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) *Controls a 10 percent or greater interest.* An entity controls a 10 percent or greater interest in a second entity if the first entity:

(i) Controls a 10 percent ownership share of the second entity, or

(ii) Controls 10 percent or more of the voting stock of the second entity.

(4) *Otherwise controls.* (i) A PQS or IPQ holder otherwise controls QS or IFQ, or a QS or IPQ holder, if it has:

(A) The right to direct, or does direct, the business of the entity which holds the QS or IFQ;

(B) The right in the ordinary course of business to limit the actions of or replace, or does limit or replace, the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of the entity which holds the QS or IFQ;

(C) The right to direct, or does direct, the transfer of QS or IFQ;

(D) The right to restrict, or does restrict, the day-to-day business activities and management policies of the entity holding the QS or IFQ through loan covenants;

(E) The right to derive, or does derive, either directly, or through a minority shareholder or partner, and in favor of a PQS or IPQ holder, a significantly disproportionate amount of the economic benefit from the holding of QS or IFQ;

(F) The right to control, or does control, the management of, or to be a controlling factor in, the entity holding QS or IFQ;

(G) The right to cause, or does cause, the sale of QS or IFQ;

(H) Absorbs all of the costs and normal business risks associated with ownership and operation of the entity holding QS or IFQ; and

(I) Has the ability through any other means whatsoever to control the entity that holds QS or IFQ.

(ii) Other factors that may be indicative of control include, but are not limited to the following:

(A) If a PQS or IPQ holder or employee takes the leading role in establishing an entity that will hold QS or IFQ;

(B) If a PQS or IPQ holder has the right to preclude the holder of QS or IFQ from engaging in other business activities;

(C) If a PQS or IPQ holder and QS or IFQ holder use the same law firm, accounting firm, etc.;

(D) If a PQS or IPQ holder and QS or IFQ holder share the same office space, phones, administrative support, etc.;

(E) If a PQS or IPQ holder absorbs considerable costs and normal business risks associated with ownership and operation of the QS or IFQ holdings;

(F) If a PQS or IPQ holder provides the start up capital for the QS or IFQ holder on less than an arm's-length basis;

(G) If a PQS or IPQ holder has the general right to inspect the books and records of the QS or IFQ holder; and

(H) If the PQS or IPQ holder and QS or IFQ holder use the same insurance agent, law firm, accounting firm, or broker of any PQS or IPQ holder with whom the QS or IFQ holder has entered into a mortgage, long-term or exclusive sales or marketing agreement, unsecured loan agreement, or management agreement.

*Arbitration IFQ* means:

(1) Class A catcher vessel owner (CVO) IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ,

(2) Prior to July 1, 2008, catcher vessel crew (CVC) IFQ that the holder has elected to submit to the Arbitration System, and that is held by a person who is not a holder of PQS or IPQ, and who is not affiliated with any holder of PQS or IPQ, and

(3) Beginning July 1, 2008, Class A CVC IFQ held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ.

(4) IFQ held by an FCMA cooperative.

*Arbitration QS* means:

(1) CVO QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ,

(2) Prior to July 1, 2008, CVC QS that the holder has elected to submit to the Arbitration System, and that is held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ and,

(3) Beginning July 1, 2008, CVC QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ.

*Arbitration System* means the system established by the contracts required by § 680.20, including the process by which the Market Report and Non-Binding Price Formula are produced, the negotiation approaches, the Binding Arbitration process, and fee collection.

*Assessed value* means the most recent value for a vessel and gear provided in a marine survey.

*Auditor* means an examiner employed by, or under contract to, the data collection agent to verify data submitted in an economic data report.

*Blind data* means any data collected from the economic data report by the data collection agent that are subsequently amended by removing personal identifiers, including, but not limited to social security numbers, crew permit numbers, names and addresses, Federal fisheries permit numbers, Federal processor permit numbers, Federal tax identification numbers, State of Alaska vessel registration and permit numbers, and by adding in their place a nonspecific identifier.

*Box size* means the capacity of a crab-packing container in kilograms or pounds.

*BSAI crab* means those crab species governed under the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands King and Tanner Crabs.

*BSAI Crab Capacity Reduction Program* means the program authorized by Public Law 106-554, as Amended by Public Law 107-20 and Public Law 107-117.

*BSAI crab fisheries* means those crab fisheries governed under the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands King and Tanner Crabs.

*Captain* means, for the purposes of the EDR, a vessel operator.

*Catcher/processor (CP)* means a vessel that is used for catching crab and processing that crab.

*Catcher vessel* means a vessel that is used for catching crab and that does not process crab on board.

*CDQ community* means a community eligible to participate in the Western Alaska Community Development Program under subpart C of 50 CFR part 679.

*CDQ group* means a CDQ group as that term is defined at 50 CFR 679.2.

*Committed IFQ* means:

(1) Any Arbitration IFQ for which the holder of such IFQ has agreed or committed to delivery of crab harvested with the IFQ to the holder of previously uncommitted IPQ and for which the holder of the IPQ has agreed to accept delivery of that crab, regardless of whether such agreement specifies the price or other terms for delivery, or

(2) Any Arbitration IFQ for which, on or after the date which is 25 days prior to the opening of the first crab fishing season in the crab QS fishery for such IFQ, the holder of the IFQ has unilaterally committed to delivery of crab harvested with the IFQ to the holder of previously uncommitted IPQ, regardless of whether the IFQ and IPQ holders have reached an agreement that specifies the price or other terms for delivery.

*Committed IPQ* means any IPQ for which the holder of such IPQ has received a commitment of delivery from

a holder of Arbitration IFQ such that the Arbitration IFQ is committed IFQ, regardless of whether the Arbitration IFQ and IPQ holders have reached an agreement that specifies the price or other terms for delivery.

*CP standard price* means price, expressed in U.S. dollars per raw crab pound, for all CR crab landed by a CP as determined for each crab fishing year by the Regional Administrator and documented in a CP standard price list published by NMFS.

*Crab cost recovery fee liability* means that amount of money, in U.S. dollars, owed to NMFS by a CR allocation holder or RCR as determined by multiplying the appropriate ex-vessel value of the amount of CR crab debited from a CR allocation by the appropriate crab fee percentage.

*Crab fee percentage* means that positive number no greater than 3 percent determined for each crab fishing year by the Regional Administrator and used to calculate the crab cost recovery fee liability for a CR allocation holder or RCR under the Crab Rationalization Program.

*Crab fishing year* means the period from July 1 of one calendar year through June 30 of the following calendar year.

*Crab grade* means a grading system to describe the quality of crab.

(1) Grade 1 means standard or premium quality crab, and

(2) Grade 2 means below standard quality crab.

*Crab harvesting cooperative*, for the purposes of this part 680, means a group of crab QS holders who have chosen to form a crab harvesting cooperative, under the requirements of § 680.21, in order to combine and collectively harvest their crab IFQ through a crab harvesting cooperative IFQ permit issued by NMFS.

*Crab harvesting cooperative IFQ* means the annual catch limit of IFQ crab that may be harvested by a crab harvesting cooperative that is lawfully allocated a harvest privilege for a specific portion of the TAC of a crab QS fishery.

*Crab individual fishing quota (crab IFQ)* means the annual catch limit of a crab QS fishery that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the TAC of a crab QS fishery with the following designations or with the designation as a crab IFQ hired master:

(1) *Catcher vessel crew (CVC) IFQ* means a permit to annually harvest, but not process, a CR crab on board a vessel.

(2) *Catcher vessel owner (CVO) IFQ* means a permit to annually harvest, but not process, a CR crab on board a vessel.

(i) *Class A IFQ* means IFQ that is required to be delivered to a processor holding unused IPQ.

(ii) *Class B IFQ* means IFQ that is not required to be delivered to a processor holding unused IPQ.

(3) *Catcher/processor owner (CPO) IFQ* means a permit to annually harvest and process a CR crab on a catcher/processor.

(4) *Catcher/processor crew (CPC) IFQ* means a permit to annually harvest and process a CR crab on a catcher/processor.

*Crab IFQ hired master* means a person who holds a crab IFQ hired master permit issued under § 680.4.

*Crab IFQ permit holder* means the person identified on an IFQ permit.

*Crab LLP license history* means, for any particular crab LLP license, the legal landings made on the vessel(s) that was used to qualify for that LLP license and any legal landings made under the authority of that LLP license.

*Crab quota share (crab QS)* means a permit the face amount of which is used as the basis for the annual calculation and allocation of a person's crab IFQ with the following designations:

(1) *Catcher vessel crew (CVC) QS* means a permit that yields CVC IFQ.

(2) *Catcher vessel owner (CVO) QS* means a permit that yields CVO IFQ.

(3) *Catcher/processor owner (CPO) QS* means a permit that yields CPO IFQ.

(4) *Catcher/processor crew (CPC) QS* means a permit that yields CPC IFQ.

*Crab QS fishery* means those CR fisheries under Table 1 to this part that require the use of QS and PQS, and their resulting IFQ and IPQ, to harvest and receive IFQ crab.

*Crab QS program* means the program that allocates QS and PQS, and their resulting IFQ and IPQ, for CR crab of the BSAI off Alaska and governed by regulations under this part.

*Crab QS regional designation* means the designation of QS or PQS and their resulting IFQ and IPQ subject to regional delivery requirements in this part.

*Crab Rationalization (CR) allocation* means any allocation of CR crab authorized under the CR Program.

*Crab Rationalization (CR) crab* means those crab species in the crab fisheries subject to management under the Crab Rationalization Program described in Table 1 to this part.

*Crab Rationalization (CR) fisheries* means those fisheries defined in Table 1 to part 680.

*Crab Rationalization (CR) Program* means the crab QS program plus the CDQ and the Adak community allocation programs, including all management, monitoring, and

enforcement components, for BSAI king and Tanner crabs governed by the regulations of this part.

*Crew* means:

(1) Any individual, other than the fisheries observers, working on a vessel that is engaged in fishing.

(2) For the purposes of the EDR, each employee on a vessel, excluding the captain and fisheries observers, that participated in any CR fishery.

*Custom processing* means processing of crab by a person undertaken on behalf of another person.

*Data collection agent (DCA)* means the entity selected by the Regional Administrator to distribute an EDR to a person required to complete it, to receive the completed EDR, to review and verify the accuracy of the data in the EDR, and to provide those data to authorized recipients.

*Days at sea* means, for the purposes of the EDR, the number of days spent at sea while fishing for crab, including travel time to and from fishing grounds.

*Economic data report (EDR)* means the report of cost, labor, earnings, and revenue data for catcher vessels, catcher/processors, shoreside crab processors, and stationary floating crab processors participating in CR fisheries.

*Eligible community resident* means, for purposes of the Crab QS program, any individual who:

(1) Is a citizen of the United States;

(2) Has maintained a domicile in the ECC, from which the individual requests to lease crab IFQ, for at least 12 consecutive months immediately preceding the time when the assertion of residence is made and who is not claiming residency in another community, state, territory, or country; and

(3) Is otherwise eligible to receive crab QS or IFQ by transfer.

*Eligible crab community (ECC)* means a community in which at least 3 percent of the initial allocation of processor quota share of any crab fishery is allocated. The specific communities are:

(1) CDQ Communities.

(i) Akutan;

(ii) False Pass;

(iii) St. George; and

(iv) St. Paul.

(2) Non-CDQ Communities.

(i) Unalaska/Dutch Harbor;

(ii) Kodiak;

(iii) King Cove;

(iv) Port Moller; and

(v) Adak.

*Eligible crab community (ECC) entity* means a non-profit organization specified under § 680.41(j)(2) that is designated by the governing body of an ECC, other than Adak, to represent it for the purposes of engaging in the right of

first refusal of transfer of crab PQS or IPQ outside the ECC under contract provisions set forth under section 313(j) of the Magnuson-Stevens Act. For those ECCs that also are CDQ communities, the ECC entity is the CDQ group to which the ECC is a member.

*Eligible crab community organization (ECCO)* means a non-profit organization that represents at least one ECC, as defined in this part, and that has been approved by the Regional Administrator to obtain by transfer and hold crab QS and to lease the resulting IFQ on behalf of an ECC.

*Ex-vessel value* means:

(1) *For the shoreside processing sector.* The total U.S. dollar amount of all compensation, monetary and non-monetary, including any retroactive payments, received by a CR allocation holder for the purchase of any CR crab debited from the CR allocation described in terms of raw crab pounds.

(2) *For the catcher/processor sector.* The total U.S. dollar amount of CR crab landings as calculated by multiplying the number of raw crab pounds debited from the CR allocation by the appropriate CP standard price determined by the Regional Administrator.

*FCMA cooperative*, for the purposes of this part 680, means a cooperative formed in accordance with the Fishermen's Collective Marketing Act of 1934 (15 U.S.C. 521).

*Finished pounds* means the total weight, in pounds, of processed product, not including the container.

*IFQ account* means the amount of crab IFQ in raw crab pounds that is held by a person at any particular time for a crab QS fishery, sector, region, and class.

*IFQ crab* means crab species listed in Table 1 to this part subject to management under the crab QS program.

*Individual processor quota (IPQ)* means the annual amount of crab, in pounds, representing a specific portion of the TAC for a crab QS fishery, that may be received for processing by a person who is lawfully allocated PQS or IPQ.

*Initial processor quota share (PQS) pool* means the total number of PQS units for each crab QS fishery which is the basis of initial PQS allocations.

*Initial quota share (QS) pool* means the total number of non-processor QS units for each crab QS fishery which is the basis of initial QS allocations.

*IPQ account* means the amount of crab IPQ in raw crab pounds that is held by a person at any particular time for a crab QS fishery and region.

*Landing* means the transfer of raw crab harvested by a vessel prior to that crab being reported on a CR crab landing report.

(1) For catcher/processors, the amount of crab retained during a reporting period constitutes a landing.

(2) For catcher vessels, the amount of crab removed from the boat at a single location/time constitutes a landing.

*Lease of QS/IFQ or PQS/IPQ* means a temporary, annual transfer of crab IFQ or IPQ without the underlying QS or PQS.

*Leaseholder* means, for purposes of the EDR, a person who:

(1) Is identified as the leaseholder in a written lease of a catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor, or

(2) Pays the expenses of a catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor, or

(3) Claims expenses for the catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor as a business expense on schedule C of his/her Federal income tax return or on a state income tax return.

*Magnuson-Stevens Act* means the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

*Mutual Agreement* means, for purposes of the Arbitration System, the consent and agreement of Arbitration Organizations that represent an amount of Arbitration QS equal to more than 50 percent of all the Arbitration QS in a fishery, and an amount of PQS equal to more than 50 percent of all the PQS in a fishery based upon the Annual Arbitration Organization Reports.

*Newly constructed vessel* means, for the purposes of initial QS issuance, a vessel on which the keel was laid by June 10, 2002.

*Official crab rationalization record* means the information prepared by the Regional Administrator about the legal landings and legal processing by vessels and persons in the BSAI crab fisheries during the qualifying periods specified at § 680.40.

*Processing, or to process* means the preparation of, or to prepare, crab to render it suitable for human consumption or storage. This includes, but is not limited to: Cooking, canning, butchering, sectioning, freezing or icing.

*Processor quota share (PQS)* means a permit the face amount of which is used as the basis for the annual calculation and allocation of IPQ.

*Raw crab pounds* means the weight of raw crab in pounds when landed.

*Registered crab receiver (RCR)* means a person holding an RCR Permit issued by the Regional Administrator.

*Retain* means to fail to return crab to the sea after a reasonable opportunity to sort the catch.

*Right of First Refusal (ROFR)* means the civil contract provisions set forth under section 313(j) of the Magnuson-Stevens Act between the holders of PQS and IPQ and ECC entities, other than Adak, for the opportunity of ECCs to exercise the right to purchase or lease PQS or IPQ proposed to be transferred by a holder of PQS or IPQ in an ECC.

*Seafood Marketing Association Assessment (SMAA)* means the seafood processing assessment collected by processing firms and buyers from fishery harvesters for the State of Alaska.

*Share payment* means an amount of monetary compensation (not salary or wages) based on gross or net earnings of a BSAI crab fishing vessel.

*Shoreside crab processor* means any person or vessel that receives, purchases, or arranges to purchase unprocessed crab, except a catcher/processor or a stationary floating crab processor.

*Stationary floating crab processor (SFCP)* means a vessel of the United States that remains anchored or otherwise remains stationary while receiving or processing crab in the waters of the State of Alaska.

*Uncommitted IFQ* means any Arbitration IFQ that is not Committed IFQ.

*Uncommitted IPQ* means any IPQ that is not Committed IPQ.

*U.S. Citizen means:*

(1) Any individual who is a citizen of the United States; or

(2) Any corporation, partnership, association, or other entity that is organized under Federal, state, or local laws of the United States or that may legally operate in the United States.

#### § 680.3 Relation to other laws.

(a) *King and Tanner crab.* (1) Additional laws and regulations governing the conservation and management of king crab and Tanner crab in the BSAI area are contained in 50 CFR part 679, Alaska Statutes at A.S. 16, and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39.

(2) The Alaska Administrative Code (at 5 AAC 39.130) governs reporting and permitting requirements using the ADF&G "Intent to Operate" registration form and "Fish Tickets."

(b) *Sport, personal use, and subsistence.* (1) For State of Alaska statutes and regulations governing sport and personal use crab fishing other than

subsistence fishing, see Alaska Statutes, Title 16—Fish and Game; 5 AAC Chapters 47 through 77.

(2) For State of Alaska statutes and regulations governing subsistence fishing for crab, see Alaska Statutes, Title 16—Fish and Game; 5 AAC 02.001 through 02.625.

#### § 680.4 Permits.

(a) *General information.* Persons participating in the CR fisheries are required to possess the permits described in this section.

(1) *Approval.* Approval of applications under this part may be conditioned on the payment of fees under § 680.44 or the submission of an EDR as described under § 680.6.

(2) *Issuance.* The Regional Administrator may issue or amend any permits under this section or under § 680.21 annually or at other times as needed under this part.

(3) *Transfer.* Crab QS and PQS permits issued under § 680.40 and Crab IFQ and IPQ permits issued under this section are transferable, as provided under § 680.41. Crab IFQ hired master permits, Federal crab vessel permits, and RCR permits issued under this section are not transferable.

(4) *Inspection.* The holder of a Federal crab vessel permit, crab IFQ permit, crab IPQ permit, or crab IFQ hired master permit, must present a legible copy of the permit on request of any authorized officer or RCR receiving a crab IFQ landing. A legible copy of the RCR permit must be present at the location of a crab IFQ landing and an individual representing the RCR must make the RCR permit available for inspection on request of any authorized officer.

(b) *Crab QS permit.* Crab QS is issued by the Regional Administrator to persons who successfully apply for an initial allocation under § 680.40 or to receive QS by transfer under § 680.41. Once issued, a crab QS permit is valid until modified by transfer under § 680.41; or until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904. To qualify for a crab QS permit, the applicant must be a U.S. Citizen.

(c) *Crab PQS permit.* Crab PQS is issued by the Regional Administrator to persons who successfully apply for an initial allocation under § 680.40 or receive PQS by transfer under § 680.41. Once issued, a PQS permit is valid until modified by transfer under § 680.41 or until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(d) *Crab IFQ permit.* (1) A crab IFQ permit authorizes the person identified on the permit to harvest crab in the



fishery identified on the permit at any time the fishery is open during the crab fishing year for which the permit is issued, subject to conditions of the permit. A crab IFQ permit is valid under the following circumstances:

(i) Until the end of the crab fishing year for which the permit is issued;

(ii) Until the amount harvested is equal to the amount specified on the permit;

(iii) Until the permit is modified by transfers under § 680.41; or

(iv) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(2) A legible copy of the crab IFQ permit must be carried on board the vessel used by the permitted person at all times that IFQ crab are retained on board.

(3) A crab IFQ permit is issued on an annual basis by the Regional Administrator to persons who hold crab QS, of the type specified on the crab QS permit, and who have submitted a complete annual application for crab IFQ/IPQ permit, described at paragraph (f) of this section, that is subsequently approved by the Regional Administrator.

(4) To qualify for a crab IFQ permit, the applicant must be a U.S. Citizen.

(e) *Crab IPQ permit.* (1) A crab IPQ permit authorizes the person identified on the permit to receive/process the IFQ crab identified on the permit during the crab fishing year for which the permit is issued, subject to conditions of the permit. A crab IPQ permit is valid under the following circumstances:

(i) Until the end of the crab fishing year for which the permit is issued;

(ii) Until the amount received/processed is equal to the amount specified on the permit;

(iii) Until the permit is modified by transfers under § 680.41; or

(iv) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(2) A legible copy of the crab IPQ permit authorizing receiving/processing of IFQ crab must be retained on the premises or vessel used by the permitted person to process the IFQ crab at all times that IFQ crab are retained on the premises or vessel.

(3) A crab IPQ permit is issued on an annual basis by the Regional Administrator to persons who hold crab PQS, and who have submitted a complete annual application for crab IFQ/IPQ permit, described at paragraph (f) of this section, that is subsequently approved by the Regional Administrator.

(f) *Contents of annual application for crab IFQ/IPQ permit.* (1) A complete

application must be received by NMFS no later than August 1 of the crab fishing year for which a person is applying to receive IFQ or IPQ. If a complete application is not received by NMFS by this date, that person will not receive IFQ or IPQ for that crab fishing year.

(2) For the application to be considered complete, all fees required by NMFS must be paid, and any EDR required under § 680.6 must be submitted to the DCA. In addition, the applicant must include the following information:

(i) *Applicant information.* Enter applicant's name and NMFS Person ID; applicant's date of birth or, if a non-individual, date of incorporation; applicant's social security number (optional) or tax identification number; applicant's permanent business mailing address and any temporary mailing address the applicant wishes to use; and applicant's business telephone number, facsimile number, and e-mail address.

(ii) *Crab IFQ or IPQ permit identification.* Indicate the type of crab IFQ or IPQ permit for which applicant is applying by QS fishery(ies) and indicate (YES or NO) whether applicant has joined a crab harvesting cooperative. If YES, indicate cooperative's name and ensure that this application is submitted by the applicant's cooperative with its completed application for an annual crab harvesting cooperative IFQ permit.

(iii) *Identification of ownership interests.* If the applicant is not an individual, provide the names of all persons, to the individual level, holding an ownership interest in the entity and the percentage ownership each person and individual holds in the applicant.

(iv) *Documentation of affiliation.* Complete a documentation of affiliation declaring any and all affiliations, as the term "affiliation" is defined at § 680.2. A documentation of affiliation includes affirmations by the applicant pertaining to relationships that may involve direct or indirect ownership or control of the delivery of IFQ crab and any supplemental documentation deemed necessary by NMFS to determine whether an affiliation exists. Indicate whether any entity that holds PQS or IPQ is affiliated with the applicant, as affiliation is defined in § 680.2. If the applicant is considered affiliated, the applicant must provide a list of all PQS or IPQ holders with which he/she is affiliated, including full name, business mailing address, and business telephone number.

(v) *Certification of applicant.* The applicant must sign and date the application certifying that all information is true, correct, and

complete to the best of his/her knowledge and belief. Print the name of the applicant. If the application is completed by an authorized representative, proof of authorization must accompany the application.

(g) *Crab IFQ hired master permit.* (1) A crab IFQ hired master permit is issued on an annual basis and authorizes the individual identified on the permit to harvest and land IFQ crab for debit against the specified crab IFQ permit until the crab IFQ hired master permit expires or is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904, or on request of the crab IFQ permit holder.

(2) A legible copy of the crab IFQ hired master permit must be on board the vessel used by the hired master to harvest IFQ crab at all times IFQ crab are retained on board. Except as specified in § 680.42, an individual who is issued a crab IFQ hired master permit must remain aboard the vessel used to harvest IFQ crab, specified under that permit, during the crab fishing trip and at the landing site until all crab harvested under that permit are offloaded and the landing report for IFQ crab is completed.

(h) *Contents of application for crab IFQ hired master permit.* In order for the application to be considered complete, a copy of the USCG *Abstract Of Title or Certificate Of Documentation* must be included with this application to demonstrate percent of vessel ownership by the IFQ permit holder. A complete application for a crab IFQ hired master permit must include the following information:

(1) *Purpose of application.* Indicate whether the application is to add or to delete a hired master and identification of crab IFQ permit(s) for which this application is submitted.

(2) *IFQ permit holder information.* Enter permit holder's name, NMFS Person ID, and social security number (optional) or tax identification number; permit holder's permanent or temporary business mailing address; and permit holder's business telephone number, facsimile number, and e-mail address (if available).

(3) *Identification of vessel upon which crab IFQ will be harvested.* Enter the vessel's name, ADF&G vessel registration number, and USCG documentation number. Indicate whether (YES or NO) the permit holder has at least a 10 percent ownership interest in the vessel the crab IFQ hired master will use to fish permit holder's IFQ crab. If YES, provide documentation of IFQ permit holder's 10 percent ownership interest.

(4) *IFQ hired master permit holder information.* Complete a separate section for each crab IFQ hired master. Enter the hired master's name, NMFS Person ID, social security number (optional) or tax identification number, and date of birth; hired master's permanent or temporary business mailing address; and hired master's business telephone number, facsimile number, and e-mail address (if available).

(5) *Applicant certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then authorization must accompany the application.

(i) *RCR permit.* (1) An RCR permit is issued on an annual basis. An RCR permit is valid during the crab fishing year for which it is issued until the RCR permit expires or is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(2) An RCR permit is required for any person who receives unprocessed CR crab from the person(s) who harvested the crab, the owner or operator of a vessel that processes CR crab at sea, any person holding IPQ, and any person required to submit a Departure Report under 50 CFR 679.5(l)(4).

(j) *Contents of application for RCR permit.* For the application to be considered complete, all fees required by NMFS must be paid, and any EDR required under § 680.6 must be submitted to the DCA. In addition, the applicant must include the following information:

(1) *Purpose of application.* Indicate whether the application is a request for a new RCR permit, a renewal of an existing RCR permit, or an amendment to an existing RCR permit. If a renewal of or amendment to an existing RCR permit, include the applicant's RCR permit number.

(2) *Applicant identification.* Enter applicant's name and NMFS Person ID; applicant's social security number or tax ID number (required); name of contact person for the applicant, if applicant is not an individual; applicant's permanent business mailing address; and business telephone number, facsimile number, and e-mail address (if available).

(3) *Type of activity.* Select type of receiving or processing activity and whether catcher/processor or shoreside processor.

(4) *Individual responsible for submission of EDR.* Enter the name of the designated representative submitting the EDR on behalf of the RCR, if an EDR is required at § 680.6. If different from the RCR's contact information, also enter the designated representative's business mailing address, telephone number, facsimile number, and e-mail address (if available).

(5) *Application certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then proof of authorization must accompany the application.

(k) *Federal crab vessel permit.* The owner of a vessel must have a Federal crab vessel permit on board that vessel when used to fish for CR crab.

(1) A Federal crab vessel permit is issued on an annual basis to the owner of the vessel and is in effect from the date of issuance through the end of the crab fishing year for which the permit was issued, unless it is revoked, suspended, or modified under § 600.735 or § 600.740.

(2) A Federal crab vessel permit may not be surrendered at any time during the crab fishing year for which it was issued.

(3) A Federal crab vessel permit issued under this paragraph is not transferable or assignable and is valid only for the vessel for which it is issued.

(4) To qualify for a Federal crab vessel permit, the applicant must be a U.S. Citizen.

(5) The holder of a Federal crab vessel permit must submit an amended application for a Federal crab vessel permit within 10 days of the date of change in: the ownership of the vessel (a copy of the current USCG documentation for the vessel showing the change in ownership must accompany the amended application), or the individual responsible for submission of the EDR on behalf of the vessel's owner(s).

(l) *Contents of application for federal crab vessel permit.* For the application to be considered complete, all fees required by NMFS must be paid, and any EDR required under § 680.6 must be submitted to the DCA. Also, if ownership of the vessel has changed or if the permit application for a vessel to which a Federal crab vessel permit has never been issued, a copy of the USCG *Abstract Of Title or Certificate Of*

*Documentation.* In addition the applicant must include the following information:

(1) *Purpose of application.* Indicate whether the application is a request for a new permit, a renewal of an existing permit, or an amendment to an existing permit. If a renewal of or amendment to an existing permit, include the current Federal crab vessel permit number.

(2) *Contact owner information.* The name(s), permanent business mailing address, social security number (voluntary) or tax ID number, business telephone number, business facsimile number, business e-mail address (if available) of all vessel owners, and the name of any person or company (other than the owner) that manages the operation of the vessel.

(3) *Vessel information.* Enter the vessel's name and home port (city and state); ADF&G processor code, if vessel is a catcher/processor or stationary floating crab processor; whether a vessel of the United States; USCG documentation number; ADF&G vessel registration number; and vessel's LOA (in feet), registered length (in feet), gross tonnage, net tonnage, and shaft horsepower. Indicate all types of operations the vessel may conduct during a crab fishing year.

(4) *Designated representative for EDR.* Enter the name of the designated representative who is responsible for completion and submission of the EDR, and the representative's business mailing address, telephone number, facsimile number, and e-mail address (if available).

(5) *Applicant certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. Print the applicant name. If the application is completed by an authorized representative, then authorization must accompany the application.

(m) *Annual crab harvesting cooperative IFQ permit.* See § 680.21.

#### **§ 680.5 Recordkeeping and reporting (R&R).**

(a) *General requirements*—(1) *Recording and reporting crab.* Any CR crab harvested that is retained must be recorded and reported.

(2) *Responsibility.* (i) The participants in the CR fisheries are responsible for complying with the following R&R requirements:

Recordkeeping and reporting report	Person responsible	Reference
(A) Longline and pot gear catcher vessel daily fishing log-book.	Owner and operator of vessel .....	§ 679.5(c)(1).
(B) Longline and pot gear catcher/processor daily cumulative production logbook.	Owner and operator of vessel .....	§ 679.5(c)(1).
(C) Product Transfer Report (PTR) .....	Owner and operator of catcher/processor; Owner and manager of shoreside processor or SFCP; RCR.	§ 679.5(g).
(D) U.S. Vessel Activity Report (VAR) .....	Owner and operator of vessel .....	§ 679.5(k).
(E) Transshipment Authorization .....	Owner and operator of a catcher/processor; RCR .....	§ 679.5(l)(3).
(F) IFQ Departure Report .....	Owner and operator of vessel .....	§ 679.5(l)(4).
(G) CR crab Landing Report .....	RCR .....	§ 680.5(c).
(H) Catcher/processor offload report .....	Owner and operator of a catcher/processor .....	§ 680.5(d).
(I) Eligible Crab Community Organization (ECCO) Annual Report for an Eligible Crab Community (ECC).	ECCO .....	§ 680.5(e).
(J) RCR Fee Submission Form .....	RCR .....	§ 680.5(f).
(K) Crab Economic Data Report (EDR) .....	Owners or leaseholders of a catcher vessel, catcher/processor, shoreside processor, or SFCP.	§ 680.6.

(3) *Representative.* Designation of a representative to complete R&R requirements does not relieve the person(s) responsible for compliance from ensuring compliance with this section.

(4) *Submittal of information.* A person must submit to NMFS all information, records, and reports required in this section in English and in a legible, timely, and accurate manner, based on A.I.T.; if handwritten or typed, in indelible ink.

(5) *Alteration of records.* A person may not alter or change any entry or record submitted to NMFS, except that an inaccurate, incomplete, or incorrect entry or record may be corrected after notifying the Regional Administrator at the address and facsimile number listed on each form, or as provided the opportunity on the Internet.

(6) *Inspection of records.* A person responsible for R&R under paragraph (a)(2) of this section must make available for inspection all reports, forms, scale receipts, and CR crab landing report receipts upon the request of an authorized officer for the time periods indicated in paragraph (a)(7) of this section.

(7) *Retention of records.* A person responsible for R&R under paragraph (a)(2) of this section must retain all reports and receipts as follows:

(i) *On site.* Until the end of the crab fishing year during which the records were made and for as long thereafter as crab or crab products recorded in the records are retained onboard the vessel or on site at the facility; and

(ii) *For 3 years.* For 3 years after the end of the crab fishing year during which the records were made.

(8) *Landing verification and inspection.* Each CR crab landing and all crab retained on board the vessel making a CR crab landing are subject to verification and inspection by authorized officers.

(9) *Sampling.* Each CR crab landing and all crab retained onboard a vessel making a CR crab landing are subject to sampling by authorized officers and observers.

(b) *CR landing report procedure—(1) Properly debited landing.* All retained crab catch must be weighed, reported, and debited from the appropriate IFQ or IPQ account under which the catch was harvested, as appropriate.

(2) An RCR must enter his or her authorized user ID and password to access the IERS. An RCR obtains a user ID by submitting to NMFS an IERS application for user ID (see paragraph (c)(1) of this section).

(3) The crab IFQ permit holder, crab IFQ hired master, or person who harvested Adak or CDQ crab must provide his or her name, NMFS person ID, crab IFQ number, and his or her own password or personal identification number (PIN), if required, to enter a CR crab landing report;

(4) The RCR must enter the landing and/or processing data specified under paragraphs (c)(7), (c)(8) or (c)(9) of this section in the Internet submission form(s) or other NMFS-approved method.

(5) Deadloss and personal use crab must be debited from the appropriate CR allocation under which the catch was harvested.

(6) Deadloss and personal use crab that an IPQ holder did not purchase are not required to be debited from the IPQ holder's account.

(7) A properly debited, printed receipt from the IERS or other NMFS-approved reporting method constitutes confirmation that NMFS received the CR crab landing report and that the permit holder's account is properly debited.

(8) The RCR and the crab IFQ permit holder, crab IFQ hired master, IPQ permit holder, or person who harvested Adak or CDQ crab must each sign the

printed receipt(s) to indicate that the landing reports are accurate and must enter date signed.

(9) The receipt must be retained as specified under paragraph (a)(7) of this section.

(10) A person who for any reason is unable to properly submit an electronic CR crab landing report or debit a landing as required under paragraph (d) of this section must telephone NMFS (800-304-4846).

(11) The address of the NMFS Alaska Region Internet site will be provided to all RCRs receiving crab.

(c) *Interagency electronic reporting system (IERS).* Unless an alternative reporting method has been approved by NMFS, an RCR must obtain at his or her own expense: hardware, software, and Internet connectivity to support Internet submissions of the CR crab landing report on the IERS. The IERS will provide a web page where the applicant will enter information.

(1) *IERS application for user ID.* (i) Each RCR and the crab IFQ permit holder, crab IFQ hired master, IPQ permit holder, or person who harvested Adak or CDQ crab must submit an IERS application to the Regional Administrator to provide information needed to process account access into the IERS. The IERS will validate that all required information is submitted, that the information entered is in correct format, and that the requested user ID is not already in use. The IERS will generate a PDF document from the information entered by the applicant.

(ii) The user will print, sign, and submit the application by mail to the Regional Administrator. Signature of applicant on form means that the applicant agrees to use access privileges to the IERS for purposes of submitting legitimate fishery landing reports and to safeguard the user ID and password to prevent their use by unauthorized persons. In addition, signature of the

RCR ensures that the applicant is authorized to submit landing reports for the processor permit number(s) listed.

(iii) Agency staff will review the form, confirm that the user should be authorized for the system, and will activate the user on the IERS. The IERS will then send the user an e-mail informing the user that his or her new user ID is ready for use.

(2) *Contents of the IERS application for user ID.* The IERS application for user ID must contain the following information: Date of application, name of applicant (user), processor name and location (city and state) or vessel name, if applicable, business telephone number, business facsimile number, business e-mail address (if available), requested user ID, initial password, security question, security answer, ADF&G processor code(s), Federal processor permit number, if applicable, and RCR permit number(s).

(d) *CR crab landings*—(1) *Joint and several liability.* The RCR and the crab IFQ permit holder, crab IFQ hired master, IPQ permit holder, or person who harvested Adak or CDQ crab are required to provide accurate information to the RCR to complete the CR crab landing report.

(2) *Reporting.* All CR crab must be reported by the receiving RCR unless the crab has been previously reported.

(i) *Reporting by all except catcher/processors.* Crab must be reported using the IERS system described in paragraph (c) of this section.

(ii) *Reporting by catcher/processors.* Catcher/processors may submit CR crab landings by e-mail attachment in a format approved by NMFS.

(3) *Submittal requirement.* An RCR is required to submit a CR crab landing report to the Regional Administrator for each catcher vessel landing or catcher/processor landing.

(4) *Time limits.* (i) For CR crab harvested on a catcher/processor, the owner or operator is required to submit a CR crab landing report to NMFS within 6 hours of the end of each weekly reporting period in which CR crab was harvested.

(ii) For CR crab landed to an RCR that is not a catcher/processor, the owner or manager is required to submit a CR crab landing report to NMFS within 6 hours after all crab is offloaded from a specific vessel.

(5) *Remain at landing site.* Except for landings of CR crab processed at sea, once the landing has commenced, neither the harvesting vessel nor the crab IFQ permit holder, crab IFQ hired master, or person who harvested Adak or CDQ crab may leave the landing facility until the CR crab account is

properly debited (as described in paragraph (b)(5) of this section).

(6) *No movement of CR crab.* The landed crab may not be moved from the facility where it was landed until the CR crab landing report is received by the Regional Administrator, and the IFQ permit holder's or IPQ permit holder's account is properly debited (as described in paragraph (b)(5) of this section).

(7) *Contents of CR crab landing report.* The RCR must accurately enter the following information in a CR crab landing report:

- (i) RCR permit number;
- (ii) ADF&G processor code of first purchaser;
- (iii) State of Alaska Interim Use Permit (IUP) number;
- (iv) Commercial Fisheries Entry Commission year sequence number;
- (v) Indicate (YES or NO) whether a portion of the harvested CR crab was or will be delivered to another RCR (partial delivery);
- (vi) Indicate (YES or NO) whether this is the last delivery for the trip;
- (vii) Management program: IFQ, CDQ, or Adak. (If CDQ or Adak, see paragraph (c)(11) of this section);
- (viii) ADF&G vessel registration number of the delivering vessel;
- (ix) Date fishing began;
- (x) Date of the CR crab landing;
- (xi) Number of pot lifts in each ADF&G statistical area;
- (xii) Number of crew, including operator and excluding observer(s);
- (xiii) Number of observers;
- (xiv) ADF&G fish ticket number (if not automatically supplied);
- (xv) If a shoreside processor, type of processing operation; enter port code from Tables 14a or 14b to part 679. If a catcher/processor, enter operation type from Table 14c to part 679;
- (xvi) ADF&G statistical area of harvest reported by the IFQ permit holder;
- (xvii) Species code of catch from Table 2 to this part;
- (xviii) Delivery-condition codes of catch from Table 3a to this part;
- (xix) Number of crab retained (optional);
- (xx) Price per pound;
- (xxi) Scale weight of live crab in pounds;
- (xxii) Scale weight of deadloss in pounds;
- (xxiii) Scale weight of crab retained for personal use in pounds; and
- (xxiv) Gear code to describe gear used to harvest CR crab (see Table 15 to 50 CFR part 679).

(8) *Custom processing.* In addition to the information required in paragraph (c)(7) of this section, if custom processing CR crab, enter the ADF&G

processor code of the person for which the CR crab was custom processed;

(9) *CDQ and Adak landings.* Instead of the information described in paragraph (c)(7) of this section, an RCR who receives a landing of CR crab harvested under the CDQ or Adak community allocation programs must submit for each landing the following information for each CR fishery and species:

- (i) RCR permit number;
- (ii) Crab species code from Table 2 to this part;
- (iii) Type of crab, either CDQ or Adak community allocation;
- (iv) If CDQ, enter CDQ group number;
- (v) Crab species amount. Enter the scale weight(s) in raw crab pounds landed or processed at sea; and
- (vi) Price per pound.

(e) *Catcher/processor offload report.* The owner or operator of a catcher/processor that harvested and processed CR crab must complete a catcher/processor offload report at the time of offload of CR crab and attach a scale printout showing gross product offload weight.

(1) *Contents of catcher/processor offload report.* The catcher/processor offload report must include the following: Name, ADF&G processor code, and Federal crab vessel permit number of the catcher/processor; fishing start date and time; fishing stop date and time; product code from Table 3b to this part; total gross weight of product offload, including glaze and packaging (specify lb or kg); estimated glaze percentage; case count and average box weight (specify lb or kg); net weight of crab product (specify lb or kg); completion date and time of catcher/processor offload; location (port) of catcher/processor offload (see Tables 14a and 14b to part 679); and ADF&G fish ticket numbers.

(2) *Submittal.* The RCR must submit electronically or by facsimile (907-586-7465) the catcher/processor offload report and a copy of the scale printout within 2 hours of completion of offload to the Regional Administrator.

(f) *ECCO Annual Report.* (1) Annually by June 30, each ECCO must submit a complete annual report on its crab QS activity for the prior crab fishing year for each ECC represented by the ECCO. The ECCO must submit a copy of the annual report to the governing body of each community represented by the ECCO and to the Regional Administrator, NMFS, Alaska Region; P.O. Box 21668; Juneau, AK 99802.

(2) *Contents of ECCO Annual Report.* A complete annual report must include the following information for the crab

IFQ derived from the QS held by the ECCO:

(i) Name, ADF&G vessel registration number, USCG documentation number, and Federal crab vessel permit of each vessel from which the crab IFQ was harvested;

(ii) Name and business addresses of individuals employed as crew members when fishing the crab IFQ;

(iii) Criteria used by the ECCO to distribute crab IFQ leases among eligible community residents;

(iv) Description of efforts made to ensure that crab IFQ lessees employ crew members who are eligible community residents of the ECC aboard vessels on which crab IFQ derived from QS held by a ECCO is being fished;

(v) Description of the process used to solicit lease applications from eligible community residents of the ECC on whose behalf the ECCO is holding QS;

(vi) Names and business addresses and amount of crab IFQ requested by each individual applying to receive crab IFQ from the ECCO;

(vii) Any changes in the bylaws of the ECCO, board of directors, or other key management personnel;

(viii) Copies of minutes, bylaw changes, motions, and other relevant decision making documents from ECCO board meetings.

(g) *RCR fee submission form* (See § 680.44). (1) *Applicability*. An RCR who receives any CR crab pursuant to § 680.44 or the RCR's authorized representative, must submit a complete RCR fee submission form electronically, by mail, or by facsimile to the Regional Administrator. Mail to: Regional Administrator, NMFS, Alaska Region; Attn: OMI; P.O. Box 21668; Juneau, AK 99802-1668; Facsimile (907-586-7354). Fee submission forms are available from RAM or on the Alaska Region Home Page at <http://www.fakr.noaa.gov/>.

(2) *Due date and submittal*. The reporting period of the RCR fee

submission form shall be the crab fishing year. An RCR must submit any crab cost recovery fee liability payment(s) and the RCR fee submission form to NMFS electronically or to the address provided at paragraph (g)(1) of this section not later than July 31 following the crab fishing year in which the CR crab landings were made.

(3) *Required information*. An RCR must accurately record on the RCR fee submission form the following information:

(i) *Identification of the RCR*. Enter the printed full name, NMFS person ID, RCR permit number, social security number or Federal tax identification number of the RCR. Enter the permanent or temporary business mailing address (indicate whether permanent or temporary), and the business telephone number, facsimile number, and e-mail address (if available).

(ii) *Signature of applicant*. Enter printed name and signature of applicant and date signed. If authorized representative, attach authorization to application.

(iii) *Method of Payment* (see § 680.44 (a)(4)). The RCR must select the method of payment for fees; whether by personal check, bank certified check (cashier's check), money order, or credit card. If by credit card, the RCR must select the type of credit card and enter the card number, expiration date, amount of payment, name as printed on the card, signature of the card holder, and date of signature.

(h) *Product transfer report*. (See § 679.5(g).)

(i) *U.S. Vessel activity report (VAR)*. (See § 679.5(k).)

(j) *Transshipment authorization*. (See § 679.5(l)(3).)

(k) *IFQ departure report*. (See § 679.5(l)(4).)

(l) *Catcher vessel longline and pot daily fishing logbook (DFL) and catcher/processor daily cumulative production logbook (DCPL)*. (See § 679.5 (c)).

#### § 680.6 Crab economic data report (EDR).

Persons participating in the CR crab fisheries are required to submit the EDRs described in this section for various permit applications to be considered complete. Use these tables to complete the EDRs described in this section: Table 1, Crab Rationalization (CR) Fisheries; Table 2, Crab Species Codes; Table 3c, Crab Product Codes for the EDRs; Table 4, Crab Process Codes; Table 5, Crab Size Codes; and Table 6, Crab Grade Codes.

(a) *Catcher vessel historical EDR*. (1) NMFS will select catcher vessels from a list of known catcher vessels, as determined by NMFS, that made at least one landing from fisheries listed in Table 1 to this part between January 1, 1998, through December 31, 2004, and will publish a **Federal Register** notice identifying vessels whose existing or former owners and leaseholders are required to submit an EDR, as follows:

(i) Owners or leaseholders of catcher vessels that participated in the BSAI crab fisheries between January 1, 1998, through December 31, 2004, and have received an allocation of QS, PQS, IFQ, or IPQ.

(ii) Owners or leaseholders of catcher vessels that participated in the BSAI crab fisheries between January 1, 1998, through December 31, 2004, that did not qualify for and receive QS, PQS, IFQ, or IPQ, but were participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit*. The owner or leaseholder of the identified vessels must submit the historical EDR to the DCA 90 days after the **Federal Register** notice notifying owners or leaseholders, to the address provided on the form.

(3) *Instructions*. Instructions for submitting a catcher vessel historical EDR and certification page are specified in the following table:

If you were . . .	And . . .	You must complete and submit . . .
(i) The catcher vessel owner as described in paragraph (a)(1) of this section.	(A) You harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years. (B) No one harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and you were notified by NMFS to submit an EDR for selected years. (C) You leased the vessel to another party, and harvested no BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.	Entire EDR for each year that BSAI crab was harvested.  EDR certification pages.  (1) EDR certification pages.  (2) Provide the name, business address, and telephone number of the person to whom you leased the vessel during the NMFS-selected years.

If you were . . .	And . . .	You must complete and submit . . .
	(D) You leased the vessel for a portion of the year to another party, but harvested some BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.	(1) Entire EDR for each year that BSAI crab was harvested.
(ii) The leaseholder as described in paragraph (a)(1) of this section.	You harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section vessel and were notified by NMFS to submit an EDR for selected years.	(2) Provide the name, business address, and telephone number of the person to whom you leased the vessel during the NMFS-selected years. Entire EDR for each year that BSAI crab was harvested.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages (see paragraph (a)(3) of this section).

(ii) The owner, leaseholder, or designated representative must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for which the vessel must submit the EDR;

(B) *Catcher vessel information.* Vessel name, USCG documentation number, ADF&G vessel registration number, crab LLP license number(s), current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. If the name and address of the

owner provided in paragraph (a)(4)(ii)(C) of this section is the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR:

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, ADF&G Fish ticket number(s), number of days at sea, average crew size (including captain), and number of pots lost (if applicable).

(ii) *Crab sales gross revenue.* CR fishery code, pounds sold, and gross revenue.

(iii) *CDQ crab lease costs.* CR fishery code, pounds leased, and total cost of lease. If you did not participate in CDQ fisheries, indicate N/A.

(iv) *Crab harvesting labor costs.* CR fishery code, number of crew earning shares (excluding captain), total crew share payment, and captain's share payment.

(v) *BSAI crab crew residence.* For employees that participated in BSAI crab harvesting, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(vi) *BSAI crab-specific vessel costs.* For the fishing year being reported, record insurance premiums (for hull, property and indemnity, and pollution), insurance deductible fees, quantity and cost of pots purchased, line, and other crab fishing gear purchases, pounds and cost of bait by species, gallons and cost of fuel, cost of lubrication and hydraulic fluids, cost of food and provisions for crew, other crew costs, freight costs of

supplies shipped to you for the vessel, freight costs for landed crab, storage, observer costs, fish taxes, and other crab-specific costs.

(vii) *Vessel-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an "X" in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment; repair and maintenance (R&M) expenses for vessel, gear and equipment; and other vessel-specific costs (specify).

(viii) *Labor payment details.* (A) Indicate with an "X" in the appropriate column whether the following expenses were deducted, directly charged, or not deducted or directly charged from the total revenue before calculating the crew payments in BSAI fisheries: fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that was applied to boat share and crew share (including captain).

(ix) *Annual totals for all fisheries.* For the calendar year, record the total days at sea, gross revenue, round pounds caught (excluding discards), and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(b) *Catcher vessel annual EDR—(1) Requirement.* On or before May 1 of each year, any owner or leaseholder of a catcher vessel that landed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous calendar year. For the year 2005, the annual EDR is due on or before May 1, 2006.

(2) *Instructions.* Instructions for submitting a catcher vessel annual EDR and certification page are specified in the following table:

If you are . . .	And . . .	You must complete and submit . . .
(i) The catcher vessel owner .....	<p>(A) You harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year.</p> <p>(B) No one harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this year.</p> <p>(C) You leased the vessel to another party, and harvested no BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year.</p> <p>(D) You leased the vessel for a portion of the year to another party, but harvested some BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year.</p>	<p>Entire EDR.</p> <p>EDR certification pages.</p> <p>(1) EDR certification pages.</p> <p>(2) Provide the name, address, and telephone number of the person to whom you leased the vessel during this calendar year.</p> <p>(1) Entire EDR.</p> <p>(2) Provide the name, address, and telephone number of the person to whom you leased the vessel during this calendar year.</p>
(ii) The leaseholder .....	You harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section vessel during this calendar year.	Entire EDR.

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year of reporting year;

(B) *Catcher vessel information.* Catcher vessel name, USCG documentation number, ADF&G vessel registration number, Federal crab vessel permit number, crab LLP license number(s), current estimated market value of vessel and equipment, and replacement value of vessel and equipment;

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available);

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary

contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (b)(3)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, ADF&G Fish ticket number(s), number of days at sea, average crew size (including captain), and number of pots lost (if applicable).

(ii) *Crab sales, gross revenue.* CR fishery code, species code, pounds sold, and gross revenue;

(iii) *CDQ and IFQ crab leases.* CR fishery code, species code, pounds leased, and total cost of leasing the quota. If you did not participate in CDQ or IFQ fisheries, indicate N/A.

(iv) *Crab harvesting labor costs—(A) Standard crew payment (shares) for non-IFQ crew and/or captains.* CR fishery code, number of crew earning shares, total crew share payment, and captain's share payment;

(B) *Payments to IFQ-holding crew and/or captains.* CR fishery code, number of crew contributing IFQ shares,

pounds of IFQ contributed by crew, total payment to crew for IFQ and shares (for all crab caught, and residual profit on their IFQ), pounds of IFQ contributed by captain, and payment to captain for IFQ and shares (for all fish caught, and residual profit on their IFQ);

(v) *BSAI crab crew residence—(A) Employees with crew license.* Record the Alaska Commercial Crew license number or the State of Alaska Commercial Fisheries Entry Commission (CFEC) gear operator permit number, and location of crew residence (city and state);

(B) *Employees without crew license.* Record the locations where they reside and the number of employees that are from each residential location as follows:

(1) If Alaska, enter primary city of residence;

(2) If state other than Alaska, enter primary state of residence; or

(3) If country other than United States, enter primary country of residence.

(vi) *BSAI crab-specific vessel costs.* Insurance premiums (hull, property and indemnity, and pollution), insurance deductible fees, pots purchased, line and other gear purchases, pounds and cost of bait by species, gallons and cost of fuel, lubrication and hydraulic fluids, food and provisions for crew, other crew costs, freight costs of supplies shipped to you for the vessel, freight costs for landed crab, storage, observer costs, fish taxes, other crab-specific costs (specify), and fishing cooperative costs.

(vii) *Vessel-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an "X"



in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment (city and state where purchased); R&M expenses for vessel, gear and equipment (city and state where repairs were made); and other vessel-specific costs (specify).

(viii) *Labor payment details.* (A) Indicate with an "X" in the appropriate column whether the following expenses were deducted, directly charged, or not deducted or directly charged from the total revenue before calculating the crew payments in BSAI crab fisheries: fuel and lubrication, food and provisions,

bait, fish tax, observer costs, CDQ fish, IFQ leases, freight, gear loss, and other (specify);

(B) Indicate percentage of the net share that is applied to boat share and crew share (including captain).

(ix) *Annual totals for all fisheries.* For the calendar year, record the total days at sea, gross revenue, round pounds caught (excluding discards), and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(c) *Catcher/processor historical EDR—*(1) *Requirement.* Any owner or leaseholder of a catcher/processor that harvested or processed BSAI crab in the calendar years 1998, 2001, or 2004 must submit to the DCA, at the address

provided on the form, an EDR for historical data for each of the specified calendar years, if they:

(i) Received an allocation of QS, PQS, IFQ, or IPQ under this program;

(ii) Did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the catcher/processor described in paragraph (c)(4)(ii)(B) of this section must submit the historical EDR to the DCA by June 30, 2005, at the address provided on the form.

(3) *Instructions.* Instructions for submitting a catcher/processor historical EDR and certification page are specified in the following table:

If you were . . .	And . . .	You must complete and submit . . .
(i) The catcher/processor owner described in paragraph of this section.	(A) You processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004. (B) No one processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004. (C) You leased your catcher/processor to another party, and processed no BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004. (D) You leased your catcher/processor for a portion of the year to another party, but processed some BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.  EDR certification pages for each year that no one processed BSAI crab. (1) EDR certification pages.  (2) Provide the name, business address, and telephone number of the person to whom you leased the catcher/processor during 1998, 2001, or 2004. (1) Entire EDR for each year that BSAI crab was processed.  (2) Provide the name, business address, and telephone number of the person to whom you leased the catcher/processor during 1998, 2001, or 2004.
(ii) The leaseholder described in paragraph (c)(1) of this section.	You processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification page either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* If the owner or leaseholder did not process BSAI crab in 1998, 2001, or 2004, he or she must submit the completed EDR certification pages only, and must attest that he or she meets the conditions exempting him or her from submitting the EDR, by signing and dating the certification pages, for each year of 1998, 2001, or 2004 that this applies.

(ii) The owner or leaseholder must submit the following information on the certification pages;

(A) *Calendar year of EDR.* Calendar year corresponding to 1998, 2001, or 2004;

(B) *Catcher/processor information.* Catcher/processor name, USCG documentation number, ADF&G processor code, crab LLP license number(s), current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The

designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (c)(4)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and  
(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI crab activity chart.* Complete a crab activity chart by entering the

following information: CR fishery code; dates covered (beginning and ending day, month and year); number of days at sea; number of crab processing days, and number of pots lost (if applicable).

(ii) *BSAI crab production*. CR fishery code, raw crab pounds, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (yes or no).

(iii) *Crab harvesting labor costs*. CR fishery code, number of crew earning shares, total crew share payment, and captain's share payment.

(iv) *Crab processing labor costs*. CR fishery code, number of crew with pay determined by processing work, average number of crab processing positions, and total processing labor payment.

(v) *BSAI crab crew residence*. For employees that participated in BSAI crab harvesting and processing, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence;

(B) If state other than Alaska, enter primary state of residence;

(C) If country other than United States, enter primary country of residence;

(vi) *BSAI crab custom processing done for you*. CR fishery code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(vii) *Raw crab purchases from delivering vessels*. CR fishery code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(viii) *CDQ Crab Costs (leases)*. CR fishery code, pounds leased, and total cost. If you did not participate in CDQ or IFQ fisheries, indicate N/A.

(ix) *Annual BSAI crab sales*. Record the following information on crab sales to affiliated entities and to unaffiliated entities: species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(x) *BSAI crab-specific vessel costs*. Insurance premiums (hull, property and indemnity, and pollution); insurance deductible fees; total of fisheries taxes which includes the Alaska fisheries business tax, Alaska fisheries resource landing tax, SMAA taxes, and other local sales tax on raw fish; pots purchased (quantity and cost); line and other crab fishing gear purchases; bait (by each CR fishery code, species, pounds and cost); fuel (by CR fishery code, gallons and cost); lubrication and hydraulic fluids; food and provisions for crew; other crew costs; processing and packaging materials, equipment and supplies; re-packing costs, broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product storage; gear storage; and other crab-specific costs (specify).

(xi) *Vessel-specific costs*. Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an "X" in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment; R&M expenses for vessel, gear and equipment (city and state where repairs were made); number of employees and salaries for foremen, managers, and other employees not included in direct labor costs; and other vessel-specific costs (specify).

(xii) *BSAI crab custom processing performed for others*. CR Fishery code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(xiii) *Annual totals for all fisheries*. For the calendar year, record the total processing days, total days at sea, gross revenue, finished pounds processed, round pounds caught (excluding discards), and labor costs for your fishing and processing activities in all fisheries in which you participated (crab, groundfish, etc.).

(xiv) *Labor payment details*. (A) Indicate with an "X" in the appropriate column whether the following expenses were deducted, directly charged, or not deducted or directly charged from the total revenue before calculating the crew payments in BSAI fisheries: fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that was applied to boat share and harvesting crew share (including captain).

(C) If processing workers were paid on a share system, indicate percentage of the net share (if applicable) that was applied to processing workers based on product value or net share.

(d) *Catcher/processor annual EDR—*  
(1) *Requirement*. On or before May 1 of each year, any owner or leaseholder of a catcher/processor that landed or processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous calendar year. For the year 2005, the annual EDR is due on or before May 1, 2006.

(2) *Instructions*. Instructions for submitting a catcher/processor annual EDR and certification page are specified in the following table:

If you are . . .	And . . .	You must complete and submit . . .
(i) The catcher/processor owner	(A) You processed BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	Entire EDR.
	(B) No one processed BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	EDR certification pages.
	(C) You leased all of your IPQ to another party, and processed no BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	(1) EDR certification pages.
	(D) You leased portions of your IPQ to another party, but processed some BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	(2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year. (1) Entire EDR.

If you are . . .	And . . .	You must complete and submit . . .
(ii) The leaseholder described in paragraph (d)(1) of this section.	You processed BSAI crab in the described in vessel described at paragraph paragraph (d)(3)(ii)(B) of this section this section during this calendar year.	(2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year. Entire EDR.

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for the reporting year;

(B) *Catcher/processor information.* Catcher/processor name, USCG documentation number, ADF&G processor code, RCR permit number, crab LLP license number(s), current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (d)(3)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, dates covered (beginning and ending day, month and year), number of days at sea, number of crab processing days, and number of pots lost (if applicable).

(ii) *BSAI crab production.* CR fishery code, species code, raw crab pounds, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(iii) *Harvesting labor costs.* Record the following information for crew if they harvest crab only, or harvest and process crab.

(A) *Standard crew payment (shares) for non-IFQ contributing crew and/or captains.* CR fishery code, number of crew earning shares, total crew share payment, and captain's share payment.

(B) *Payments to IFQ-holding crew and/or captains.* CR fishery code, number of crew contributing IFQ shares, pounds of IFQ contributed by crew, total payment to crew for IFQ and shares, pounds of IFQ contributed by captain, and payment to captain for IFQ and shares.

(iv) *Crab processing labor costs.* CR fishery code, number of crew with pay determined by processing work, average number of crab processing positions, and total processing labor payment.

(v) *BSAI crab crew residence—(A) Employees with crew license.* Record the Alaska Commercial Crew license number or the State of Alaska Commercial Fisheries Entry Commission (CFEC) gear operator permit number, and location of crew residence (city and state);

(B) *Employees without crew license.* Record the locations where they reside and the number of employees that are from each residential location as follows:

(1) If Alaska, enter primary city of residence;

(2) If state other than Alaska, enter primary state of residence; or

(3) If country other than United States, enter primary country of residence.

(vi) *BSAI crab custom processing done for you.* CR fishery code, species code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(vii) *Raw crab purchases from delivering vessels.* CR fishery code, species code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(viii) *CDQ and IFQ crab costs (leases).* For CDQ and IFQ leases enter CR fishery code, species code, pounds leased, and total cost. If you did not participate in CDQ or IFQ fisheries, indicate N/A.

(ix) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(x) *BSAI crab-specific vessel costs.* Insurance premiums (hull, property and indemnity, and pollution); insurance deductible fees; total of fisheries taxes which include the Alaska fisheries business tax, Alaska fisheries resource landing tax, SMAA taxes, and other local sales tax on raw fish; pots purchased by city and state (quantity and cost); line and other crab fishing gear purchases by city, state, and cost; bait (by each CR fishery code by city and state, species, pounds, and cost); fuel in gallons and cost by CR fishery code, city and state; lubrication and hydraulic fluids by city and state; food and provisions for crew; other crew costs; processing and packaging materials, equipment and supplies by city and state; re-packing costs; broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for products to the vessel; freight and handling costs for processed crab products from the vessel; product storage; gear storage; other crab-specific costs (specify), and fishing cooperative costs.

(xi) *Vessel-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively

for BSAI crab operations, place an "X" in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment (city and state where purchased); R&M expenses for vessel, gear and equipment (city and state where repairs were made); number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other vessel-specific costs (specify).

(xii) *BSAI crab custom processing performed for others.* CR fishery code, species code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(xiii) *Annual totals for all fisheries.* For the calendar year, record the total processing days, total days at sea, gross revenue, finished pounds processed, round pounds caught (excluding

discards), and labor costs for your fishing and processing activities in all fisheries in which you participated (crab, groundfish, etc.).

(xiv) *Labor payment details.* (A) Indicate with an "X" in the appropriate column whether the following expenses were deducted, directly charged, or not deducted or directly charged from the total revenue before calculating the crew payments in BSAI fisheries: fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, IFQ leases, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that is applied to boat share and harvesting crew share (including captain).

(C) If processing workers are paid on a share system, indicate percentage of the net share (if applicable) that is applied to processing workers based on product value or net share.

(e) *Stationary floating crab processor (SFCP) historical EDR—(1)*

*Requirement.* Any owner or leaseholder of an SFCP that processed CR crab in the calendar years 1998, 2001, or 2004 must submit to the DCA, at the address provided on the form, an EDR for historical data for each of the specified calendar years, if they:

(i) Received an allocation of QS, PQS, IFQ, or IPQ under this program;

(ii) Did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the SFCP described in paragraph (e)(4)(ii)(B) of this section must submit the historical EDR to the DCA by June 30, 2005, at the address provided on the form.

(3) *Instructions.* Instructions for submitting an SFCP historical EDR and certification page are specified in the following table:

If you were . . .	And . . .	You must complete and submit . . .
(i) The SFCP owner described in paragraph (e)(1) of this section.	(A) You processed BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004. (B) No one processed BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, 2004. (C) You leased your SFCP to another party, and processed no BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.  (D) You leased your SFCP a portion of the time to another party, but processed some BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.  EDR certification pages for each year that no one processed BSAI crab.  (1) EDR certification pages.  (2) Provide the name, address, and telephone number of the person to whom you leased the SFCP during 1998, 2001, or 2004. (1) Entire EDR for each year that BSAI crab was processed.  (2) Provide the name, address, and telephone number of the person to whom you leased the SFCP during 1998, 2001, or 2004.
(ii) The leaseholder described in paragraph (e)(1) of this section.	You operated the SFCP described at paragraph (e)(4)(ii)(B) of this section and processed some BSAI crab during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* If the owner or leaseholder did not process BSAI crab in 1998, 2001, or 2004, he or she must submit the completed EDR certification pages only, and must attest that he or she meets the conditions exempting him or her from submitting

the EDR, by signing and dating the certification pages, for each year of 1998, 2001, or 2004 that this applies.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar years corresponding to 1998, 2001, or 2004;

(B) *SFCP information.* SFCP name, USCG documentation number, ADF&G processor code, current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole

proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative, who is an individual for responding to questions on the EDR, and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (e)(4)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(3) Name of person, title, business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR*. The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart*. Complete a crab activity chart by entering the following information: CR fishery code, number of crab processing days, dates covered (beginning and ending day, month and year), raw crab pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs*. CR fishery code, average number of crab positions, total man-hours, and total labor payment.

(iii) *BSAI Crab crew residence*. For employees that participated in BSAI crab processing, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you*. CR fishery code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels*. CR fishery code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales*. Record the following information on crab sales to affiliated entities and to unaffiliated entities: species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(vii) *BSAI crab-specific vessel data*. Total of fisheries taxes which include the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment, and supplies; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product storage; and other crab-specific costs (specify).

(viii) *Vessel-specific costs*. Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an "X" in the COST RELATED TO MORE

THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate capitalized expenditures for vessel, gear and equipment; R&M expenses for vessel, gear and equipment (city and state where repairs were made); number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other vessel-specific costs (specify).

(ix) *BSAI crab custom processing performed for others*. CR fishery code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Annual totals for all fisheries*. For the calendar year, record the total processing days, gross revenue, finished pounds processed, and processing labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(f) *Stationary floating crab processor (SFCP) annual EDR*—(1) *Requirement*. On or before May 1 of each year, any owner or leaseholder of an SFCP that processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous calendar year. For the year 2005, the annual EDR is due on or before May 1, 2006.

(2) *Instructions*. Instructions for submitting an SFCP annual EDR and certification page are specified in the following table:

If you are . . .	And . . .	You must complete and submit . . .
(i) The SFCP owner .....	<p>(A) You processed BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.</p> <p>(B) No one processed BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.</p> <p>(C) You leased all of your IPQ to another party and processed no BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.</p> <p>(D) You leased a portion of your IPQ to another party, but processed some BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.</p>	<p>Entire EDR.</p> <p>EDR certification pages.</p> <p>(1) EDR certification pages.</p> <p>(2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.</p> <p>(1) Entire EDR.</p> <p>(2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.</p>
(ii) The leaseholder described in paragraph (f)(1) of this section.	You operated the SFCP described at paragraph (f)(3)(ii)(B) of this section and processed some BSAI crab during this paragraph calendar year.	Entire EDR.

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages (see paragraph (e)(2) of this section).

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year of the reporting year;

(B) *SFCP information.* SFCP name, USCG documentation number, ADF&G processor code, RCR permit number, current estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing the report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph (f)(3)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, number of crab processing days, dates covered (beginning and ending day, month and year), raw crab pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* CR fishery code, average number of crab processing positions, total man-hours, and total processing labor payment.

(iii) *BSAI Crab employee residence.* For employees that participated in BSAI crab processing, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* CR fishery code, species code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* CR fishery code, species code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(vii) *BSAI crab-specific vessel costs.* Total of fisheries taxes which includes the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment and supplies by city and state; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product

storage; and other crab-specific costs (specify).

(viii) *Vessel-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an "X" in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all fishing activities. Indicate fuel, electricity, lubrication and hydraulic fluids; capitalized expenditures for vessel, gear and equipment (city and state where purchased); R&M for vessel, gear and equipment (city and state where repairs were made); number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other vessel-specific costs (specify).

(ix) *BSAI crab custom processing performed for others.* CR fishery code, species code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Annual totals for all fisheries.* For the calendar year, record the total processing days, gross revenue, finished pounds processed, and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(g) *Shoreside processor historical EDR—(1) Requirement.* Any owner or leaseholder of a shoreside processor who processed CR crab in the calendar years 1998, 2001, or 2004 must submit to the DCA, at the address provided on the form, an EDR for historical data for each of the specified calendar years, if they:

(i) Received an allocation of QS, PQS, IFQ, or IPQ under this Program;

(ii) Did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the shoreside processor described in paragraph (g)(4)(ii)(B) of this section must submit the historical EDR to the DCA by June 30, 2005, at the address provided on the form.

(3) *Instructions.* Instructions for submitting a shoreside processor historical EDR and certification page are specified in the following table:

If you are . . .	And . . .	You must complete and submit . . .
(i) The shoreside processor owner described in paragraph (g)(1) of this section.	(A) You processed BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.

If you are . . .	And . . .	You must complete and submit . . .
	<p>(B) No one processed BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.</p> <p>(C) You leased your shoreside processor to another party, and processed no BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.</p> <p>(D) You leased your shoreside processor for a portion of the time to another party, but processed some BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.</p>	<p>EDR certification pages for each year that no one processed BSAI crab.</p> <p>(1) EDR certification pages.</p> <p>(2) Provide the name, address, and telephone number of the person to whom you leased the shoreside processor during 1998, 2001, or 2004.</p> <p>(1) Entire EDR for each year that BSAI crab was processed.</p> <p>(2) Provide the name, address, and telephone number of the person to whom you leased the shoreside processor during 1998, 2001, or 2004.</p>
(ii) The leaseholder described in paragraph (g)(1) of this section.	You operated the plant described at (g)(4)(ii)(B) of this section and processed some BSAI crab during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* If the owner or leaseholder did not process BSAI crab in 1998, 2001, or 2004, he or she must submit the completed EDR certification pages only, and must attest that he or she meets the conditions exempting him or her from submitting the EDR, by signing and dating the certification pages for each year of 1998, 2001, or 2004 that this applies;

(ii) *Required information.* The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar years corresponding to 1998, 2001, or 2004;

(B) *Shoreside processor information.* Shoreside processor name, ADF&G processor code, physical location of land-based plant (street address, city, state, zip code), borough assessed value of plant and equipment, year assessed, and current estimated market value of plant and equipment;

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available);

(D) *Designated representative.* Any owner or leaseholder may appoint a

designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing the report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing the report, check the correct box. If the name and address of the owner provided in paragraph (g)(4)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, number of crab processing days, dates covered (beginning and ending day, month and year), raw crab pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* CR fishery code, average number of crab processing positions, total man-hours, and total processing labor payment.

(iii) *BSAI Crab crew residence.* For employees that participated in BSAI

crab processing, record the locations where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* CR fishery code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* CR fishery code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(vii) *BSAI crab-specific plant costs.* Total fisheries taxes which include the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment and supplies; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs, broker fees and promotions for BSAI crab sales by CR fishery code; observer costs by CR fishery code; freight costs for supplies to the plant; freight and handling costs for



processed crab products from the plant; product storage; water, sewer, and waste disposal; and other crab specific costs (specify).

(viii) *Plant-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an "X" in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all vessel activities: fuel, electricity, lubrication, and hydraulic fluids; capitalized expenditures for plant, and equipment; R&M for existing plant and equipment;

number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other plant-specific costs (specify).

(ix) *BSAI crab custom processing done for others.* CR fishery code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Annual totals for all fisheries.* For the calendar year, record the total processing days, gross revenue, finished pounds processed, and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(h) *Shoreside processor annual EDR—*  
(1) *Requirement.* On or before May 1 of each year, any owner or leaseholder of a shoreside processor that processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous year. For the year 2005, the annual EDR is due on or before May 1, 2006.

(2) *Instructions.* Instructions for submitting a shoreside processor annual EDR and certification page are specified in the following table:

If you are . . .	And . . .	You must complete and submit . . .
(i) The shoreside processor owner.	(A) You processed BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year. (B) No one processed BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year. (C) You leased all of your IPQ to another party, and processed no BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.  (D) You leased portions of your IPQ to another party, but processed some BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	Entire EDR.  EDR certification pages.  (1) EDR certification pages.  (2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year. (1) Entire EDR.  (2) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year. Entire EDR.
(ii) The leaseholder described in paragraph (h)(1) of this section.	You operated the plant described at paragraph (h)(3)(ii)(B) of this section and processed some BSAI crab during this calendar year.	Entire EDR.

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for the reporting year;

(B) *Shoreside processor information.* Shoreside processor name, RCR permit number, ADF&G processor code, physical location of land-based plant (street address, city, state, zip code),

borough assessed value of plant and equipment, current estimated market value of plant and equipment, and year assessed.

(C) *Owner information.* Name of company, partnership, or sole proprietorship and business telephone number, facsimile number, and e-mail address (if available);

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing the report.* (1) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(2) If the owner is the person completing this report, check the correct box. If the name and address of the owner provided in paragraph

(h)(3)(ii)(C) of this section are the same as the name and address of the person completing the EDR, the information does not need to be repeated here; and

(3) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(4) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code, number of crab processing days, dates covered (beginning and ending day, month and year), raw crab pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* CR fishery code, average number of crab processing positions, total man-hours, and total processing labor payment.

(iii) *BSAI Crab employee residence.* For employees that participated in BSAI crab processing, record the locations

where they reside and the number of employees that are from each residential location, as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* CR fishery code, species code, raw crab pounds supplied to custom processors, raw crab pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* CR fishery code, species code, crab size, crab grade, raw crab pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and FOB Alaska Revenues.

(vii) *BSAI crab-specific plant costs.* Total of fisheries taxes which include the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment and supplies by city and state; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales by CR fishery code; observer costs by CR fishery code; freight costs for supplies to the plant; freight and handling costs for processed crab products from the plant; product storage; water, sewer, and waste disposal; and other crab specific costs (specify).

(viii) *Plant-specific costs.* Record the total annual costs for each category. If the reported total cost is not exclusively for BSAI crab operations, place an "X" in the COST RELATED TO MORE THAN JUST CRAB FISHING column. The agency or contracted analyst will prorate this amount over all vessel activities: fuel, electricity, lubrication, and hydraulic fluids; capitalized expenditures for plant and equipment by city and state; R&M for existing plant and equipment by city and state; number of employees and salaries for foremen, managers and other employees not included in direct labor costs; and other plant-specific costs (specify).

(ix) *BSAI crab custom processing performed for others.* CR fishery code, species code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Annual totals for all fisheries.* For the calendar year, record the total processing days, gross revenue, finished pounds processed, and labor costs for your fishing activities in all fisheries in which you participated (crab, groundfish, etc.).

(i) *Verification of data.* (1) The DCA shall conduct verification of information with the owner or leaseholder.

(2) The owner or leaseholder must respond to inquiries by the DCA within 20 days of the date of issuance of the inquiry.

(3) The owner or leaseholder must provide copies of additional data to facilitate verification by the DCA. The DCA auditor may review and request copies of additional data provided by the owner or leaseholder, including but not limited to: previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data.

(j) *DCA authorization.* The DCA is authorized to request voluntary submission of economic data specified in this section from persons who are not required to submit an EDR under this section.

#### **§ 680.7 Prohibitions.**

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) *Receiving and processing CR crab.* (1) Process any CR crab that has not been weighed by an RCR on:

(i) A scale approved by the State in which the RCR is located and that meets the requirements described in § 680.23(f); or

(ii) Onboard a catcher/processor RCR on a scale approved by NMFS as described in § 680.23(e).

(2) Receive CR crab harvested under an IFQ permit in any region other than the region for which the IFQ permit is designated.

(3) Use IPQ on board a vessel outside of the territorial sea or internal waters of the State of Alaska.

(4) Use IPQ in any region other than the region for which the IPQ is designated.

(5) Receive any crab harvested under a Class A IFQ permit in excess of the total amount of unused IPQ held by the RCR.

(6) Receive crab harvested under a Class B IFQ permit on a vessel if that vessel was used to harvest and process any crab in that crab QS fishery during the same crab fishing season.

(7) For an IPQ holder to use more IPQ crab than the maximum amount of IPQ that may be held by that person. Use of

IPQ includes all IPQ held by that person and all IPQ crab that are received by any RCR at any shoreside crab processor or stationary floating crab processor in which that IPQ holder has a 10 percent or greater direct or indirect ownership interest.

(8) For a shoreside crab processor or stationary floating crab processor that does not have at least one owner with a 10 percent or greater direct or indirect ownership who also holds IPQ in that crab QS fishery, to be used to receive in excess of 30 percent of the IPQ issued for that crab fishery.

(b) *Landing CR crab.* (1) Remove retained and unprocessed CR crab from a vessel at any location other than to an RCR operating under an approved catch monitoring plan as described in § 680.23(g) unless that crab is accompanied by a signed landing receipt showing the crab was properly landed.

(2) Remove any CR crab processed at sea from any vessel before completing a landing report, as defined at § 680.5(c), for all such CR crab onboard.

(3) Resume fishing for CR crab or take CR crab on board a vessel once a landing has commenced and until all CR crab are landed.

(4) Fail to remove all processed crab harvested under a CPO or a CPC IFQ permit to an onshore location within the United States, accessible by road or regularly scheduled air service, and to weigh that crab product on a scale approved by the State in which the crab is weighed.

(5) Make an IFQ crab landing except by an individual who holds either a crab IFQ permit or a crab IFQ hired master permit issued under § 680.4 in his or her name.

(6) Make an IFQ crab landing without the following on board: a copy of the crab IFQ permit to be debited for the landing; and, if applicable, a copy of the crab IFQ hired master permit issued under § 680.4 in the name of the person making the landing.

(7) For a Crab IFQ hired master to make an IFQ crab landing on any vessel other than the vessel named on the Crab IFQ hired master permit.

(c) *Harvest crab.* (1) Harvest any BSAI crab with any vessel not named on a valid Federal crab vessel permit.

(2) Harvest IFQ crab with any vessel that does not use functioning VMS equipment as required by § 680.23.

(3) Harvest on any vessel more IFQ crab than are authorized under § 680.42.

(4) Harvest crab under a CVC or a CPC IFQ permit unless the person named on the IFQ permit is on board that vessel.

(5) Harvest crab under a CPO or CPC permit unless all scales used to weigh

crab, or used by an observer for sampling crab, have passed an inseason scale test according to § 680.23(e)(1).

(d) *Recordkeeping and reporting.* (1) Fail to submit information on any report, application, or statement required under this part.

(2) Submit false information on any report, application, or statement required under this part.

(e) *Permits.* (1) Retain IFQ crab without a valid crab IFQ permit for that fishery on board the vessel.

(2) Retain IFQ crab on a vessel in excess of the total amount of unharvested crab IFQ, for a crab QS fishery, that is currently held by all crab IFQ permit holders or Crab IFQ Hired Masters aboard that vessel.

(3) Receive Class B IFQ by transfer if a person holds PQS or IPQ.

(4) Receive Class B IFQ by transfer if you are affiliated with a person who holds PQS or IPQ.

(f) *IPQ.* Use IPQ as collateral or otherwise leverage IPQ to acquire an ownership interest in Class B IFQ.

(g) *General.* (1) Possess, buy, sell, or transport any crab harvested or landed in violation of any provision of this part.

(2) Violate any other provision under this part.

(h) *Inseason action.* Conduct any fishing contrary to notification of inseason action closure, or adjustment issued under § 680.22.

#### § 680.8 Facilitation of enforcement.

See § 600.730 of this chapter.

#### § 680.9 Penalties.

(a) Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson-Stevens Act, or any regulation issued under the Magnuson-Stevens Act, is subject to the civil and criminal penalty provisions, permit sanctions, and civil forfeiture provisions of the Magnuson-Stevens Act, to part 600 of this chapter, to 15 CFR part 904 (Civil Procedures), and to other applicable law. Penalties include but are not limited to permanent or temporary sanctions to PQS, QS, IPQ, IFQ, Crab IFQ hired master, Federal crab vessel permit, or RCR permits.

(b) In the event a holder of any IPQ is found by a court of competent jurisdiction, either in an original action in that court or in a proceeding to enforce or review the findings or orders of any Government agency having jurisdiction under the antitrust laws, to have violated any of the provisions of antitrust laws in the conduct of the licensed activity, the Secretary of Commerce may revoke all or a portion of such IPQ. The antitrust laws of the United States include, but are not limited to, the following Acts:

(1) The Sherman Act, 15 U.S.C. 1–7;  
(2) The Wilson Tariff Act, 15 U.S.C. 8–11;

(3) The Clayton Act, 15 U.S.C. 12–27; and

(4) The Federal Trade Commission Act, 15 U.S.C. 12 and 45(a).

### Subpart B—Management Measures

#### § 680.20 Arbitration System.

(a) *Applicability.*—(1) *Arbitration System.* All CVO QS, Arbitration IFQ, Class A IFQ holders, CVC QS holders after June 30, 2005, PQS and IPQ holders must enter the contracts as prescribed in this section that establish the Arbitration System. Certain parts of the Arbitration System are voluntary for some parties, as specified in this section. All contract provisions will be enforced by parties to those contracts.

(2) *Open negotiation.* Any holder of uncommitted IFQ may negotiate with any holder of uncommitted IPQ, the price and delivery terms for that season or for future seasons for any uncommitted IFQ and uncommitted IPQ. Uncommitted IFQ holders and uncommitted IPQ holders may freely contact each other and initiate open negotiations.

(b) *Eligibility for Arbitration System.*—(1) *Arbitration Organization.* The following persons are the only persons eligible to join an Arbitration Organization:

- (i) Holders of CVO and CVC QS,
- (ii) Holders of PQS,
- (iii) Holders of Arbitration IFQ,
- (iv) Holders of Class A IFQ affiliated with a PQS or IPQ holder, and
- (v) Holders of IPQ.

(2) *Persons eligible to use negotiation and Binding Arbitration procedures.* The following persons are the only persons eligible to enter contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ and IPQ holders under other negotiation approaches:

- (i) Holders of Arbitration IFQ, and
- (ii) Holders of IPQ.

(3) *Persons ineligible to use negotiation and Binding Arbitration procedures.* Holders of IFQ that are affiliated with holders of PQS or IPQ are ineligible to enter contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ and IPQ holders under other negotiation approaches.

(c) *Preseason requirements for joining an Arbitration Organization.* All holders of CVO QS, CVC QS after June 30, 2008, PQS, Arbitration IFQ, Class A IFQ affiliated with a PQS or IPQ holder, and IPQ must join and maintain a membership in an Arbitration Organization as specified in paragraph (d) of this section. All holders of QS, PQS, IFQ, or IPQ must join an Arbitration Organization at the following times:

(1) For QS holders and PQS holders except as provided for in paragraph (c)(3) of this section, not later than May 1 of each year for the crab fishing year that begins on July 1 of that year.

(2) For IFQ holders and IPQ holders, not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery if that IFQ or IPQ holder does not also hold QS or PQS.

(3) During 2005, QS and PQS holders must join an Arbitration Organization as described in paragraph (d) of this section not later than August 15, 2005.

(4) Persons receiving QS, PQS, IFQ, or IPQ by transfer after these dates must join an Arbitration Organization at the time of receiving the QS, PQS, IFQ, or IPQ by transfer.

(d) *Formation process for an Arbitration Organization.* (1) Arbitration Organizations must be formed to select and contract a Market Analyst, Formula Arbitrator, Contract Arbitrator(s), and establish the Arbitration System, including the payment of costs of arbitration, described in this section for each crab QS fishery. All persons defined in paragraph (a)(1) of this section must join an Arbitration Organization.

(i) *Arbitration QS/IFQ Arbitration Organization.* Holders of Arbitration QS and Arbitration IFQ must join an Arbitration QS/IFQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of Arbitration QS or Arbitration IFQ. Arbitration QS holders and Arbitration IFQ holders may join separate Arbitration QS/IFQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(ii) *PQS/IPQ Arbitration Organization.* Holders of PQS or IPQ must join a PQS/IPQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of PQS or IPQ. PQS holders and IPQ holders may join separate PQS/IPQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(iii) *Affiliated QS/IPQ Arbitration Organization.* Holders of CVO QS or Class A IFQ affiliated with a PQS or IPQ holder must join an Affiliated QS/IPQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of QS or IFQ affiliated with a PQS or IPQ holder. CVO QS holders and Class A IFQ holders may join separate Affiliated QS/IPQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(iv) *Limitation on joining an Arbitration Organization.* For a crab QS fishery during a crab fishing year, a person who holds:

(A) PQS/IPQ may join only one PQS/IPQ Arbitration Organization;

(B) Affiliated QS/IPQ may join only one Affiliated QS/IPQ Arbitration Organization; and

(C) Arbitration QS/IPQ may join only one Arbitration QS/IPQ Organization.

(2) Each Arbitration Organization must submit a complete Annual Arbitration Organization report to NMFS. A complete report must include:

(i) A copy of the business license of the Arbitration Organization;

(ii) A statement identifying the members of the organization and the amount of Arbitration QS and Arbitration IFQ, Non-Arbitration QS and Non-Arbitration IFQ, or PQS and IPQ held by each member and represented by that Arbitration Organization;

(iii) QS, PQS, IFQ, and IPQ ownership information on the members of the organization;

(iv) Management organization information, including:

(A) The bylaws of the Arbitration Organization;

(B) A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers;

(v) The name of the Arbitration Organization, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the Arbitration Organization, resumes of management personnel; and

(vi) A copy of all minutes of any meeting held by the Arbitration Organization or any members of the Arbitration Organization.

(3) An Arbitration Organization, with members who are QS or PQS holders, must submit a complete Annual Arbitration Organization Report to NMFS by electronic mail to the Regional Administrator, NMFS, or by mail addressed to the Regional

Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802 by:

(i) August 20, 2005 for the crab fishing year beginning on July 1, 2005.

(ii) May 1 of each subsequent year for the crab fishing year beginning on July 1 of that year.

(4) An Arbitration Organization, with members who are IFQ or IPQ holders, must submit a complete Annual Arbitration Organization Report to NMFS by electronic mail to the Regional Administrator, NMFS, or by mail addressed to the Regional

Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802 by not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery.

(e) *Role of Arbitration Organization(s) and annual requirements.* (1) *General.*

The members of each Arbitration Organization must enter into a contract that specifies the terms and conditions of participation in the organization.

(i) The contract among members of an Arbitration QS/IPQ Arbitration Organization, or a PQS/IPQ Arbitration Organization shall include the terms, conditions, and provisions specified in paragraph (e)(2) of this section.

(ii) The contract among members of an Affiliated QS/IPQ Arbitration Organization shall include the terms, conditions, and provisions in paragraph (e)(3) of this section.

(2) *Provisions for Arbitration QS/IPQ Arbitration Organizations, and PQS/IPQ Arbitration Organizations—*(i) *Selection of Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).* A provision authorizing the Arbitration Organization to act on behalf of its members in the selection of and contracting with the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) under paragraph (e)(4) of this section.

(ii) *Confidentiality of information.* A provision that a member that is a party to a Binding Arbitration proceeding shall sign a confidentiality agreement with the party with whom it is arbitrating stating they will not disclose at any time to any person any information received from the Contract Arbitrator or any other party in the course of the arbitration. That confidentiality agreement shall specify the potential sanctions for violating the agreement.

(iii) *Provision of information to members.* A provision requiring the Arbitration Organization to provide to its members:

(A) A copy of the contracts for the Market Analyst, Formula Arbitrator, and Contract Arbitrator for each fishery in which the member participates; and

(B) A copy of the Market Report and the Non-Binding Price Formula for each

fishery in which the member participates within 5 days of its release.

(iv) *Information release.* (A) A provision requiring that the Arbitration Organization deliver to NMFS any data, information, and documents generated pursuant to this section.

(B) In the case of a PQS/IPQ Arbitration Organization(s):

(1) A provision that requires the PQS/IPQ Arbitration Organization to provide for the delivery of the names of and contact information for its members who hold uncommitted IPQ, and to identify the regional designations and amounts of such uncommitted IPQ, to Arbitration QS/IPQ Arbitration Organizations either directly or through a third-party data provider so the information may be provided to any persons that hold uncommitted Arbitration IFQ for purposes of Share Matching, Binding Arbitration, and Post Arbitration Opt-in;

(2) A provision that prohibits the disclosure of any information received under this provision to any person except those Arbitration QS/IPQ Arbitration Organizations, or their third-party data provider so that information may be provided to holders of uncommitted Arbitration IFQ. The provision will require that information concerning uncommitted IPQ be updated within 24 hours of a change of any such information, including any commitment of IPQ, and that information be provided to those persons that hold uncommitted Arbitration IFQ. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure Web site, or through other electronic means;

(3) A provision that requires the PQS/IPQ Arbitration Organization to arrange for the delivery to all holders of uncommitted Arbitration IFQ through the Arbitration QS/IPQ Arbitration Organizations holders or their third-party data provider the terms of a decision of a Contract Arbitrator in a Binding Arbitration proceeding involving a member that holds uncommitted IPQ within 24 hours of notice of that decision. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure Web site, or through other electronic means; and

(4) A provision that requires the holders of uncommitted IPQ to provide information concerning such uncommitted IPQ as necessary for the PQS/IPQ Arbitration Organization to comply with this paragraph and prohibits the disclosure of any such information by such holder to any

person, except as directed in this paragraph.

(C) In the case of a Arbitration QS/IPQ Organization(s):

(1) A provision that requires Arbitration QS/IPQ Arbitration Organizations holders, or their third-party data provider to provide information concerning uncommitted IPQ from PQS/IPQ Arbitration Organization(s) as necessary for the Arbitration IFQ holder to use that information in a timely manner.

(2) A provision that prohibits the disclosure of any such information concerning uncommitted IPQ from PQS/IPQ Arbitration Organization to any person, except as directed therein.

(D) Third-party Data Provider provision. Notwithstanding any provision in this section, an Arbitration Organization required to supply or receive information under this section must hire administrative personnel or may contract with a person who will arrange for the receipt and delivery of information as required. Any such third party that receives such information cannot be affiliated with or employed by or related to any QS, PQS, IFQ, or IPQ holder in any crab QS fishery and must enter a contract that:

(1) Prohibits such third person from releasing any information received to any person except as specifically provided by this section; and

(2) Prohibits such third person from entering taking any employment from or establishing any relationship, except under a contract meeting the requirements of this section for a period of 3 years after the termination of the contract.

(v) *Costs.* A provision that authorizes the Arbitration Organization to enter into a contract with all other Arbitration Organizations for the payment of the costs of arbitration as specified under this section.

(A) The Arbitration Organizations must establish a contract that requires the payment of all costs of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s), dissemination of information concerning uncommitted IPQ to holders of uncommitted Arbitration IFQ, and the costs of such persons associated with lengthy season approach, share matching approach, Binding Arbitration, quality and performance disputes, to be shared equally so that IPQ holders pay 50 percent of the costs and Arbitration IFQ holders and Class A IFQ holders pay 50 percent of the costs.

(B) Each person shall pay an amount of the cost based on the amount of IPQ or IFQ held by that person at the time

of application to an Arbitration Organization.

(C) PQS holders shall advance all costs and shall collect the contribution of IFQ holders at landing subject to terms mutually agreed to by the Arbitration Organizations.

(vi) *Negotiation methods.* A provision that prohibits the Arbitration Organization from engaging in any contract negotiations on behalf of its members, except for those necessary to hire the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).

(vii) *Enforcement of the contract.* Violations of the contract shall be enforced under civil law.

(3) *Provisions applying to Affiliated QS/IPQ Arbitration Organizations.* The provisions that allow for the provision of information to members, payment of costs, limits on the transfer of QS, PQS, IFQ, and IPQ, and enforcement of the contract as described under paragraphs (e)(2)(iv), (v), (vii), and (viii) will apply to the contract among members of an Affiliated QS/IPQ Arbitration Organization(s).

(4) *Process for selection of Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).* (i) For each crab fishing year, QS holders who are members of Arbitration QS/IPQ Arbitration Organization(s) and PQS holders who are members of PQS/IPQ Arbitration Organization(s), by mutual agreement, will select one Market Analyst, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery. The number of Contract Arbitrators selected for each fishery will be subject to the mutual agreement of those Arbitration Organizations. The selection of the Market Analyst and the Formula Arbitrator must occur in time to ensure the Market Report and non-binding price formula are produced within the time line established in paragraph (e)(4)(ii) of this section.

(ii) The Arbitration Organizations representing Arbitration QS holders and PQS holders in a crab fishery shall establish by mutual agreement the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for each fishery, which shall provide that the Market Report and Non-Binding Price Formula are produced not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year except as provided in paragraph (e)(6) of this section. The contractual obligations of the Market Analyst, the Formula Arbitrator and Contract Arbitrators will be enforced by the parties to the contract.

(iii) The same person may be chosen for the positions of Market Analyst and Formula Arbitrator for a fishery.

(iv) A person selected to be a Contract Arbitrator may not be the Market Analyst or Formula Arbitrator, and shall not be affiliated with, employed by, or otherwise associated with, the Market Analyst or Formula Arbitrator, for that fishery.

(5) *Notification to NMFS.* Not later than June 1 for that crab fishing year, except as provided in paragraph (e)(6) of this section, the Arbitration Organizations representing the holders of Arbitration QS and PQS in each fishery shall notify NMFS of the persons selected as the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for the fishery by electronic mail addressed to the Regional Administrator, NMFS, or by mail addressed to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802. The Arbitration Organizations shall include a list of Arbitration Organizations that mutually agreed to the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) and signatures of representatives of those Arbitration Organizations and a copy of the contract with Market Analyst, the Formula Arbitrator, and each Contract Arbitrator. The notification must include a curriculum vitae and other relevant biographical material for each of these individuals.

(6) *First-year implementation.* During 2005, the selection of and establishment of the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) as required under this section shall occur not later than September 1, 2005.

(7) *IFQ and IPQ Issuance and Selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).* NMFS will not issue CVO IFQ, CVC IFQ after July 1, 2008, and IPQ for a crab QS fishery until Arbitration Organizations establish by mutual agreement contracts with a Market Analyst, Formula Arbitrator, and Contract Arbitrators for that fishery and notify NMFS.

(f) *Roles and standards for the Market Analyst and process for producing the Market Report.* (1) For each crab QS fishery, the Arbitration QS/IPQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Market Analyst to produce a Market Report for the fishery. The terms of this contract must specify that the Market Analyst must produce a Market Report that shall provide an analysis of the market for products of that fishery.

(2) The contract with the Market Analyst must specify that:

(i) The Market Analyst shall base the Market Report on:

(A) A survey of the market for crab products produced by the fishery; and  
(B) Information provided by the IPQ and IFQ holders regarding market conditions and expectations.

(ii) To the extent IPQ and IFQ holders provide information requested by the Market Analyst, they must provide such information directly to the Market Analyst and not to any other IPQ holder or IFQ holder, except that IFQ holders that are members of any single FCMA cooperative may share such information with other members of the same FCMA cooperative who are authorized to participate in the arbitration system.

(iii) The Market Analyst:

(A) May meet with IFQ holders who are members of any single FCMA cooperative collectively;

(B) Shall meet with IPQ holders individually;

(C) Shall meet with distinct crab FCMA cooperatives individually; and

(D) Shall meet with IFQ holders who are not members of the same FCMA cooperatives individually.

(iv) The information provided to the Market Analyst by IPQ and IFQ holders must be historical information based on activities occurring more than three months prior to the generation of the Market Report.

(v) The Market Analyst shall keep confidential the identity of the source of any particular information contained in the report. The Market Analyst may note generally the sources from which it gathered information. The report shall:

(A) Include only data that is based on information regarding activities occurring more than three months prior to the generation of the Market Report;

(B) Include only statistics for which there are at least five providers reporting data upon which each statistic is based and for which no single provider's data represents more than 25 percent of a weighted basis of that statistic; and

(C) Sufficiently aggregate any information disseminated in the report such that it would not identify specific price information by an individual provider of information.

(vi) The Market Report shall consider the following factors:

(A) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A IFQ, Class B IFQ, and CVC IFQ permits;

(B) Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);

(C) Innovations and developments of the harvesting and processing sectors and the participants in the arbitration (including new product forms);

(D) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(E) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(F) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(G) Safety and expenditures for ensuring adequate safety;

(H) Timing and location of deliveries; and

(I) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(vii) There shall only be one annual Market Report for each fishery.

(viii) The Market Analyst shall not issue interim or supplemental reports for each fishery.

(3) The Market Analyst shall not disclose any information to any person not required under this section.

(4) In 2005, the Market Report shall be produced not later than September 30, 2005 or 25 days prior to the first crab fishing season for that crab QS fishery whichever is later in that crab fishing year as required under this section.

(i) In all subsequent years, the Market Report shall be produced not later than 50 days prior to the first crab fishing season for that crab QS fishery.

(ii) The contract with the Market Analyst must specify that the Market Analyst will provide in that crab fishing year to:

(A) Each Arbitration Organization in that fishery;

(B) NMFS by electronic mail to the Regional Administrator, NMFS, or addressed to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802; and

(C) The Formula Arbitrator and any Contract Arbitrator(s) for the fishery.

(g) *Roles and standards for the Formula Arbitrator.* (1) For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Formula Arbitrator to develop a Non-Binding Price Formula.

(2) The contract with the Formula Arbitrator must specify that:

(i) The Formula Arbitrator will conduct a single annual fleet-wide

analysis of the markets for crab to establish a Non-Binding Price Formula under which a fraction of the weighted average first wholesale prices for crab products from the fishery may be used to set an ex-vessel price; and

(ii) The Non-Binding Price Formula shall:

(A) Be based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex-vessel prices, taking into consideration the size of the harvest in each year; and

(B) Establish a price that preserves the historical division of revenues in the fishery while considering the following:

(1) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;

(2) Consumer and wholesale product prices for the processing sector and the participants in arbitrations (recognizing the impact of sales to affiliates on wholesale pricing);

(3) Innovations and developments of the harvesting and processing sectors and the participants in arbitrations (including new product forms);

(4) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(5) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(6) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(7) Safety and expenditures for ensuring adequate safety;

(8) Timing and location of deliveries; and

(9) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(C) Include identification of various relevant factors such as product form, delivery time, and delivery location.

(D) Consider the "highest arbitrated price" for the fishery from the previous crab fishing season, where the "highest arbitrated price" means the highest arbitrated price for arbitrations of IPQ and Arbitration IFQ which represent a minimum of at least 7 percent of the IPQ resulting from the PQS in that fishery.

For purposes of this process, the Formula Arbitrator may aggregate up to three arbitration findings to collectively equal a minimum of 7 percent of the IPQ. When arbitration findings are

aggregated with 2 or more entities, the lesser of the arbitrated prices of the arbitrated entities included to attain the 7 percent minimum be considered for the highest arbitrated price.

(iii) The Non-Binding Price Formula may rely on any relevant information available to the Formula Arbitrator, including, but not limited to,

(A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery, and

(B) The Market Report for the fishery.

(iv) The Formula Arbitrator:

(A) May meet with IFQ holders who are members of any single FCMA cooperative collectively;

(B) Shall meet with IPQ holders individually;

(C) Shall meet with distinct FCMA cooperatives individually; and

(D) Shall meet with IFQ holders who are not members of the same FCMA cooperative individually.

(v) The Formula Arbitrator may request any relevant information from QS, PQS, IPQ, and IFQ holders in the fishery, but the Formula Arbitrator shall not have subpoena power.

(vi) The Formula Arbitrator may obtain information from persons other than QS, PQS, IPQ, and IFQ holders in the fishery, if those persons agree to provide such data. Any information that is provided must be based on activities occurring more than three months prior to the date of submission to the Formula Arbitrator.

(vii) The Formula Arbitrator shall keep confidential the information that is not publicly available and not disclose the identity of the persons providing specific information.

(viii) (A) In 2005, the non-binding price formula shall be produced not later than September 30, 2005 or 25 days prior to the first crab fishing season for that crab QS fishery whichever is later in that crab fishing year as required under this section.

(B) In all subsequent years, the non-binding price formula shall be produced not later than 50 days prior to the first crab fishing season for that crab QS fishery.

(C) The contract with the Formula Arbitrator must specify that the Formula Arbitrator will provide the non-binding price formula in that crab fishing year to:

(1) Each Arbitration Organization in that fishery;

(2) NMFS by electronic mail to the Regional Administrator, NMFS, or addressed to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802; and

(3) The Market Analyst and all Contract Arbitrators in the fishery.

(ix) The Formula Arbitrator shall not disclose any information to any person not required under this section, except as permitted by paragraph (j) of this section.

(h) *Roles and standards for the Contract Arbitrator(s)*—(1) *General*. For each crab QS fishery, the Arbitration QS/IPQ Arbitration Organizations and PQS/IPQ Arbitration Organizations shall establish a contract with all Contract Arbitrators in that fishery that specifies that each Contract Arbitrator may be selected to resolve a dispute concerning the terms of delivery, price, or other factors in the fishery.

(2) *Selection of Contract Arbitrators*. The contract with the Contract Arbitrator shall specify the means by which the Contract Arbitrator will be selected to resolve specific disputes. This contract must specify that for any dispute for which the Contract Arbitrator is selected, the Contract Arbitrator will comply with the last best offer arbitration method as set forth in this section.

(3) *Negotiation and Binding Arbitration Procedure*. The contract with the Contract Arbitrator(s) shall specify the following approaches for negotiation and Binding Arbitration among members of the Arbitration Organizations:

(i) *Restrictions on collective negotiation*. An IFQ and an IPQ holder may negotiate individually. Groups of IFQ holders may negotiate collectively with an IPQ holder only under the following provisions:

(A) Members of an FCMA cooperatives may participate collectively with other members of the same FCMA cooperative in Binding Arbitration except as otherwise provided under this section.

(B) Members of different FCMA cooperatives shall not participate collectively in Binding Arbitration.

(C) IPQ holders shall not participate collectively. Only one IPQ holder shall enter into Binding Arbitration with any IFQ holder or IFQ holder(s).

(D) An Arbitration Organization must not negotiate on behalf of a member. This shall not prohibit the members of an Arbitration IFQ Arbitration Organization from negotiation if the Arbitration Organization qualifies as an FCMA cooperative.

(ii) *Open negotiations*. At any time prior to the date of the first crab fishing season of a crab fishing year for that crab QS fishery, any holder of uncommitted Arbitration IFQ may negotiate with any holder of uncommitted IPQ, the price and delivery terms for that season for any

uncommitted IFQ and uncommitted IPQ.

(A) Uncommitted Arbitration IFQ holders and Uncommitted IPQ holders may freely contact each other and initiate open negotiations.

(B) If Arbitration IFQ holders and IPQ holders do not reach an agreement on price, delivery terms, or other terms after committing shares, an Arbitration IFQ holder may initiate Binding Arbitration in accordance with the procedures specified in this section in order to resolve disputes in those price, delivery terms, or other terms.

(C) Once IFQ or IPQ has been committed, the IFQ holder and IPQ holder cannot engage in open negotiation using those shares.

(iii) *Lengthy season approach*. (A) Prior to the date of the first crab fishing season for that crab QS fishery in that crab fishing year a committed IPQ holder and one or more committed Arbitration IFQ holders may choose to adopt a Lengthy Season approach. The Lengthy Season approach is an alternative method to the Binding Arbitration proceedings.

(B) A Lengthy Season approach allows a committed IPQ holder and a committed Arbitration IFQ holder to agree to postpone negotiation of specific contract terms until a time during the crab fishing year as agreed upon by the Arbitration IFQ holder and IPQ holder participating in the negotiation. The Lengthy Season approach allows the Arbitration IFQ holders and IPQ holder involved in the negotiation to postpone Binding Arbitration, if necessary, until a time during the crab fishing year. If the parties reach a final agreement on the contract terms, Binding Arbitration is not necessary.

(C) If a committed IPQ holder and one or more committed Arbitration IFQ holder(s) are unable to reach an agreement on whether to adopt a Lengthy Season approach, they may request mediation to assist the parties in determining whether to adopt a Lengthy Season approach. The parties may request a Contract Arbitrator to act as a mediator. If the mediation proves unsuccessful or is not selected, the Arbitration IFQ holder may initiate enter Binding Arbitration to determine whether to adopt a lengthy season approach.

(1) Binding Arbitration may begin immediately with the same Contract Arbitrator.

(2) If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, either party may request another Contract Arbitrator for the Binding Arbitration.



(iv) *Share matching.* (A) At any time after the issuance of IFQ and IPQ for a crab QS fishery but not earlier than 25 days prior to the first crab fishing season for a crab QS fishery in the crab fishing year, holders of uncommitted Arbitration IFQ may choose to commit the delivery of harvests of crab to be made with that uncommitted Arbitration IFQ to an uncommitted IPQ holder.

(B) To commit Arbitration IFQ, the holder of uncommitted IFQ must offer an amount of Arbitration IFQ:

(1) Not less than 50 percent of the Arbitration IFQ holder's total uncommitted Arbitration IFQ, or an amount of uncommitted Arbitration IFQ equal to the total amount of uncommitted IPQ available, whichever is less, if the Arbitration IFQ holder is not an FCMA cooperative; and

(2) Not less than 25 percent of the Arbitration IFQ holder's total uncommitted Arbitration IFQ, or an amount of uncommitted Arbitration IFQ equal to the total amount of uncommitted IPQ available, whichever is less, if the Arbitration IFQ holder is an FCMA cooperative.

(C) Any holder of uncommitted IPQ must accept all proposed Arbitration IFQ commitments, up to the amount of its uncommitted IPQ. The commitment of IPQ will take place on receipt of notice from the holder of uncommitted Arbitration IFQ of the intention to commit that IFQ.

(D) After matching, an Arbitration IFQ holder and an IPQ holder may decide to enter mediation to reach agreement on contract terms. The Arbitration IFQ holder and IPQ holder may request a Contract Arbitrator to act as a mediator to facilitate an agreement.

(1) If the mediation proves unsuccessful, or if mediation is not selected, the Arbitration IFQ holder may initiate Binding Arbitration which may begin immediately with the same Contract Arbitrator.

(2) If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, the Arbitration IFQ holder may request another Contract Arbitrator for the Binding Arbitration.

(v) *Initiation of Binding Arbitration.* If an Arbitration IFQ holder intends to initiate Binding Arbitration, the Arbitration IFQ holder must initiate the Binding Arbitration procedure between 25 days and 15 days prior to the date of the first crab fishing season for a crab QS fishery. Binding Arbitration is initiated after the committed Arbitration IFQ holder notifies a committed IPQ holder and selects a Contract Arbitrator. Binding Arbitration may be initiated to resolve price, terms of delivery, and

other disputes. There will be only one Binding Arbitration Proceeding for an IPQ holder but multiple Arbitration IFQ holders may participate in this proceeding. This limitation on the timing of Binding Arbitration proceedings does not include proceedings that arise due to:

- (A) The lengthy season approach;
- (B) Performance disputes; and
- (C) Quality disputes.

(vi) *Joining a Binding Arbitration proceeding.* Any uncommitted Arbitration IFQ holder may join a Binding Arbitration proceeding as a party by committing the shares to the arbitration and providing notice to the IPQ holder and the Contract Arbitrator(s). An Arbitration IFQ holder may join a Binding Arbitration proceeding only if uncommitted IPQ is available. Once shares are committed to a Binding Arbitration Proceeding they cannot be uncommitted. The contract with the Contract Arbitrator may specify the terms and timing of joining the proceedings.

(vii) *Arbitration schedule meeting.* The Contract Arbitrator shall meet with all parties to a Binding Arbitration proceeding as soon as possible once a Binding Arbitration proceeding has been initiated for the sole purpose of establishing a schedule for the Binding Arbitration. This schedule shall include the date by which the IPQ holder and Arbitration IFQ holder(s) must submit their last best offer and any supporting materials, and any additional meetings or mediation if agreed to by all parties. This meeting will discuss the schedule of the Binding Arbitration proceedings and not address terms of last best offers.

(viii) *Terms of last best offers.* The Contract Arbitrator will meet with the parties to the Binding Arbitration proceeding to determine the matters that must be included in the last best offer, which may include a fixed price or a price over a time period specified by the parties, a method for adjusting prices over a crab fishing year, or an advance price paid at the time of delivery.

(ix) *Submission of last best offers.* The parties to a Binding Arbitration proceeding shall each submit to the Contract Arbitrator(s) a last best offer defining all the terms specified for inclusion in a last best offer by the Contract Arbitrator. An Arbitration IFQ holder that is an FCMA cooperative may submit a last best offer that defines terms for the delivery of crab harvested by members of that FCMA cooperative with IFQ held by the cooperative. An Arbitration IFQ holder that is not an FCMA cooperative may submit a last best offer that defines the term of delivery of crab harvested with IFQ held

by that person. The IPQ holder that is a party to the proceeding shall submit a single offer that defines terms for delivery of crab harvested with all IFQ that are subject to the proceedings.

(x) *Arbitration decisions.* The Contract Arbitrator(s) shall decide among each offer received from an Arbitration IFQ holder and the offer received from the IPQ holder. Each arbitration decision shall result in a binding contract between the IPQ holder and the Arbitration IFQ holder defined by the terms of the offer selected by Contract Arbitrator(s). An arbitration decision applies to all committed IFQ and committed IPQ in that arbitration.

(xi) *Announcement of decisions.* (A) If last best offers are submitted at least 15 days before the first crab fishing season for that crab fishing year for that crab QS fishery, arbitration decisions shall be issued no later than 10 days before the first crab fishing season for that crab QS fishery. Otherwise, the Contract Arbitrator will notify the parties of the arbitration decision within 5 days of the parties submitting their last best offers.

(B) The Contract Arbitrator will notify the parties by providing each Arbitration IFQ holder and IPQ holder that is a party to the Binding Arbitration proceeding, a copy of any decision. The decision is binding on the parties to the Binding Arbitration proceeding.

(4) *Basis for the Arbitration decision.* The contract with the Contract Arbitrator shall specify that the Contract Arbitrator will be subject to the following provisions when deciding which last best offer to select.

(i) The Contract Arbitrator's decision shall:

(A) Be based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex-vessel prices, taking into consideration the size of the harvest in each year; and

(B) Establish a price that preserves the historical division of revenues in the fishery while considering the following:

(1) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A IFQ, Class B IFQ, and CVC IFQ permits;

(2) Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);

(3) Innovations and developments of the harvesting and processing sectors and the participants in the arbitration (including new product forms);

(4) Efficiency and productivity of the harvesting and processing sectors

(recognizing the limitations on efficiency and productivity arising out of the management program structure);

(5) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(6) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(7) Safety and expenditures for ensuring adequate safety;

(8) Timing and location of deliveries; and

(9) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(C) Consider the Non-Binding Price Formula established in the fishery by the Formula Arbitrator.

(ii) The Contract Arbitrator's decision may rely on any relevant information available to the Contract Arbitrator, including, but not limited to:

(A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery regarding the factors identified in paragraph (h)(4)(i) of this section; and

(B) The Market Report for the fishery.

(iii) Each of the Arbitration IFQ holders and the IPQ holders that is party to the proceeding may provide the Contract Arbitrator with additional information to support its last best offer. The Contract Arbitrator must receive and consider all data submitted by the parties.

(iv) The Contract Arbitrator may request specific information from the Arbitration IFQ holder(s) and IPQ holder that would be useful in reaching a final decision. The Contract Arbitrator will not have subpoena power and it is in the sole discretion of the person from whom information is requested as to whether to provide the requested information.

(5) *Limits on the release of data.* The parties to a Binding Arbitration proceeding shall be precluded from full access to the information provided to the Contract Arbitrator.

(i) Arbitration IFQ holders that are party to an arbitration proceeding shall have access only to information provided directly by the IPQ holder to the Contract Arbitrator for that Binding Arbitration proceeding.

(ii) IPQ holders that are party to an arbitration proceeding shall have access only to information provided directly by an Arbitration IFQ holder to the Contract Arbitrator for that Binding Arbitration proceeding.

(iii) The Contract Arbitrator shall keep confidential the information provided

by any QS, PQS, IFQ, or IPQ holders in the fishery and not disclose the identity of the persons providing specific information except as provided in paragraph (h)(6) of this section.

(iv) The Arbitration IFQ holders and IPQ holders shall not release information received in a Binding Arbitration proceeding to persons who were not party to that Binding Arbitration proceeding other than the final result of that arbitration proceeding as provided for in paragraph (h)(6) of this section.

(6) *Information provided to NMFS.* The Contract Arbitrator must provide any information, documents, or data required under this paragraph to NMFS via mail to the Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, or electronically not later than 30 days prior to the end of the crab fishing year for which the open negotiation or arbitration applied. The contract with the Contract Arbitrator must specify that the Contract Arbitrator provide NMFS with:

(i) A copy of any minutes from any meeting attended by that Contract Arbitrator between or among any PQS or IPQ holders concerning any negotiations under this section;

(ii) Any last-best offers made during the Binding Arbitration process, including all contract details, the names of other participants in the arbitration, and whether the bid was accepted by the Contract Arbitrator; and

(iii) A copy of any information, data, or documents given by the Contract Arbitrator to any person who is not a party to the particular arbitration for which that information was provided. The Contract Arbitrator must identify the arbitration to which the information, data, or documents apply, and the person to whom those information, data, or documents were provided.

(7) *Enforcement of Binding Arbitration decisions.* The decision of the Contract Arbitrator for Binding Arbitration shall be enforced among the parties to that arbitration.

(8) *Failure of Contract Arbitrator(s).* Except as provided for in paragraph (h)(6) of this section, the failure of a Contract Arbitrator to perform shall be enforced by the Arbitration Organizations.

(9) *Post Binding Arbitration opt-in.* (i) An Arbitration IFQ holder with uncommitted IFQ, may opt-in to any contract that results from a completed a Binding Arbitration procedure with any IPQ holder that has uncommitted IPQ.

(A) All the terms from the arbitrated contract will apply. The Contract Arbitrator may determine fees and a time frame by which a Post Binding

Arbitration opt-in may occur if those terms are not specified in the arbitrated contract.

(B) Once exercised, the opt-in results in a contract that is binding on both the Arbitration IFQ and IPQ holder.

(ii) To initiate the opt-in process, the holder of uncommitted Arbitration IFQ will notify the holder of uncommitted IPQ in writing of its intent to opt-in.

(iii) Holders of uncommitted Arbitration IFQ may opt-in to a contract resulting from a completed Binding Arbitration procedure with a person that holds uncommitted IPQ for that fishery.

(iv) If the IPQ holder and the Arbitration IFQ holder are unable to resolve a dispute regarding whether the opt-in offer is consistent with the original contract from the completed Binding Arbitration procedure, the dispute may be decided by the Contract Arbitrator to the original arbitration that resulted in the contract to which the Arbitration IFQ holder is seeking to opt-in. The Contract Arbitrator will decide only whether the proposed opt-in terms are consistent with the original contract.

(10) *Performance disputes.* If an IPQ holder and an Arbitration IFQ holder are unable to resolve disputes regarding the obligations to perform specific contract provisions after substantial negotiations or when time is of the essence, the issues of that dispute shall be submitted for Binding Arbitration before a Contract Arbitrator for that fishery.

(i) Binding Arbitration resulting from a performance dispute can occur at any point during or after the crab fishing year. The dispute must be raised by the IPQ holder or the Arbitration IFQ holder. Arbitration of that performance dispute must be initiated prior to the date of the first crab fishing season for the following crab fishing year in that crab QS fishery.

(ii) Performance dispute arbitration shall follow the applicable procedures described for a Binding Arbitration in paragraph (h)(3) of this section, except that the time frame for the procedure applicable to a performance dispute will be determined by the Contract Arbitrator once the dispute has been raised.

(iii) If a party fails to abide by the arbitration decision, a party may pursue available contract remedies.

(iv) The costs of arbitrating performance disputes shall be provided from the general fees collected by the Arbitration Organizations pursuant to paragraph (e) of this section.

(v) The Contract Arbitrator may assign fees to any party bringing frivolous complaints. Any such fees shall be paid by the party and not from the fees

collected under paragraph (e)(2)(vi) of this section.

(11) *Quality disputes.* When disputes regarding the quality of the harvested crab arise within the context of an existing contract, the parties may settle the disputes within the context of the arbitration system according to the following:

(i) In cases where the IPQ holder and Arbitration IFQ holder(s) have agreed to a formula-based price for crab but where they cannot reach an agreement on the quality and price of the crab, the IPQ holder and Arbitration IFQ holder(s) will receive their share of the value of the amount of crab delivered based on the provisions of the contract.

(ii) In quality disputes where the Arbitration IFQ holders prefer to use actual ex-vessel price and not a formula-based price and a dispute arises regarding crab quality and price, the dispute should be referred to a mutually agreeable independent quality specialist firm. This independent quality specialist firm will determine the quality of the crab. This information will be used as the basis for subsequent price determinations. The IPQ holder and Arbitration IFQ holder(s) with this quality dispute shall share the cost of hiring the specialist firm and agree to abide by its findings according to the terms of their agreement.

#### **§ 680.21 Crab harvesting cooperatives.**

This section governs the formation and operation of crab harvesting cooperatives. The regulations in this section apply only to crab harvesting cooperatives that have formed for the purpose of applying for and fishing under a crab harvesting cooperative IFQ permit issued by NMFS. Members of crab harvesting cooperatives that are not FCMA cooperatives should consult counsel before commencing any activity if the members are uncertain about the legality under the antitrust laws of the crab harvesting cooperative's proposed conduct.

(a) *Formation of crab harvesting cooperatives.* The following requirements apply to the formation of crab harvesting cooperatives.

(1) *Membership requirements.* A crab harvesting cooperative is limited to QS holders that hold any amount of CPO, CVO, CPC, or CVC QS, and that NMFS has determined are eligible to receive crab IFQ.

(i) *Minimum number of members.* Each crab harvesting cooperative must include at least four unique QS holding entities. A unique QS holding entity is a QS holder or group of affiliated QS holders that are not affiliated with any other QS holders or QS holding entities

in the crab harvesting cooperative. For the purpose of this paragraph, the term "affiliation" is defined at § 680.2.

(ii) *Voluntary nature of membership.* Membership in a crab harvesting cooperative is voluntary. No person may be required to join a crab harvesting cooperative, and no crab harvesting cooperative may be required to accept a member who the crab harvesting cooperative chooses not to accept.

(iii) *Membership in more than one crab harvesting cooperative.* (A) A QS holder may join one crab harvesting cooperative per CR fishery.

(B) Upon joining a crab harvesting cooperative for a CR fishery, NMFS will convert all of a QS holder's QS holdings for that CR fishery to crab harvesting cooperative IFQ, except that after June 30, 2008, a CVC QS holder that joins a crab harvesting cooperative may retain his or her Class B IFQ from use by the crab harvesting cooperative.

(2) *Legal and organizational requirements.* A crab harvesting cooperative must meet the following legal and organizational requirements before it is eligible to apply for a crab harvesting cooperative IFQ permit:

(i) *Registered business entity.* Each crab harvesting cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia.

(ii) *Appointment of a designated representative.* Each crab harvesting cooperative must appoint an individual as designated representative to act on the crab harvesting cooperative's behalf and serve as contact point for NMFS for questions regarding the operation of the crab harvesting cooperative. The designated representative may be a member of the crab harvesting cooperative or some other individual authorized by the crab harvesting cooperative to act on its behalf.

(b) *Application for annual crab harvesting cooperative IFQ permits.* A crab harvesting cooperative IFQ permit is an annual permit issued to a crab harvesting cooperative that establishes an annual catch limit of crab that is based on the collective QS holdings of the members of the crab harvesting cooperative that have been contributed by the members. A crab harvesting cooperative IFQ permit will list the IFQ amount, by fishery, held by the crab harvesting cooperative and identify the members of the crab harvesting cooperative. Each crab harvesting cooperative will be issued a separate IFQ permit for each type of QS held by a member (or members) of the crab harvesting cooperative.

(1) *August 1 application deadline.* A completed application for an annual crab harvesting cooperative IFQ permit must be submitted annually by each crab harvesting cooperative and received by NMFS no later than August 1, together with the signed annual application for crab IFQ/IPQ permit forms of all the members of the crab harvesting cooperative.

(2) *Contents of application for annual crab harvesting cooperative IFQ permit.* A completed application also must contain the following information:

(i) *Cooperative identification.* Enter the crab harvesting cooperative's legal name; type of business entity under which the crab harvesting cooperative is organized; state in which the crab harvesting cooperative is legally registered as a business entity; printed name of the crab harvesting cooperative's designated representative; the permanent business address, telephone number, facsimile number, and e-mail address (if available) of the crab harvesting cooperative or its designated representative; and the signature of the crab harvesting cooperative's designated representative and date signed.

(ii) *Members of the cooperative.* Full name and NMFS Person ID of each member of the crab harvesting cooperative.

(iii) *Additional documentation.* For the application to be considered complete, the following documents must be attached to the application: the completed and signed annual application for crab IFQ/IPQ permit for all members of the crab harvesting cooperative, a copy of the business license issued by the state in which the crab harvesting cooperative is registered as a business entity, a copy of the articles of incorporation or partnership agreement of the crab harvesting cooperative, and a copy of the crab harvesting cooperative agreement signed by the members of the crab harvesting cooperative (if different from the articles of incorporation or partnership agreement of the crab harvesting cooperative).

(3) *Issuance of crab harvesting cooperative IFQ permits.* Upon receipt of a completed application for an annual crab harvesting cooperative IFQ permit that is subsequently approved, NMFS will issue one-year crab harvesting cooperative IFQ permits to the crab harvesting cooperative. The crab harvesting cooperative IFQ permits will list the crab IFQ amounts that are generated by the aggregate QS holdings of all members of the crab harvesting cooperative for each fishery, region, sector, and Class A/B IFQ categories.

Issuance by NMFS of a crab harvesting cooperative IFQ permit is not a determination that the crab harvesting cooperative is formed or is operating in compliance with antitrust law.

(4) *Appeals.* A crab harvesting cooperative or person that is adversely affected by an initial administrative determination (IAD) that is associated with the issuance of a crab harvesting cooperative IFQ permit may appeal the IAD using the appeals procedures described in § 680.43.

(c) *Restrictions on fishing under a crab harvesting cooperative IFQ permit.* The following restrictions govern fishing for IFQ crab under a crab harvesting cooperative IFQ permit:

(1) *Maintenance of permit on board.* A copy of a crab harvesting cooperative IFQ permit must be maintained on board any vessel that is being used to harvest crab under the permit.

(2) *Persons eligible to harvest crab under a crab harvesting cooperative IFQ permit.* The only person eligible to harvest crab under a crab harvesting cooperative IFQ permit is the crab IFQ hired master under § 680.4(g) who is operating a vessel in which at least a 10 percent ownership share is held by a member of the crab harvesting cooperative to whom the IFQ permit is issued.

(3) *Liability.* Each member of a crab harvesting cooperative is responsible for ensuring that members of the crab harvesting cooperative and crab IFQ hired masters of the crab harvesting cooperative comply with all regulations applicable to fishing for CR crab.

(d) *Transfers by members of a crab harvesting cooperative.* The following requirements address transfers of QS and IFQ by members of a crab harvesting cooperative.

(1) *Transfer of QS.* A member of a crab harvesting cooperative may acquire or divest QS at any time using the transfer procedures described in § 680.41. However, transfers of QS that occur after the August 1 deadline for crab harvesting cooperative IFQ permit applications will not be reflected in the type or amount of IFQ permit issued to the crab harvesting cooperative for the subsequent fishing season.

(2) *Transfer of individually held IFQ.* A member of a crab harvesting cooperative may acquire or divest individually held IFQ using the transfer procedures described in § 680.41. However, any vessel used to harvest IFQ not held by a crab harvesting cooperative loses the vessel use cap exemption.

(3) *Transfer of crab harvesting cooperative IFQ prohibited.* A member of a crab harvesting cooperative may not

acquire or divest crab harvesting cooperative IFQ. Crab harvesting cooperative IFQ may only be transferred between two crab harvesting cooperatives.

(e) *Transfers by crab harvesting cooperatives.* The following requirements address transfers of QS, IFQ, PQS, and IPQ by crab harvesting cooperatives that have been issued crab harvesting cooperative IFQ permits.

(1) *Acquisition of QS, PQS, and IPQ prohibited.* A crab harvesting cooperative that has been issued a crab harvesting cooperative IFQ permit is prohibited from acquiring any amount of QS, PQS, or IPQ for the valid duration of the crab harvesting cooperative IFQ permit. A crab harvesting cooperative that acquires any amount of QS, PQS, or IPQ becomes ineligible to receive a crab harvesting cooperative IFQ permit.

(2) *Transfer of crab harvesting cooperative IFQ.* A crab harvesting cooperative may transfer its IFQ only to another crab harvesting cooperative. Crab harvesting cooperatives wishing to engage in an inter-cooperative transfer must complete an application for inter-cooperative transfer to transfer crab IFQ between crab harvesting cooperatives. A crab harvesting cooperative is prohibited from transferring any amount of crab harvesting cooperative IFQ to any entity that is not a crab harvesting cooperative operating under a crab harvesting cooperative IFQ permit.

(3) *Use caps.* Inter-cooperative transfers of IFQ will apply to the individual use caps of crab harvesting cooperative members through the designation of the crab harvesting cooperative members conducting the transfer.

(f) *Application for inter-cooperative transfer.* An application for inter-cooperative transfer is to be used only to apply for a transfer of crab harvesting cooperative IFQ from one crab harvesting cooperative to another crab harvesting cooperative. A complete application must also contain the following information:

(1) *Identification of transferor.* Enter the name; NMFS Person ID; date of incorporation; Tax ID number; name of crab harvesting cooperative's designated representative; permanent business mailing address; and business telephone number, facsimile number, and e-mail address (if available) of the crab harvesting cooperative transferor. A temporary mailing address for each transaction may also be provided in addition to the permanent business mailing address.

(2) *Identification of crab harvesting cooperative member.* Enter the name

and NMFS Person ID of the member to whose use cap the crab harvesting cooperative IFQ will be applied.

(3) *Identification of transferee.* Enter the name; NMFS Person ID; date of incorporation; Tax ID number; name of crab harvesting cooperative's designated representative; permanent business mailing address; and business telephone number, facsimile number, and e-mail address (if available) of the crab harvesting cooperative transferee. A temporary mailing address for each transaction may also be provided in addition to the permanent business mailing address.

(4) *Identification of crab harvesting cooperative member.* Enter the name and NMFS person ID of the member from whose use cap the crab harvesting cooperative IFQ will be removed.

(5) *Crab harvesting cooperative IFQ to be transferred.* Identify the crab harvesting cooperative IFQ being transferred, including the type of crab harvesting cooperative IFQ being transferred, crab harvesting cooperative permit number and year that permit was issued. Indicate (YES or NO) whether all remaining pounds for the current fishing year are to be transferred; if NO, specify number of pounds to be transferred.

(6) *Transferor information.* Indicate (YES or NO) whether a broker is being used for this transaction. If YES, indicate the dollar amount to be paid in brokerage fees or percentage of total price. Enter the total amount being paid for the IFQ in this transaction, including all fees, and the price per pound of IFQ.

(7) *Certification of transferor.* The crab harvesting cooperative transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Only an application with an original, notarized signature will be accepted. Also enter the printed name of the crab harvesting cooperative transferor's representative or authorized representative. If the application is completed by an authorized representative, proof of authorization to act on behalf of the transferor must accompany the application. A Notary Public must sign the application, enter the date commission expires, and affix notary stamp or seal.

(8) *Certification of transferee.* The crab harvesting cooperative transferee's representative must sign and date the application certifying that all information is true, correct, and complete to the best of his or her knowledge and belief. Only an application with an original, notarized

signature will be accepted. Also enter the printed name of the crab harvesting cooperative transferee's representative or authorized representative. If the application is completed by an authorized representative, proof of authorization to act on behalf of the transferee must accompany the application. A Notary Public must sign the application, enter the date commission expires, and affix notary stamp or seal.

(g) *Inseason changes to crab harvesting cooperative membership.* The following requirements address inseason changes to crab harvesting cooperative membership.

(1) *Eligible membership changes.* A crab harvesting cooperative may add a new member if that person becomes eligible to join the crab harvesting cooperative through the acquisition of any amount of the QS upon which the crab harvesting cooperative's annual IFQ permit was based, provided that the person acquiring the QS in question has been determined by NMFS to be eligible to hold IFQ. Likewise, a crab harvesting cooperative may remove a member if that person no longer holds any of the QS upon which the crab harvesting cooperative's annual IFQ permit was based.

(2) *Inseason membership changes are voluntary.* A crab harvesting cooperative is not required to add or remove members during the fishing season to reflect inseason transfers of QS. Each crab harvesting cooperative is free to establish its own process for deciding whether or not to admit new members or to remove existing members during the fishing season to reflect changes in the QS holdings. No crab harvesting cooperative is required to admit a new QS holder that the crab harvesting cooperative chooses not to admit, regardless of whether the person in question has acquired any amount of QS upon which the crab harvesting cooperative's annual IFQ is based. If a crab harvesting cooperative chooses to make inseason membership changes, then it must comply with paragraph (g)(3) of this section.

(3) *Application for an inseason change in cooperative membership.* To change crab harvesting cooperative membership, a crab harvesting cooperative must submit to NMFS a revised application for an annual crab harvesting cooperative IFQ permit together with any revised supporting documents that are required to be submitted with the application. The revised application for an annual crab harvesting cooperative IFQ permit must be accompanied by a cover letter that indicates the revisions that have been

made. Upon approval of the membership change, NMFS will issue a revised crab harvesting cooperative IFQ permit that reflects the change. A new member may not fish on behalf of a cooperative except as a crab IFQ hired master until NMFS issues a revised crab harvesting cooperative IFQ permit that reflects the change in membership.

(4) *Successors-in-interest.* If a member of a crab harvesting cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the QS held by that person will be transferred to the legal successor-in-interest. However, the crab harvesting cooperative IFQs generated by that person's QS holdings remain under the control of the crab harvesting cooperative for the valid duration of the crab harvesting cooperative IFQ permit. Each crab harvesting cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season to reflect the transfer of QS due to the death or dissolution of a QS holder. The regulations in this section do not require any crab harvesting cooperative to admit a successor-in-interest that the cooperative chooses not to admit. If a crab harvesting cooperative chooses to admit the successor-in-interest for membership, then the crab harvesting cooperative must comply with paragraph (g)(3) of this section.

#### **§ 680.22 Sideboard protections for GOA groundfish fisheries.**

The regulations in this section restrict the owners of vessels with a history of participation in the Bering Sea snow crab fishery from using the increased flexibility provided by the CR Program to expand their level of participation in GOA groundfish fisheries. These restrictions are commonly known as "sideboards."

(a) *Vessels and LLP licenses subject to sideboard restrictions.* The sideboard fishing restrictions described in this section are based on a vessel's fishing history and apply both to the fishing vessel itself and to any LLP license generated by that vessel's fishing history. The criteria used to determine which vessels and LLP licenses are subject to GOA groundfish sideboard fishing restrictions are as follows:

(1) *Vessels subject to GOA groundfish sideboard directed fishing closures.* Any vessel that NMFS has determined meets one or both of the following criteria is subject to GOA groundfish sideboard directed fishing closures issued under paragraph (e) of this section.

(i) Any non-AFA vessel that made a legal landing of Bering Sea snow crab between January 1, 1996, and December

31, 2000, that had landings of Bering Sea snow crab during the QS qualifying period in Table 7 of this part, or

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(1)(i) of this section.

(2) *Vessels prohibited from directed fishing for Pacific cod in the GOA.* Any vessel that NMFS has determined meets either of the following two criteria is prohibited from directed fishing for Pacific cod in the GOA:

(i) Any vessel subject to GOA groundfish sideboard closures under paragraph (a)(1)(i) of this section that landed less than 50 mt (110,231 lb), in round weight equivalents, of groundfish harvested from the GOA between January 1, 1996, and December 31, 2000, or

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(2)(i) of this section.

(3) *Vessels exempt from Pacific cod sideboard closures in the GOA.* Any vessel that NMFS has determined meets one or both of the following criteria is exempt from sideboard directed fishing closures for Pacific cod in the GOA:

(i) Any vessel subject to GOA groundfish closures under paragraph (a)(1)(i) of this section that landed less than 100,000 lb (45,359 kg), in raw weight equivalents, of Bering Sea snow crab and more than 500 mt (1,102,311 lb), in round weight equivalents, of Pacific cod from the GOA between January 1, 1996, and December 31, 2000; and

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(3)(i) of this section.

(b) *Notification of affected vessel owners and LLP license holders.* After NMFS determines which vessels and LLP licenses meet the criteria described in paragraph (a) of this section, NMFS will inform each vessel owner and LLP license holder in writing of the type of sideboard restriction and issue a revised Federal Fisheries Permit and/or LLP license that displays the restriction on the face of the permit or license.

(c) *Appeals.* A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a GOA groundfish sideboard restriction may request reconsideration. All requests for reconsideration must be submitted in writing to the RAM Division, Alaska Region, NMFS, together with any documentation or

evidence supporting the request. If the request for reconsideration is denied, affected persons may appeal using the procedures described at § 680.43.

(d) *Determination of GOA groundfish sideboard ratios.* Sideboard ratios for each GOA groundfish species other than fixed-gear sablefish, species group, season, and area for which annual specifications are made, are established according to the following formulas:

(1) *Pacific cod.* The sideboard ratios for Pacific cod are calculated by dividing the aggregate retained catch of Pacific cod by vessels that are subject to sideboard directed fishing closures under paragraph (a)(1) of this section and that do not meet the criteria in paragraphs (a)(2) or (a)(3) of this section by the total retained catch of Pacific cod by all groundfish vessels between 1996 and 2000.

(2) *Groundfish other than Pacific cod.* The sideboard ratios for groundfish species and species groups other than Pacific cod and fixed-gear sablefish are calculated by dividing the aggregate landed catch by vessels subject to sideboard directed fishing closures under paragraph (a)(1) of this section by the total landed catch of that species by all groundfish vessels between 1996 and 2000.

(e) *Conversion of sideboard ratios into annual harvest limits.* NMFS will convert sideboard ratios into annual harvest limits according to the following procedures.

(1) *Annual harvest limits.* Annual harvest limits for each groundfish species, except fixed-gear sablefish, will be established by multiplying the sideboard ratios calculated under paragraph (d) of this section by the interim and final TACs in each area for which a TAC is specified. If a TAC is further apportioned by season, the sideboard harvest limit also will be apportioned by season in the same ratio as the overall TAC. The resulting harvest limits expressed in metric tons will be published in the annual GOA groundfish harvest specification notices.

(2) *Sideboard directed fishing allowance.* (i) If the Regional Administrator determines that a harvest limit for a species or species group has been or will be reached, the Regional Administrator may establish a sideboard directed fishing allowance for the species or species group applicable only to the group of crab vessels to which the sideboard limit applies.

(ii) If the Regional Administrator determines that a harvest limit is insufficient to support a directed fishery for that species or species group, then the Regional Administrator may set the

sideboard directed fishing allowance at zero for that species or species group.

(3) *Directed fishing closures.* Upon attainment of a sideboard directed fishing allowance, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species or species group in the specified subarea, regulatory area, or district. A directed fishing closure is effective for the duration of the fishing year or season.

#### **§ 680.23 Equipment and operational requirements.**

(a) *Catcher vessel requirements.* A catcher vessel used to harvest CR crab must:

(1) Carry and use a VMS as described in paragraph (d) of this section;

(2) Land all retained crab to an RCR operating under an approved catch monitoring plan as described in paragraph (g) of this section;

(b) *Catcher/processor requirements.* A catcher/processor used to harvest CR crab must:

(1) Carry and use a VMS as described in paragraph (d) of this section;

(2) Weigh all retained crab to be processed on board, in its raw form, on a scale approved by NMFS as described in paragraph (e) of this section;

(3) Land all retained crab not processed on board at an RCR;

(4) Land all product processed on board at a shoreside location in the United States accessible by road or regularly scheduled air service and weigh that product on a scale approved by the State in which the product is landed; and

(5) Provide an approved observer platform scale and test weights that meet the requirements in paragraph (e) of this section.

(c) *RCR requirements.* An RCR must:

(1) Ensure that all CR crab landings are weighed on a scale approved by the State in which the landing takes place.

(2) Ensure that all crab landing and weighing be conducted as specified in an approved crab monitoring plan as described in paragraph (g) of this section, and that a copy of the crab monitoring plan is made available to NMFS personnel or authorized officer upon demand.

(d) *Vessel Monitoring System (VMS) requirements.*—(1) *General requirements.* General VMS requirements concerning the approval and installation of VMS components and the responsibilities of vessel owners and operators are detailed at § 679.28(f)(1) through (5).

(2) *VMS transmission requirements.* A vessel's transmitter must be transmitting if:

(i) The vessel is operating in any reporting area (see definitions at § 679.2) off Alaska;

(ii) The vessel has crab pots or crab pot hauling equipment, or a crab pot launcher onboard; and

(iii) The vessel has or is required to have a Federal crab vessel permit for that crab fishing year.

(e) *Scales approved by NMFS.* To be approved by NMFS, a scale used to weigh crab at sea must meet the type evaluation and initial inspection requirements set forth in § 679.28(b)(1) and (2). Once a scale is installed on a vessel and approved by NMFS for use, it must be reinspected annually as described in § 679.28(b) by requesting a scale inspection from NMFS. Each scale must be tested daily and meet the maximum permissible error (MPE) requirements described in paragraph (e)(1) of this section.

(1) *At-sea scale tests.* To verify that the scale meets the MPEs specified in this paragraph, the vessel operator must test each scale or scale system used to weigh CR crab one time during each 24-hour period when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

(i) *Belt scales.* The MPE for the daily at-sea scale tests is plus or minus 3 percent of the known weight of the test material. The scale must be tested by weighing at least 400 kg (882 lb) of crab or an alternative material supplied by the scale manufacturer on the scale under test. The known weight of the test material must be determined by weighing it on a platform scale approved for use under § 679.28 (b)(7).

(ii) *Automatic hopper scales.* An automatic hopper scale must be tested at its minimum and maximum capacity with approved test weights. Test weights must be placed in the bottom of the hopper unless an alternative testing method is approved by NMFS. The MPE for the daily at-sea scale tests is plus or minus 2 percent of the weight of the approved test weights.

(iii) *Platform scales used for observer sampling.* A platform scale used for observer sampling must be tested at 10, 25, and 50 kg (or 20, 50, and 100 lb if the scale is denominated in pounds) using approved test weights. The MPE for the daily at-sea scale test is plus or minus 0.5 percent if the scale is used to determine the known weight of test material for the purpose of testing a belt scale. If the scale is not used for that purpose, the MPE for the daily at-sea scale test is plus or minus 1 percent.

(iv) *Approved test weights.* Each test weight must have its weight stamped on or otherwise permanently affixed to it.

The weight of each test weight must be annually certified by a National Institute of Standards and Technology approved metrology laboratory or approved for continued use by the NMFS authorized inspector at the time of the annual scale inspection.

(v) *Requirements for all scale tests.*

(A) Notify the observer at least 15 minutes before the time that the test will be conducted, and conduct the test while the observer is present.

(B) Conduct the scale test and record the following information on the at-sea scale test report form:

- (1) Vessel name;
- (2) Month, day, and year of test;
- (3) Time test started to the nearest minute;

(4) Known weight of test weights;

(5) Weight of test weights recorded by scale;

(6) Percent error as determined by subtracting the known weight of the test weights from the weight recorded on the scale, dividing that amount by the known weight of the test weights, and multiplying by 100; and

(7) Sea conditions at the time of the scale test.

(C) Maintain the test report form on board the vessel until the end of the crab fishing year during which the tests were conducted, and make the report forms available to observers, NMFS personnel, or an authorized officer. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the crab fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(2) *Scale maintenance.* The vessel owner must ensure that the vessel operator maintains the scale in proper operating condition throughout its use, that adjustments made to the scale are made so as to bring the performance errors as close as practicable to a zero value, and that no adjustment is made that will cause the scale to weigh inaccurately.

(3) *Printed reports from the scale.* The vessel owner must ensure that the printed reports are provided as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports were made and be made available to NMFS or NMFS authorized personnel. In addition, the vessel owner must retain printed reports for 3 years after the end of the year during which the printouts were made.

(i) *Reports of catch weight and cumulative weight.* Reports must be printed at least once every 24 hours prior to submitting a CR crab landing

report as described in § 680.5. Reports must also be printed before any information stored in the scale computer memory is replaced. Scale weights must not be adjusted by the scale operator to account for the perceived weight of water, mud, debris, or other materials. Scale printouts must show:

(A) The vessel name and Federal crab vessel permit number;

(B) The weight of each load in the weighing cycle (hopper scales only);

(C) The date and time the information was printed;

(D) The total amount weighed since the last printout was made; and

(E) The total cumulative weight of all crab or other material weighed on the scale.

(ii) *Printed report from the audit trail.*

The printed report must include the information specified in sections 2.3.1.8, 3.3.1.7, and 4.3.1.8 of appendix A to 50 CFR part 679. The printed report must be provided to the authorized scale inspector at each scale inspection and must also be printed at any time upon request of NMFS staff or other NMFS-authorized personnel.

(iii) *Platform scales used for observer sampling.* A platform scale used for observer sampling is not required to produce a printed record unless that scale is also used to obtain raw weight for a CR crab landing report.

(4) *Scale installation requirements.* Unless otherwise approved by NMFS, a scale used to obtain raw weight for a CR crab landing report must be installed such that:

(i) From the location where the observer samples unsorted crab, the observer can ensure that all crab are being weighed;

(ii) The scale may not be installed in a manner that facilitates bypassing. It must not be possible for the scale inspector and an assistant to bypass the scale with 100 kg (220 lb) of test material in less than 20 seconds.

(f) *Scales approved by the state.* Scale requirements in this paragraph are in addition to those requirements set forth by the State in which the scale is approved, and nothing in this paragraph may be construed to reduce or supersede the authority of the State to regulate, test, or approve scales within the State. Scales used to weigh CR crab that are also required to be approved by the State must meet the following requirements:

(1) *Verification of approval.* The scale must display a valid State sticker indicating that the scale was inspected and approved within the previous 12 months.

(2) *Visibility.* An RCR must ensure that the scale and scale display are visible simultaneously. NMFS personnel or NMFS authorized personnel, including observers, must be allowed to observe the weighing of crab on the scale and be allowed to read the scale display at all times.

(3) *Printed scale weights.* (i) An RCR must ensure that printouts of the scale weight of each delivery or offload are made available to NMFS personnel or to NMFS authorized personnel, including observers, at the time printouts are generated. An RCR must maintain printouts on site until the end of the fishing year during which the printouts were made and make them available upon request by an authorized officer for 3 years after the end of the fishing year during which the printout was made.

(ii) A scale used to weigh any portion of a landing of CR crab or an offload of CR crab product must produce a printed record for each landing, or portion of each landing, weighed on that scale. The printed record must include:

(A) The RCR's name;

(B) The weight of each load in the weighing cycle;

(C) The total weight of crab in each landing, or portion of the landing that was weighed on that scale;

(D) The date and time the information is printed; and

(E) The name and ADF&G vessel registration number of the vessel making the delivery. The scale operator may write this information on the scale printout in ink at the time of landing.

(4) *Inseason scale testing.* Scales used to weigh CR crab must be tested by RCR personnel when testing is requested by NMFS-staff or by NMFS-authorized personnel.

(i) *Inseason testing criteria.* To pass an inseason test, NMFS staff or NMFS-authorized personnel will verify that the scale display and printed information are clear and easily read under all conditions of normal operation, that weight values are visible on the display until the value is printed, and that the scale does not exceed the maximum permissible errors specified in the following table:

Test load in scale divisions	Maximum error in scale divisions
(A) 0–500 .....	1
(B) 501–2,000 .....	2
(C) 2,001–4,000 .....	3
(D) > 4,000 .....	4

(ii) *Test weight requirements.* Scales must be tested with the amount and type of weight specified for each scale



type in the following tables under paragraphs (f)(4)(ii)(A) through (f)(4)(ii)(D) of this section:

(A) Automatic hopper 0 to 150 kg (0 to 300 lb) capacity.

Certified test weights	Other test material
(1) Minimum weighment or 10 kg (20 lb), whichever is greater.	Minimum.
(2) Maximum .....	Maximum.

(B) Automatic hopper > 150 kg (300 lb) capacity.

Certified test weights	Other test material
(1) Minimum weighment or 10 kg (20 lb), whichever is greater.	Minimum.
(2) 25 percent of maximum of 150 kg (300 lb), whichever is greater.	Maximum.

(C) Platform, flatbed or hanging scales less than 150 kg (300 lb) capacity.

Certified test weights	Other test material
(1) 10 kg (20 lb) .....	Not Acceptable.
(2) Midpoint .....	Not Acceptable.
(3) Maximum .....	Not Acceptable.

(D) Platform, flatbed or hanging scales > 150 kg (300 lb) capacity.

Certified test weights	Other test material
(1) 10 kg (20 lb) .....	Not Acceptable.
(2) 12.5 percent of maximum or 75 kg (150 lb), whichever is greater.	50 percent of maximum or 75 kg (150 lb), whichever is greater.
(3) 25 percent of maximum or 150 kg (300 lb), whichever is greater.	75 percent of maximum or 150 kg (300 lb), whichever is greater.

(iii) *Certified test weights.* An RCR must ensure that there are sufficient test weights on-site to test each scale used to weigh CR crab. Each test weight used for inseason scale testing must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be certified by a National Institute of Standards and Technology approved metrology laboratory every 2 years.

(iv) *Other test material.* When permitted in paragraph (f)(4)(ii) of this section, a scale may be tested with test material other than certified test weights.

(g) *Crab Monitoring Plans (CMP).* A CMP is a plan submitted by an RCR for

each location or processing vessel where the RCR wishes to take deliveries of CR crab. The CMP must detail how the RCR will meet the catch monitoring standards detailed in paragraph (g)(5) of this section. An RCR that processes only CR crab harvested under a CPO or CPC IFQ permit is not required to prepare a CMP.

(1) *CMP Approval.* NMFS will approve a CMP if it meets all the performance standards specified in paragraph (g)(5) of this section. The location or vessel identified in the CMP may be inspected by NMFS prior to approval of the CMP to ensure that the location conforms to the elements addressed in the CMP. If NMFS disapproves a CMP, the plant owner or manager may resubmit a revised CMP or file an administrative appeal as set forth under the administrative appeals procedures described in § 679.43.

(2) *Inspection scheduling.* The time and place of a CMP inspection may be arranged by submitting a written request for an inspection to NMFS, Alaska Region. An inspection must be requested no less than 10 working days before the requested inspection date. NMFS staff will conduct CMP inspections in any port located in the United States that can be reached by regularly scheduled commercial air service. The inspection request must include:

(i) Name and signature of the person submitting the application and the date of the application;

(ii) Address, telephone number, facsimile number, and e-mail address (if available) of the person submitting the application; and

(iii) A proposed CMP detailing how the RCR will meet each of the standards in paragraph (g)(5) of this section.

(3) *Approval period.* NMFS will approve a CMP for 1 year if it meets the performance standards specified in paragraph (e)(2) of this section. An owner or manager must notify NMFS in writing if changes are made in plant operations or layout that do not conform to the CMP.

(4) *Changing an approved CMP.* An RCR may change an approved CMP by submitting a CMP addendum to NMFS. Depending on the nature and magnitude of the change requested, NMFS may require a CMP inspection as described in paragraph (g)(2) of this section. A CMP addendum must contain:

(i) Name and signature of the person submitting the addendum;

(ii) Address, telephone number, facsimile number and e-mail address (if available) of the person submitting the addendum; and

(iii) A complete description of the proposed CMP change.

(5) *CMP standards*—(i) *Crab sorting and weighing requirements.* All crab, including crab parts and crab that are dead or otherwise unmarketable, delivered to the RCR must be sorted and weighed by species. The CMP must detail how and where crab are sorted and weighed.

(ii) *Scales used for weighing crab.* The CMP must identify by serial number each scale used to weigh crab and describe the rationale for its use.

(iii) *Scale testing procedures.* Scales identified in the CMP must be accurate within the limits specified in paragraph (f)(4)(i) of this section. For each scale identified in the CMP a testing plan must be developed that:

(A) Describes the procedure the plant will use to test the scale;

(B) Lists the test weights and equipment required to test the scale;

(C) Lists where the test weights and equipment will be stored; and

(D) Lists the names of the personnel responsible for conducting the scale testing.

(iv) *Printed record.* An RCR must ensure that the scale produces a complete and accurate printed record of the weight of each species in a landing. All of the crab in a delivery must be weighed on a scale capable of producing a complete printed record as described in paragraph (e)(3) of this section. A printed record of each landing must be printed before the RCR submits a CR crab landing report.

(v) *Observation area.* Each CMP must designate an observation area. The observation area is a location designated on the CMP where an individual may monitor the offloading and weighing of crab. The observation area must meet the following standards:

(A) *Access to the observation area.* The observation area must be freely accessible to observer, NMFS staff or enforcement aides at any time during the effective period of the CMP.

(B) *Monitoring the offloading and weighing of crab.* From the observation area, an individual must have an unobstructed view or otherwise be able to monitor the entire offload of crab between the first location where crab are removed from the boat and a location where all sorting has taken place and each species has been weighed.

(C) *Other requirements.* The observation area must be sheltered from the weather and not exposed to unreasonable safety hazards.

(vi) *Plant liaison.* The CMP must designate a plant liaison. The plant liaison is responsible for:

(A) Orienting new observers, NMFS staff and enforcement aides to the plant;

(B) Assisting in the resolution of observer concerns; and

(C) Informing NMFS if changes must be made to the CMP.

(vii) *Drawing to scale of delivery location.* The CMP must be accompanied by a drawing to scale of the delivery location or vessel showing:

(A) Where and how crab are removed from the delivering vessel;

(B) The observation area;

(C) The location of each scale used to weigh crab; and

(D) Each location where crab is sorted.

(viii) *Single geographic location.* All offload and weighing locations detailed in a CMP must be located on the same vessel or in the same geographic location. If a CMP describes facilities for the offloading of vessels at more than one location, it must be possible to see all locations simultaneously.

#### § 680.30 [Reserved]

### Subpart C—Quota Management Measures

#### § 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) issuance.

(a) *Crab QS and Crab QS fisheries.* The Regional Administrator will issue crab QS for the crab QS fisheries defined in paragraph (a)(1) of this section. The Regional Administrator will annually issue IFQ based on the amount of QS a person holds. Crab harvested and retained in each crab QS fishery may be harvested and retained only by persons holding the appropriate crab IFQ for that crab QS fishery.

(1) *Allocations.* With the exception of the WAI golden king crab fishery, the Regional Administrator shall annually apportion 10 percent of the TAC specified by the State of Alaska for each of the fisheries described in Table 1 to this part to the Western Alaska CDQ program. Ten percent of the TAC in the Western Aleutian Islands golden king crab fishery will be allocated to the

Adak community entity. The remaining TACs for the crab QS fisheries will be apportioned for use by QS holders in each fishery.

(2) *Official crab rationalization record.* The official crab rationalization record will be used to determine the amount of QS that is to be allocated for each crab QS fishery. The official crab rationalization record is presumed to be correct. An applicant for QS has the burden to prove otherwise. For the purposes of creating the official crab rationalization record the Regional Administrator will presume the following:

(i) An LLP license is presumed to have been used onboard the same vessel from which that LLP is derived, unless documentation is provided establishing otherwise.

(ii) If more than one person is claiming the same legal landings or legal processing activities, then each person eligible to receive QS or PQS based on those activities will receive an equal share of any resulting QS or PQS unless the applicants can provide written documentation establishing an alternative means for distributing the QS or PQS.

(iii) For the purposes of determining eligibility for CPO QS, a person is presumed to have processed BSAI crab in 1998 or 1999 if the vessel on which the applicant's LLP license is based processed such crab in those years.

(b) *QS sectors and regional designations—(1) General.* The Regional Administrator shall initially assign to qualified persons, crab QS that are specific to the crab QS fisheries defined in paragraph (a)(1) of this section. The crab QS amount issued will be based on legal landings made on vessels authorized to participate in those fisheries in four QS sectors:

(i) *Catcher Vessel Owner (CVO) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of unprocessed crab.

(ii) *Catcher Vessel Crew (CVC) QS* shall be initially issued to qualified

persons defined in paragraph (b)(3) of this section based on legal landings of unprocessed crab. After July 1, 2008, CVC QS shall yield an annual IFQ of CVC Class A or CVC Class B as defined under paragraph (h)(2) of this section.

(iii) *Catcher/Processor Owner (CPO) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of crab that were harvested and processed on the same vessel.

(iv) *Catcher/Processor Crew (CPC) QS* shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of crab that were harvested and processed on the same vessel.

(2) *Regional designations.* (i) Regional designations apply to:

(A) *North QS* if the legal landings that gave rise to the QS for a crab QS fishery were landed in the Bering Sea subarea north of 56°20' N. lat.; or

(B) *South QS* if the legal landings that gave rise to the QS for a crab QS fishery were not landed in the North Region;

(1) CVO QS allocated to the WAI crab QS fishery; and

(2) CVC QS for the WAI crab QS fishery on and after July 1, 2008.

(C) *West QS* for a portion of the QS allocated to the WAG crab QS fishery subject to the provisions under § 680.40(c)(4).

(ii) Regional designations do not apply (Undesignated QS) to:

(A) Crab QS for the BST crab QS fishery;

(B) Crab QS for that portion of the WAG QS fishery not regionally designated for the West region;

(C) CVC QS prior to July 1, 2008;

(D) CPO QS unless that QS is transferred to the CVO QS sector, in which case the regional designation is made by the recipient of the resulting CVO QS at the time of transfer; and

(E) CPC QS.

(iii) The regional designations that apply to each of the crab QS fisheries are specified in the following table:

Crab QS fishery	North region	South region	West region	Undesignated region
(A) EAG .....	X	X	.....	.....
(B) WAG .....	.....	.....	X	X
(C) BST .....	.....	.....	.....	X
(D) BSS .....	X	X	.....	.....
(E) BBR .....	X	X	.....	.....
(F) PIK .....	X	X	.....	.....
(G) SMB .....	X	X	.....	.....
(H) WAI .....	.....	X	.....	.....

(iv) The regional designation ratios applied to QS and PQS for each crab QS

fishery will be established based on the regional designations determined on

August 1, 2005. QS or PQS issued after

this date will be issued in the same ratio.

(3) *Qualified person* means, for the purposes of QS issuance, a person, as defined in § 679.2, who at the time of application for QS meets the following criteria for each of the QS sectors:

(i) *CVO QS*. Holds one or more permanent, fully transferable crab LLP licenses and is a citizen of the United States;

(ii) *CPO QS*. (A) Holds one or more permanent, fully transferable crab LLP licenses with a Catcher/Processor designation and is a citizen of the United States; and

(B) Harvested and processed at sea any crab species in any BSAI crab fishery during the years 1998 or 1999.

(iii) *CVC QS and CPC QS*. (A) Is an individual who is a citizen of the United States, or his or her successor-in-interest if that individual is deceased;

(B) Has historical participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit for a QS crab fishery and made at least one legal landing per year for any 3 eligibility years under that permit based on data from fish tickets maintained by the State of Alaska. The qualifying years are described in Column C of Table 7 to this part.

(C) Has recent participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit for a QS crab fishery and made at least one legal landing under that permit in any 2 of 3 seasons based on data from fish tickets maintained by the State of Alaska. Those seasons are defined in Column D of Table 7 to this part; except that the requirement for recent participation does not apply if:

(1) The legal landings that qualify the individual for QS in the PIK crab QS fishery were made from a vessel that was less than 60 feet length overall; or

(2) If the individual who is otherwise eligible to receive an initial issuance of QS died while working as part of a harvesting crew in any U.S. commercial fishery.

(4) *Qualification for initial allocation of QS*—(i) *Qualifying year*. The qualifying years for each crab QS fishery are described in Column B of Table 7 to this part.

(ii) *Legal landing of crab* means, for the purpose of initial allocation of QS, crab harvested during the qualifying years specified in Column B of Table 7 to this part and landed in compliance with state and Federal permitting, landing, and reporting regulations in effect at the time of the landing.

(A) Legal landings exclude any deadloss, test fishing, fishing conducted under an experimental, exploratory, or scientific activity permit, or the fishery conducted under the Western Alaska CDQ Program.

(B) Landings made onboard a vessel that gave rise to a crab LLP license or made under the authority of an LLP license are non-severable from the crab LLP license until QS has been issued for those legal landings, except as provided for in paragraph (c)(2)(vii) of this section.

(C) Landings may only be used once for each QS sector for the purposes of allocating QS.

(D) Landings made from vessels which are used for purposes of receiving compensation through the BSAI Crab Capacity Reduction Program may not be used for the allocation of CVO QS or CPO QS.

(E) Legal landings for purposes of allocating QS for a crab QS fishery only include those landings that resulted in the issuance of an LLP license endorsed for that crab QS fishery, or landings that were made in that crab QS fishery under the authority of an LLP license endorsed for that crab QS fishery, except as provided for in paragraph (c)(2)(vii) of this section.

(iii) *Documentation*. Evidence of legal landings shall be limited to State of Alaska fish tickets.

(c) *Calculation of QS allocation*—(1) *General*. (i) For each permanent, fully transferable crab LLP license under which an applicant applies, CVO and CPO QS will be based on legal landings that resulted in the issuance of that license or from legal landings that were made under the authority of that license.

(ii) For each State of Alaska Interim Use Permit under which an applicant applies for CVC QS or CPC QS, the initial allocation of QS will be based on the legal landings that were made under the authority of that permit.

(2) *Computation for initial issuance of QS*. (i) Based on the official crab rationalization record the Regional Administrator shall derive the annual harvest denominator (AHD) that represents the amount of legally landed crab in each crab QS fishery in each qualifying year as established in Column B of Table 7 to this part.

(ii) The initial QS pool is described in Table 8 to this part.

(iii) A person's initial allocation of QS shall be based on a percentage of the legal landings for the applicable sector in each crab QS fishery:

(A) Associated with crab LLP licenses held by the applicant for CVO or CPO QS; or

(B) Authorized under a State of Alaska Interim Use Permit held by the applicant for CVC or CPC QS.

(iv) The Regional Administrator shall calculate the allocation of CVO and CPO QS for each crab QS fishery "f" based on each fully transferable LLP license "l" held by a qualified person by the following formulas:

(A) Sum legal landings for each qualifying year, as described in Column B of Table 7 to this part, and divide that amount by the AHD for that year as follows:

$$(\sigma \text{ legal landings}_{lf} / \text{AHD}_f) \times 100 = \text{Percentage of the AHD}_{lf}$$

(B) In those fisheries where only a subset of the qualifying years are applied, the Regional Administrator will use the years that yield the highest percentages of each AHD as calculated in paragraph (c)(2)(iv)(A) of this section.

(C) Sum the highest percentages of the AHD's for that license as calculated under paragraph (c)(2)(iv)(B) of this section and divide by the number in Column E of Table 7 to this part (Subset of Qualifying Years). This yields the Average Percentage as presented in the following equation:

$$\sigma \text{ Percentages of the AHD}_{lf} / \text{Subset of Qualifying Years}_f = \text{Average Percentage}_{lf}$$

(D) Divide the Average percentage in paragraph (c)(2)(iv)(C) of this section for a license and fishery by the Sum of all Average Percentages for all licenses for that fishery as presented in the following equation:

$$\text{Average Percentage}_{lf} / \sigma \text{ Average Percentage}_{sf} = \text{Percentage of the Total Percentages}_{lf}$$

(E) Multiply the Percentage of the Total Percentages in paragraph (c)(2)(iv)(D) of this section by the Initial QS Pool as described in Table 8 to this part. This yields the unadjusted number of QS units derived from a license for a fishery.

(F) Multiply the unadjusted number of QS units in paragraph (c)(2)(iv)(E) of this section by 97 percent. This yields the number of QS units to be allocated.

(G) Determine the percentage of legal landings in the subset of qualifying years associated with a LLP license with a catcher/processor designation that were processed on that vessel and multiply the amount calculated in paragraph (c)(2)(iv)(F) of this section by this percentage. This yields the amount of CPO QS to be allocated.

(H) Determine the percentage of legal landings in the subset of qualifying years associated with a LLP license that were not processed on that vessel and multiply the amount calculated in

paragraph (c)(2)(iv)(F) of this section by this percentage. This yields the amount of CVO QS to be allocated.

(I) Determine the percentage of legal landings associated with an LLP license in the subset of qualifying years that were delivered in each region as defined in paragraph (b)(2) of this section. The amount calculated in paragraph (c)(2)(iv)(H) of this section is multiplied by the percentage for each region.

(J) The percentage calculated in paragraph (c)(2)(iv)(I) of this section may be adjusted according to the provisions at paragraphs (c)(3) and (c)(4) of this section.

(v) As shown in the formulas under this paragraph (c)(2)(v), the allocation of CVC and CPC QS for each crab QS fishery "f" based on each State of Alaska Interim Use Permit "i" held by each qualified person shall be calculated by the Regional Administrator as follows:

(A) Sum legal landings for each qualifying year as described in Column B of Table 7 to this part and divide that amount by the AHD for that year using the following equation:

$$(\sigma \text{ legal landings}_{if} / \text{AHD}_{if}) \times 100 = \text{Percentage of the AHD}_{if}$$

(B) In those fisheries where only a subset of the qualifying years are applied, the Regional Administrator will use the years that yield the highest percentages of the AHD as calculated in paragraph (c)(2)(v)(A) of this section.

(C) Sum the highest percentages of the AHDs for that license calculated under paragraph (c)(2)(v)(B) of this section and divide by the number in Column E of Table 7 to this part (Subset of Qualifying Years). This yields the Average Percentage as presented in the following equation:

$$\sigma \text{ Percentages of the AHD}_{if} / \text{Subset of Qualifying Years}_f = \text{Average Percentage}_{if}$$

(D) Divide the Average Percentage in paragraph (c)(2)(v)(C) of this section for a permit and fishery by the Sum of all Average Percentages for all permits for that fishery as presented in the following equation:

$$\text{Average Percentage}_{if} / \sigma \text{ Average Percentage}_{sf} = \text{Percentage of the Total Percentages}_{if}$$

(E) Multiply the Percentage of the Total Percentages in paragraph (c)(2)(v)(E) of this section by the Initial QS Pool as described in Table 8 to this part. This yields the unadjusted number of QS units derived from a permit for a fishery.

(F) Multiply the unadjusted number of QS units in paragraph (c)(2)(v)(E) of this section by 3 percent. This yields the number of QS units to be allocated.

(G) Determine the percentage of legal landings in the subset of qualifying years associated with a permit that were processed on that vessel and multiply the amount calculated in paragraph (c)(2)(v)(F) of this section by this percentage. This yields the amount of CPC QS to be allocated.

(H) Determine the percentage of legal landings in the subset of qualifying years associated with a permit that were not processed on that vessel and multiply the amount calculated in paragraph (c)(2)(v)(F) of this section by this percentage. This yields the amount of CVC QS to be allocated.

(I) Determine the percentage of legal landings associated with a permit in the subset of qualifying years that were delivered in each region as defined in paragraph (b)(2) of this section. The amount calculated in paragraph (c)(2)(v)(H) of this section is multiplied by the percentage for each region.

(J) The percentage calculated in paragraph (c)(2)(v)(I) of this section may be adjusted according to the provisions at paragraphs (c)(3) and (c)(4) of this section. The amount calculated in paragraph (c)(2)(v)(H) of this section is multiplied by the percentage for each region. These regional QS designations do not apply in the CVC QS sector until July 1, 2008.

(vi) *Sunken vessel provisions.* (A) If a person applies for CVO QS or CPO QS based, in whole or in part, on the activities of a vessel that sank, the Regional Administrator shall presume landings for that vessel for the crab fishing years between the time of vessel loss and the replacement of the vessel under § 679.40(k)(5)(v). These presumed landings shall be equivalent to 50 percent of the average legal landings for the qualifying years established in Column B of Table 7 to this part unaffected by the sinking. If the vessel sank during a qualifying year, the legal landings for that year will not be used as the basis for presumed landings;

(B) If a person applies for CVO QS or CPO QS based, in whole or in part, on the activities of a vessel that sank and:

(1) The person who owned the vessel that sank would have been denied eligibility to replace a sunken vessel under the provisions of Public Law 106–554; and

(2) The vessel that sank was replaced with a newly constructed vessel, with that vessel under construction no later than June 10, 2002. For purposes of this section a vessel is considered under construction once the keel for that vessel has been laid; and

(3) The newly constructed vessel participated in any Bering Sea crab fishery no later than October 31, 2002;

(4) Then the Regional Administrator shall presume landings for that vessel for the crab fishing years between the time of vessel loss and the replacement of the vessel. These presumed landings shall be equivalent to 50 percent of the average legal landings for the qualifying years established in Column B of Table 7 to this part unaffected by the sinking. If the vessel sank during a qualifying year, the legal landings for that year will not be used as the basis for presumed landings.

(vii) *LLP license history exemption.* An applicant for CVO or CPO QS who:

(A) Deployed a vessel in a crab QS fishery under the authority of an interim or permanent fully transferable LLP license; and

(B) Prior to January 1, 2002, received by transfer, as authorized by NMFS, a permanent fully transferable LLP license for use in that crab QS fishery to insure that a vessel would remain authorized to participate in the fishery, may choose to use as the legal landings which are the basis for QS allocation on his or her application for crab QS or PQS either:

(1) The legal landings made on that vessel for that crab QS fishery prior to the transfer of the permanent fully transferable LLP license for use on that vessel; or

(2) The legal landings made on the vessel that gave rise to the permanent fully transferable LLP license and the legal landings made under the authority of that same LLP license in that crab QS fishery prior to January 1, 2002.

(C) If the history described in paragraph (c)(2)(vii)(B)(1) of this section is being used by another person for an allocation with an LLP license, then the allocation in paragraph (c)(2)(vii) will be based on the legal landings as described under paragraph (c)(2)(vii)(B)(2) of this section.

(3) *Adjustment of CVO and CVC QS allocation for North and South regional designation.* The Regional Administrator may adjust the regional designation of QS to ensure that it is initially allocated in the same proportion as the regional designation of PQS for that crab QS fishery. A person who would receive QS based on the legal landings in only one region, will receive QS with only that regional designation. A person who would receive QS with more than one regional designation for that crab QS fishery would have his or her QS holdings regionally adjusted on a pro rata basis as follows:

(i) Determine the ratio of the Initial PQS pool in the North and South regions.

(ii) Multiply the Initial QS pool by the ratio of North and South PQS. This will yield the target QS pool for each region.

(iii) Sum the QS for all persons who are eligible to receive North QS yielding the unadjusted North QS pool, and sum the QS for all persons who are eligible to receive South QS yielding the unadjusted South QS pool.

(iv) To calculate the amount of QS available for adjustment, subtract the amount of QS for persons receiving North only QS from the unadjusted North QS pool and subtract the amount of QS for persons receiving South only QS from the unadjusted South QS pool, as presented in the following equations:

(A) Unadj. North QS – North QS only = North QS for [North & South] QS holders.

(B) Unadj. South QS – South QS only = South QS for [North & South] QS holders.

(v) Determine which region becomes the gaining region if the target QS pool is greater than the unadjusted QS pool.

(vi) Subtract the gaining region unadjusted QS pool from the gaining region target QS pool to calculate the number of QS units that need to be applied to the gaining region. This amount is the Adjustment Amount as presented in the following equation:

Unadj. gaining region QS – Target gaining region QS pool = Adjustment Amount

(vii) Divide the Adjustment Amount by the unadjusted losing region QS pool for North and South QS holders. This yields the regional adjustment factor (RAF) for each person as presented in the following equation:

Adj. Amount/unadjusted losing region QS pool for [North & South] QS holders = RAF

(viii) For each person (p) who holds both North and South Region QS, the QS adjustment (QS Adj. (p)) to that person's Unadjusted losing region QS is expressed in the following equation as:

QS adj. p = Unadjusted losing region QS p × RAF

(ix) The QS adjustment for person (p) is made by subtracting the QS adjustment from that person's unadjusted losing region QS amount and added to that person's unadjusted gaining region QS. These adjustments will yield the regional adjustment QS amounts for that person.

(4) *Regional designation of Western Aleutian Islands golden king crab.* Fifty percent of the CVO and CVC QS that is issued in the WAG crab QS fishery will be initially issued with a West regional designation. The West regional designation applies to QS for delivery

West of 174° W. longitude. The remaining 50 percent of the CVO and CVC QS initially issued for this fishery is not subject to regional designation (Undesignated QS). A person (p) who would receive QS based on the legal landings in only one region, will receive QS with only that regional designation. A person who would receive QS with more than one regional designation for that crab QS fishery would have his or her QS holdings regionally adjusted on a pro rata basis as follows:

(i) The West QS pool is equal to 50 percent of the initial QS pool.

(ii) The Undesignated QS pool is equal to 50 percent of the initial QS pool.

(iii) Sum the QS for all persons who are eligible to receive West QS yielding the unadjusted West QS pool, and sum the QS for all persons who are eligible to receive undesignated QS yielding the unadjusted undesignated QS pool.

(iv) To calculate the amount of QS available for adjustment, subtract the amount of QS for persons receiving West only QS from the unadjusted West QS pool and subtract the amount of QS for persons receiving undesignated only QS from the unadjusted undesignated QS pool, as presented in the following equation:

(A) Unadj. West QS – West QS only = West QS for [West & Undesignated] QS holders.

(B) Unadj. Undesignated QS – Undesignated QS only = Undesignated QS for [West & Undesignated] QS holders.

(v) Subtract the gaining region Unadjusted QS pool from the gaining region Target QS pool to calculate the number of QS units that will need to be applied to the gaining region. This amount is the Adjustment Amount as presented in the following equation:

Target gaining region QS pool – unadjusted region QS = Adjustment Amount

(vi) Divide the Adjustment Amount by the unadjusted losing region QS pool for West and Undesignated QS holders. This yields the regional adjustment factor (RAF) for each person as presented in the following equation:

Adj. Factor/unadjusted losing region QS pool for West & Undesignated QS holders = RAF

(vii) For each person (p) who holds both unadjusted West and Undesignated Region QS, the QS adjustment (QS Adj. p) to that person's Unadjusted West QS is expressed in the following equation as:

QS adj. p = Unadjusted West QS p × RAF

(viii) The QS adjustment for person (p) is made by subtracting the QS adjustment for that person's unadjusted losing region QS amount and subtracted from that person's unadjusted gaining region QS. These adjustments will yield the regional adjustment QS amounts for that person.

(d) *Crab PQS and Crab PQS Fisheries*—(1) *General.* The Regional

Administrator shall initially assign to qualified persons defined in paragraph (d)(3) of this section crab PQS specific to crab QS fisheries defined in paragraph (a)(1) of this section. The crab PQS amount issued will be based on total legal processing of crab made in those crab QS fisheries. PQS shall yield annual IPQ as defined under paragraph (j) of this section.

(2) *Regional designations.* For each crab QS fishery, PQS shall be initially regionally designated based on the legal processing that gave rise to the PQS as follows:

(i) *North PQS* if the processing that gave rise to the PQS for a crab QS fishery occurred in the Bering Sea subarea north of 56°20' N. lat.; or

(ii) *South PQS* if the processing that gave rise the PQS for a crab QS fishery did not occur in the North Region, and PQS allocated to the WAI crab QS fishery; or

(iii) *West PQS* for a portion of the PQS allocated to the WAG crab QS fishery subject to the provisions under paragraph (e)(2) of this section; or

(iv) *Undesignated.* Regional designations do not apply to:

(A) That portion of the WAG crab QS fishery that is not regionally designated as West Region PQS; and

(B) The BST crab QS fishery.

(v) The specific regional designations that apply to PQS in each of the crab QS fisheries are described in paragraph (b)(2)(iii) of this section.

(3) *Qualified person,* for the purposes of PQS issuance, means a person, as defined at § 679.2, who at the time of application for PQS is a U.S. citizen, or a U.S. corporation, partnership, association, or other entity, and who:

(i) Legally processed any crab QS species established in paragraph (a)(1) of this section during 1998 or 1999 as demonstrated on the official crab rationalization record; or

(ii) Did not legally process any crab QS species during 1998 or 1999 according to the official crab rationalization record, but who:

(A) Processed BSS crab QS species in each crab season for that fishery during the period from 1988 through 1997; and

(B) From January 1, 1996, through June 10, 2002, invested in a processing facility, processing equipment, or a

vessel for use in processing operations, including any improvements made to existing facilities with a total expenditure in excess of \$1,000,000; or

(C) Is the person to whom the history of legal processing of crab has been transferred by the express terms of a written contract that clearly and unambiguously provides that such legal processing of crab has been transferred. This provision would apply only if that applicant for PQS:

(1) Legally processed any crab QS species established in paragraph (a)(1) of this section during 1998 or 1999, as demonstrated on the official crab rationalization record; or

(2) Received history of crab processing that was legally processed during 1998 or 1999, as demonstrated on the official crab rationalization record.

(iii) Qualified persons, or their successors-in-interest, must exist at the time of application for PQS.

(iv) A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise be a qualified person may apply for PQS in proportion to his or her ownership interest in the dissolved partnership or corporation.

(v) A person who has acquired a processing corporation, partnership, or other entity that has a history of legal processing of crab is presumed to have received by transfer all of that history of legal processing of crab unless a clear and unambiguous written contract establishes otherwise.

(4) *Qualification for initial allocation of PQS*—(i) *Years*. The qualifying years for each crab QS fishery are designated in Table 9 to this part.

(ii) *Ownership interest*. Documentation of ownership interest in a dissolved partnership or corporation, association, or other entity shall be limited to corporate documents (e.g., articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest.

(iii) *Legal processing of crab* means, for the purpose of initial allocation of PQS, raw crab pounds processed in the crab QS fisheries designated under paragraph (a)(1) of this section in compliance with state and Federal permitting, landing, and reporting regulations in effect at the time of the landing. Legal processing excludes any deadloss, processing of crab harvested in a test fishery or under a scientific, education, exploratory, or experimental permit, or under the Western Alaska CDQ Program.

(iv) *Documentation*. Evidence of legal processing shall be limited to State of Alaska fish tickets, except that:

(A) NMFS may use information from a State of Alaska Commercial Operators Annual Report, State of Alaska fishery tax records, or evidence of direct payment from a receiver of crab to a harvester if that information indicates that the buyer of crab differs from the receiver indicated on State of Alaska fish ticket records; however:

(B) Information on State of Alaska fish tickets shall be presumed to be correct for the purpose of determining evidence of legal processing of crab. An applicant will have the burden of proving the validity of information submitted in an application that is inconsistent with the information on the State of Alaska fish ticket.

(e) *Calculation of PQS allocation*—(1) *Computation for initial issuance of PQS*.

(i) The Regional Administrator shall establish the Total Processing Denominator (TPD) which represents the amount of legally processed raw crab pounds in each crab QS fishery in all qualifying years.

(ii) For each crab QS fishery, the percentage of the initial PQS pool that will be distributed to each qualified person shall be based on their percentage of the TPD according to the following procedure:

(A) Sum the raw crab pounds purchased for each person for all qualifying years.

(B) Divide the sum calculated in paragraph (e)(1)(ii)(A) of this section by the TPD. Multiply by 100. This yields a person's percentage of the TPD.

(C) Sum the TPD percentages of all persons.

(D) Divide the percentage for a person calculated in paragraph (e)(1)(ii)(B) of this section by the sum calculated in paragraph (e)(1)(ii)(C) of this section for all persons. This yields a person's percentage of the TPD.

(E) Multiply the amount calculated in paragraph (e)(1)(ii)(D) of this section by the PQS pool for that crab QS fishery as that amount is defined in Table 8 to this part.

(F) Determine the percentages of legally processed crab that were processed in each region. The percentages calculated in paragraph (e)(1)(ii)(E) of this section are multiplied by the amount determined within each regional designation. Regional designations will apply to that PQS according to the provisions established in paragraphs (d)(2) and (e)(2) of this section.

(2) *Regional designation of Western Aleutian Islands golden king crab*. (i) Fifty percent of the PQS that is issued

in the WAG crab QS fishery will be issued with a West regional designation. The West regional designation applies to PQS for processing west of 174° N. long. The remaining 50 percent of the PQS issued for this fishery is Undesignated region PQS.

(ii) A person will receive only West PQS if, at the time of application, that person owns a crab processing facility that is located in the West region. A person will receive West region and Undesignated Region PQS if, at the time of application, that person does not own a crab processing facility located in the West region. Expressed algebraically, for any person (p) allocated both West region PQS and undesignated region PQS the formula is as follows:

(A)  $PQS_{West} = PQS \times 0.50$

(B)  $PQS_{Und.} = PQS \times 0.50$

(C)  $PQS_{West} \text{ for } PQS_{West \& Und.} \text{ holders} = PQS_{West} - PQS_{West \text{ only}}$

(D)  $PQS_{West} \text{ for Person}_p \text{ West \& Und.} = PQS_p \times PQS_{West} \text{ for } PQS_{West \& Und.} \text{ holders} / (PQS_{West} \text{ for } PQS_{West \& Und.} \text{ holders} + PQS_{Und.})$

(E)  $PQS_{Und.} \text{ for Person}_p = PQS_p - PQS_{West} \text{ for Person}_p$

(iii) For purposes of the allocation of PQS in the WAG crab fishery:

(A) Ownership of a processing facility is defined as:

(1) A sole proprietor; or

(2) A relationship between two or more entities in which a person directly or indirectly owns a 10 percent or greater interest in another, or a third entity directly or indirectly owns a 10 percent or greater interest in both.

(B) A processing facility is a shoreside crab processor or a stationary floating crab processor.

(f) *Application for crab QS or PQS process*—(1) *General*. The Regional Administrator will issue QS and/or PQS to an applicant if a complete application for crab QS or PQS is submitted by or on behalf of the applicant during the specified application period, and if the applicant meets all criteria for eligibility as specified at paragraphs (b)(3) and (d)(3) of this section.

(i) The Regional Administrator will send application materials to the person identified by NMFS as an eligible applicant based on the official crab rationalization record. An application form may also be obtained from the Internet or requested from the Regional Administrator.

(ii) An application for crab QS or PQS may be submitted by mail to NMFS, Alaska Region, Restricted Access Management, P.O. Box 21668, Juneau, AK 99802, by facsimile (907-586-7354), or by hand delivery to the NMFS, 709 West 9th Street, room 713, Juneau, AK.

(iii) An application that is postmarked, faxed, or hand delivered after the ending date for the application period for the Crab QS Program specified in the **Federal Register** will be denied.

(2) *Contents of application.* A complete application for crab QS or PQS must be signed by the applicant, or the individual representing the applicant, and include the following, as applicable:

(i) *Type of QS or PQS for which the person is applying.* Select the type of QS or PQS for which the applicant is applying.

(A) If applying for CVO QS or CPO QS, submit information required in paragraphs (f)(2)(ii) through (f)(2)(iv) of this section;

(B) If applying for CVC QS or CPC QS, submit information required in paragraphs (f)(2)(ii), (f)(2)(iii) and (f)(2)(v) of this section;

(C) If applying for PQS, submit information required in paragraphs (f)(2)(ii), (f)(2)(iii) and (f)(2)(vi) of this section.

(ii) *Applicant information.* (A) Enter the applicant's name, NMFS person ID (if applicable), tax ID or social security number (required), permanent business mailing address, business telephone number, facsimile number, and e-mail (if available);

(B) Indicate (YES or NO) whether applicant is a U.S. citizen; if YES, enter his or her date of birth. You must be a U.S. citizen or U.S. corporation, partnership, or other business entity to obtain CVO, CPO, CVC, or CPC QS.

(C) Indicate (YES or NO) whether applicant is a U.S. corporation, partnership, association, or other business entity; if YES, enter the date of incorporation;

(D) Indicate (YES or NO) whether applicant is deceased; if YES, enter date of death. A copy of the death certificate must be attached to the application;

(E) Indicate (YES or NO) whether applicant described in paragraph (f)(2)(ii)(C) of this section is no longer in existence; if YES, enter date of dissolution and attach evidence of dissolution to the application;

(iii) *Fishery and QS/PQS type.* Indicate the crab QS fishery and type of QS/PQS for which applying.

(iv) *CVO or CPO QS.* (A) For vessels whose catch histories are being claimed for purposes of the crab QS program, enter the following information: name of the vessel, ADF&G vessel registration number, USCG documentation number, moratorium crab permit number(s), and crab LLP license number(s) held by the applicant and used on that vessel, qualifying years or seasons fished by

fishery, and dates during which those permits were used on that vessel.

(B) Indicate (YES or NO) whether applicant is applying for QS for any crab QS fishery for which the applicant purchased an LLP license prior to January 1, 2002, in order to remain in that fishery. If YES, include LLP crab license number, and the vessel's name, ADF&G vessel registration number, and USCG documentation number.

(C) Indicate (YES or NO) whether QS is being claimed based on the fishing history of a vessel that was lost or destroyed. If YES, include the name, ADF&G registration number, and USCG documentation number of the lost or destroyed vessel, the date the vessel was lost or destroyed, and evidence of the loss or destruction.

(D) Indicate (YES or NO) whether the lost or destroyed vessel described in paragraph (f)(2)(iv)(C) of this section was replaced with a newly constructed vessel. If YES, include the name, ADF&G vessel registration number, and USCG documentation number of the replacement vessel, date of vessel construction, and date vessel entered fishery(ies). Indicate (YES or NO) if the replacement vessel participated in a Bering Sea crab fishery by October 31, 2002. If YES, provide documentation of the replacement vessel's participation by October 31, 2002, in a Bering Sea crab fishery.

(E) If the applicant is applying for CPO QS, indicate (YES or NO) whether the applicant processed crab from any of the crab QS fisheries listed on Table 1 to this part on board a vessel authorized by one of the LLP licenses listed in paragraph (f)(2)(iv)(A) of this section in 1998 or 1999. If YES, enter information for the processed crab, including harvest area, date of landing, and crab species.

(v) *CVC or CPC QS.* (A) Indicate (YES or NO) whether applicant had at least one landing in three of the qualifying years for each crab species for which the applicant is applying for QS (see Table 7 to this part).

(B) Indicate (YES or NO) whether applicant has recent participation in a crab QS fishery as defined in Table 7 to this part.

(C) If the answer to paragraph (f)(2)(v)(A) or paragraph (f)(2)(v)(B) of this section is YES, enter State of Alaska Interim Use Permit number and the name, ADF&G vessel registration number, and USCG documentation number of vessel on which harvesting occurred. Select the qualifying years or seasons fished by QS fishery, and the dates during which those permits were used on that vessel;

(D) Indicate (YES or NO) whether a person is applying as the successor-in-

interest to an eligible applicant. If YES, attach to the application documentation proving the person's status as a successor-in-interest and evidence of the death of the eligible applicant.

(vi) *Processor QS.* (A) Indicate (YES or NO) whether applicant processed any of the crab species included in the Crab QS program (see Table 1 to this part) in 1998 or 1999.

(B) If answer to paragraph (f)(2)(vi)(A) of this section is YES, enter the facility name and ADF&G processor code for each processing facility where crab, from any of the crab QS fisheries listed in Table 1 of this part, were processed and the qualifying years or seasons by fishery for which applicant is claiming eligibility for PQS.

(C) If answer to paragraph (f)(2)(vi)(A) of this section is NO, indicate (YES or NO) whether applicant is claiming eligibility under hardship provisions;

(D) If answer to paragraph (f)(2)(vi)(C) of this section is YES, both of the following provisions must apply to a processor to obtain hardship provisions. Attach documentation of the following circumstances:

(1) Applicant processed QS crab during 1998 or 1999, or processed BSS crab in each season between 1988 and 1997; and

(2) Applicant invested a total expenditure in excess of \$1,000,000 for any processing facility, processing equipment, or a vessel for use in processing operations, including any improvements made to existing facilities from January 1, 1996, to June 10, 2002;

(E) Indicate (YES or NO) whether applicant has entered into a Community Right of First Refusal (ROFR) contract consistent with paragraph (f)(3) of this section pertaining to the transfer of any PQS and/or IPQ subject to ROFR and issued as a result of this application.

(F) Contract that the legal processing history and rights to apply for and receive PQS based on that legal processing history have been transferred or retained; and

(G) Any other information deemed necessary by the Regional Administrator.

(H) If applicant is applying to receive PQS for the WAG crab QS fishery, indicate (YES or NO) whether applicant owns a crab processing facility in the West region (see paragraph (b)(2) (iii) of this section).

(vii) *Applicant signature and certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized



representative, then authorization must accompany the application.

(3) *Notice and contract provisions for community right of first refusal (ROFR) for initial issuance of PQS.* (i) To be complete, an application for PQS from a person based on legal processing that occurred in an ECC, other than Adak, must also include an affidavit signed by the applicant stating that notice has been provided to the ECC of the applicant's intent to apply for PQS 60 days prior to the end of the application period. If the ECC designates an entity to represent it in the exercise of ROFR under § 680.41(l), then the application also must include an affidavit of completion of a contract for ROFR that includes the terms enacted under section 313(j) of the Magnuson-Stevens Act. The affidavit must be signed by the applicant for initial allocation of PQS and the ECC entity designated under § 680.41(l)(2). A list of contract terms is available from the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>. A copy of these contract terms also will be made available by mail or facsimile by contacting the Regional Administrator at 907-586-7221.

(ii) To be complete, an application for crab QS or PQS from a person based on legal processing that occurred in the GOA north of a line at 56°20' N. lat. must also include an affidavit signed by the applicant stating that notice has been provided to the City of Kodiak and Kodiak Island Borough of the applicant's intent to apply for PQS 60 days prior to the end of the application period. If the City of Kodiak and Kodiak Island Borough designate an entity to represent it in the exercise of ROFR under § 680.41(l), then the application also must include an affidavit of completion of a contract for ROFR that includes the terms enacted under the Consolidated Appropriations Act of 2004 (Pub. L. 108-199) and that is signed by the applicant for initial allocation of PQS and the ECC entity designated by the City of Kodiak and Kodiak Island Borough under § 680.41(l)(2). A list of contract terms is available from the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov>. A copy of these contract terms also will be made available by mail or facsimile by contacting the Regional Administrator at (907) 586-7221.

(4) *Application evaluation.* The Regional Administrator will evaluate Applications for Crab QS or PQS submitted during the specified application period and compare all claims in an application with the information in the official crab rationalization record. Claims in an application that are consistent with

information in the official crab rationalization record will be accepted by the Regional Administrator. Inconsistent claims in the Applications for Crab QS or PQS, unless verified by documentation, will not be accepted. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (f)(2) of this section, will be provided a single 30-day evidentiary period as provided in paragraph (f)(5) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official crab rationalization record. An applicant who submits claims that are inconsistent with information in the official crab rationalization record has the burden of proving that the submitted claims are correct.

(5) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted prior to or within the 30-day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official crab rationalization record will be amended and the information will be used in determining whether the applicant is eligible for QS or PQS. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application are correct, the applicant will be notified by an IAD, that the applicant did not meet the burden of proof to change the information in the official crab rationalization record.

(6) *30-day evidentiary period.* The Regional Administrator will specify by letter a single 30-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official crab rationalization record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit information as specified in paragraphs (b)(3)(iii) and (b)(3)(iv) of this section will have 30 days to provide that information. An applicant will be

limited to one 30-day evidentiary period per application. Additional information or evidence, or a revised application, received after the 30-day evidentiary period specified in the letter has expired will not be considered for purposes of the IAD.

(7) *Right of First Refusal (ROFR) contract provisions.* If an ECC designates an entity to represent it in the exercise of ROFR under § 680.41(l), then the Regional Administrator will not prepare an IAD on unverified claims or issue PQS until an affidavit is received from the applicant confirming the completion of a civil contract for ROFR as required under section 313(j) of the Magnuson-Stevens Act.

(8) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official crab rationalization record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal pursuant to § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive crab QS or PQS until after the final resolution of that appeal in the applicant's favor.

(g) *Annual allocation of IFQ.* IFQ is assigned based on the underlying QS. The Regional Administrator shall assign crab IFQs to each person who holds QS and submits a complete annual application for crab IFQ/IPQ permit as described under § 680.4. IFQ will be assigned to a crab QS fishery with the appropriate regional designation, QS sector, and IFQ class. This amount will represent the maximum amount of crab that may be harvested from the specified crab QS fishery by the person to whom it is assigned during the specified crab fishing year, unless the IFQ assignment is changed by the Regional Administrator because of an approved transfer, revoked, suspended, or modified under 15 CFR part 904.

(h) *Calculation of annual IFQ allocation*—(1) *General*. The annual allocation of IFQ to any person (p) in any crab QS fishery (f) will be based on the TAC of crab for that crab QS fishery less the allocation to the Western Alaska CDQ Program (“CDQ Reserve”) and Western Aleutian Islands golden king crab fishery. Expressed algebraically, the annual IFQ allocation formula is as follows:

(i)  $IFQ_{TAC_f} = TAC_f - (CDQ\ reserve_f + Allocation\ for\ the\ Western\ Aleutian\ Island\ golden\ king\ crab\ fishery)$

(ii)  $IFQ_{pf} = IFQ_{TAC_f} \times (QS_{pf} / QS\ pool_f)$

(2) *Class A/B IFQ*. (i) QS shall yield Class A or Class B IFQ if:

(A) Initially assigned to the CVO QS sector;

(B) Transferred to the CVO QS sector from the CPO QS sector; or

(C) After July 1, 2008, if initially issued to the CVC QS sector.

(ii) The Class A/B IFQ TAC is the portion of the TAC assigned as Class A/B IFQ under paragraphs (h)(2)(i)(A) through (C) of this section.

(3) *Class A/B IFQ issuance ratio*. (i) Class A and Class B IFQ shall be assigned on an annual basis such that the total amount of Class A and B IFQ assigned in a crab fishing year in each crab QS fishery for each region will be in a ratio of 90 percent Class A IFQ and 10 percent Class B IFQ.

(ii) The Regional Administrator will determine the amount of Class A and Class B IFQ that is assigned to each QS holder. The Class A IFQ is calculated by allocating 90 percent of the Class A/B IFQ TAC (TAC<sub>a</sub>) to Class A IFQ. A portion of the IFQ TAC<sub>a</sub> is allocated to persons eligible to hold only Class A IFQ (TAC<sub>a</sub> only), the remaining IFQ TAC (TAC<sub>r</sub>) is allocated for harvest by a person (p) eligible to receive both Class A IFQ and Class B IFQ. Expressed algebraically, for an individual person (p) eligible to hold both Class A and Class B IFQ the annual allocation formula is as follows:

(A)  $TAC_a = Class\ A/B\ IFQ\ TAC \times 0.90$

(B)  $TAC_r = TAC_a - TAC_{a\ only}$

(C)  $IFQ_{ap} = TAC_r / (Class\ A/B\ IFQ\ TAC - TAC_{a\ only}) \times IFQ_p$

(D)  $IFQ_{bp} = IFQ_p - IFQ_{ap}$

(4) *Class A IFQ and Class B IFQ issuance to IPQ holders*. If a person holds IPQ and IFQ, that person will be issued Class A IFQ only for the amount of IFQ equal to the amount of IPQ held by that person. Any remaining IFQ held by that person would be issued as Class A and Class B IFQ in a ratio so that the total Class A and Class B IFQ issued in that crab QS fishery is issued as 90 percent Class A IFQ and 10 percent Class B IFQ;

(5) *Class A IFQ and Class B IFQ issuance to persons affiliated with IPQ holders*. If an IPQ holder holds IPQ in excess of the amount of IFQ held by that person, all IFQ holders affiliated with that IPQ holder will receive only Class A IFQ in proportion to the amount of IFQ held by those affiliated persons relative to that amount of IPQ held by that IPQ holder. Any remaining IFQ held by persons affiliated with the IPQ holder would be issued as Class A and Class B IFQ in a ratio so that the total Class A and Class B IFQ issued in that fishery is issued as 90 percent Class A IFQ and 10 percent Class B IFQ.

(6) *CVC IFQ*. (i) QS that is initially allocated to the CVC QS sector shall yield CVC IFQ.

(ii) After July 1, 2008, CVC IFQ will be assigned as CVC Class A and CVC Class B IFQ under the provisions established in paragraph (h)(5)(ii) of this section.

(7) *CPO IFQ*. (i) QS that is initially allocated to the CPO QS sector shall yield CPO IFQ.

(ii) CPO IFQ is not subject to regional designation.

(8) *CPC IFQ*. (i) QS that is initially allocated to the CPC QS sector shall yield CPC IFQ.

(ii) CPC IFQ is not subject to regional designation.

(9) *QS amounts for IFQ calculation*. For purposes of calculating IFQ for any crab fishing year, the amount of a person's QS and the amount of the QS pool for any crab QS fishery will be the amounts on record with the Alaska Region, NMFS, at the time of calculation.

(10) *Class A IFQ*. (i) The amount of Class A IFQ issued in excess of the IPQ issuance limits for the BSS or BBR crab QS fisheries, as described in paragraph (j)(3) of this section, will be issued to all Class A IFQ recipients on a pro rata basis in proportion to the amount of Class A IFQ held by each person.

(ii) Any amount of Class A IFQ that is issued in excess of the IPQ issuance limits for the BSS or BBR crab QS fisheries, as described in paragraph (j)(3) of this section, is not required to be delivered to an RCR with unused IPQ.

(i) *Annual allocation of IPQ*. IPQ is assigned based on the underlying PQS. The Regional Administrator shall assign crab IPQs to each person who submits a complete annual application for crab IFQ/IPQ permit as described under § 680.4. Each assigned IPQ will be specific to a crab QS fishery with the appropriate regional designation. This amount will represent the maximum amount of crab that may be received from the specified crab QS fishery by the person to whom it is assigned

during the specified crab fishing year, unless the IPQ assignment is changed by the Regional Administrator because of an approved transfer, revoked, suspended, or modified under 15 CFR part 904.

(j) *Calculation of annual IPQ allocation*—(1) *General*. The annual allocation of TAC to PQS and the resulting IPQ in any crab QS fishery (f) is the Class A IFQ TAC (TAC<sub>a</sub>). A person's annual IPQ is based on the amount of PQS held by a person (PQS<sub>p</sub>) divided by the PQS pool for that crab QS fishery for all PQS holders (PQS<sub>pool f</sub>). Expressed algebraically, the annual IPQ allocation formula is as follows:

$IPQ_{pf} = TAC_{af} \times PQS_{pf} / PQS\ pool_f$

(2) *PQS amounts for IPQ calculation*. For purposes of calculating IPQs for any crab fishing year, the amount of a person's PQS and the amount of the PQS pool for any crab PQS fishery will be the amounts on record with the Alaska Region, NMFS, at the time of calculation.

(3) *IPQ issuance limits*. The amount of IPQ issued in any crab fishing year shall not exceed:

(i) 175,000,000 raw crab pounds (79,378.6 mt) in the BSS crab QS fishery; and

(ii) 20,000,000 raw crab pounds (9,071.8 mt) in the BBR crab QS fishery.

(k) *Timing for issuance of IFQ or IPQ*. IFQ and IPQ will be issued once the TAC for that crab QS fishery in that crab fishing year has been specified by the State of Alaska. All IFQ and IPQ for all persons will be issued once for a crab fishing year for a crab QS fishery. QS issued after NMFS has issued annual IFQ for a crab QS fishery for a crab fishing year will not result in IFQ for that crab QS fishery for that crab fishing year.

(l) *Harvesting and processing privilege*. QS and PQS allocated or permits issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the “takings” provision of the Fifth Amendment of the U.S. Constitution. Rather, such QS, PQS, or permits represent only a harvesting or processing privilege that may be revoked or amended pursuant to the Magnuson-Stevens Act and other applicable law. IPQs do not create a right, title, or interest in any crab until that crab is purchased from a fisherman.

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

(a) *General*. (1) Transfer of crab QS, PQS, IFQ, or IPQ means any transaction, approved by NMFS, requiring QS or PQS, or the use thereof in the form of

IFQ or IPQ, to pass from one person to another, permanently or for a fixed period of time, except that:

(2) A crab IFQ hired master permit issued by NMFS, as described in § 680.4, is not a transfer of crab QS or IFQ; and

(3) The use of IFQ assigned to a crab harvesting cooperative and used within that cooperative is not a transfer of IFQ.

(b) *Transfer applications.* An application is required to transfer any amount of QS, PQS, IFQ, or IPQ. The Regional Administrator shall provide applications to any person on request or on the Internet at <http://www.fakr.noaa.gov/>.

Any transfer application will not be approved until the necessary eligibility application in paragraph (c) of this section has been submitted and approved by NMFS.

(1) *Application for transfer of crab QS/IFQ or PQS/IPQ.* This application, as described in paragraph (h) of this section, is required to transfer any amount of QS, PQS, IFQ, or IPQ from an entity that is not an ECCO or a crab harvesting cooperative.

(2) *Application for transfer of crab QS/IFQ to or from an ECCO.* This application, as described in paragraph (k) of this section, is required to transfer

any amount of QS or IFQ to or from an entity that is an ECCO.

(3) *Application for inter-cooperative transfer.* This application, as described in § 680.21, is required to transfer any amount of IFQ from an entity that is a crab harvesting cooperative to another crab harvesting cooperative.

(4) *Application deadline.* The Regional Administrator will not approve any transfers of QS, PQS, IFQ, or IPQ in any crab QS fishery from August 1 until the date of the issuance of IFQ or IPQ for that crab QS fishery.

(5) *Notification of approval or disapproval of applications.* (i) Applicants submitting any application under this section will be notified by mail of the Regional Administrator's approval of an application. The Regional Administrator will notify applicants if an application submitted under this section is disapproved. This notification of disapproval will include an explanation why the application was not approved.

(ii) *Reasons for disapproval.* Reasons for disapproval of an application include, but are not limited to:

(A) Lack of U.S. citizenship, where U.S. citizenship is required;

(B) Failure to meet minimum requirements for sea time as a member of a harvesting crew;

(C) An incomplete application, including fees and an EDR, if required;

(D) An untimely application; or

(E) Fines, civil penalties, or other payments due and owing, or outstanding permit sanctions resulting from Federal fishery violations.

(6) *QS, PQS, IFQ, or IPQ accounts.* QS, PQS, IFQ, or IPQ accounts affected by a transfer approved by the Regional Administrator will change on the date of approval. Any necessary IFQ or IPQ permits will be sent with the notification of approval if the receiver of the IFQ or IPQ permit has completed an annual application for crab IFQ/IPQ permit for the current fishing year as required under § 680.4.

(c) *Eligibility to receive QS, PQS, IFQ, or IPQ by transfer.* Persons, other than persons initially issued QS or PQS, must establish eligibility to receive QS, PQS, IFQ, or IPQ by transfer.

(1) To be eligible to receive QS, PQS, IFQ, or IPQ by transfer, a person must first meet the requirements specified in the following table:

Quota type	Eligible person	Eligibility requirements
(i) PQS .....	Any person .....	None.
(ii) IPQ .....	Any person .....	None.
(iii) CVO or CPO QS .....	(A) A person initially issued QS .... (B) An individual .....	No other eligibility requirements. who is a U.S. citizen with at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery.
	(C) A corporation, partnership, or other entity.	with at least one individual member who is a U.S. citizen and who: (1) owns at least 20 percent of the corporation, partnership, or other entity; and (2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery.
	(D) An ECCO .....	that meets the eligibility requirements described under paragraph (j) of this section.
	(E) A CDQ group .....	No other eligibility requirements.
(iv) CVO or CPO IFQ .....	All eligible persons for CVO or CPO QS.	according to the requirements in paragraph (c)(1)(iii) of this section.
(v) CVC or CPC QS .....	An individual .....	who is a U.S. citizen with: (A) at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery; and (B) recent participation in a CR crab fishery in the 365 days prior to submission of the application for eligibility.
(vi) CVC or CPC IFQ .....	All eligible persons for CVC or CPC QS.	according to the requirements in paragraph (c)(1)(v) of this section.

(2) *Application for eligibility to receive QS/IFQ and PQS/IPQ by transfer.* (i) This application is required to establish a person's eligibility to receive QS, PQS, IFQ, or IPQ by transfer, if the person is not an ECCO. See paragraph (j) of this section for eligibility to transfer of QS/IFQ to or from an ECCO. The Regional Administrator shall provide an application to any person on request or

on the Internet at <http://www.fakr.noaa.gov/>.

(ii) *Contents.* A complete Application for Eligibility to Receive QS/IFQ or PQS/IPQ by Transfer must include the following:

(A) Type of QS, IFQ, PQS, or IPQ for which the applicant is seeking eligibility. Indicate type of QS, IFQ, PQS, IPQ for which applicant is seeking eligibility.

(1) If seeking CVO or CPO QS/IFQ, complete paragraphs (c)(2)(ii)(B), (c)(2)(ii)(D) if applicable, (c)(2)(ii)(E), and (c)(2)(ii)(F) of this section;

(2) If seeking CVC or CPC QS/IFQ, complete paragraphs (c)(2)(ii)(B), (c)(2)(ii)(C), (c)(2)(ii)(E), and (c)(2)(ii)(F) of this section;

(3) If seeking PQS/IPQ, complete paragraphs (c)(2)(ii)(B) and (c)(2)(ii)(F) of this section;

(B) *Applicant information.* (1) Enter applicant's name and NMFS Person ID, applicant's date of birth or, if not an individual, date of incorporation; applicant's social security number or tax ID number; applicant's permanent business mailing address and any temporary business mailing address the applicant wishes to use, and the applicant's business telephone number, business facsimile number, and e-mail address (if available).

(2) Indicate (YES or NO) whether the applicant is a U.S. citizen or U.S. corporation, partnership or other business entity. Applicants for CVO, CPO, CVC or CPC QS (and associated IFQ) must be U.S. Citizens or U.S. Corporations, Partnerships or Other Business Entity. Applicants for PQS (and associated IPQ) are not required to be U.S. Citizens.

(C) *Eligibility for CVC or CPC QS/IFQ.* Indicate (YES or NO) whether this application is intended for a person who wishes to buy CVC or CPC QS/IFQ. If YES, provide evidence of at least one delivery of a crab species in any CR crab fishery in the 365 days prior to submission of this application. Acceptable evidence of such delivery shall be limited to an ADF&G fish ticket imprinted with applicant's State of Alaska permit card and signed by the applicant, an affidavit from the vessel owner, or a signed receipt for an IFQ crab landing on which applicant was acting as the permit holder's crab IFQ hired master.

(D) *U.S. Corporations, partnerships, or business entities.* (1) Indicate (YES or NO) whether this application is submitted by a CDQ Group. If YES, complete paragraph (c)(2)(ii)(F) of this section;

(2) Indicate (YES or NO) whether this application is submitted on behalf of a corporation, partnership or other business entity (not including CDQ groups). If YES: At least one member of the corporation, partnership or other business entity must submit documentation showing at least 20 percent interest in the corporation, partnership, or other entity and must provide evidence of at least 150 days as part of a harvesting crew in any U.S. commercial fishery. Identify the individual member and provide this individual's commercial fishing experience, name, NMFS person ID, and social security number, and business mailing address, business telephone number, and business facsimile number.

(E) *Commercial fishing experience.* (1) Species; enter any targeted species in a U.S. commercial fishery;

(2) Gear Type; enter any gear type used to legally harvest in a U.S. commercial fishery;

(3) Location; enter actual regulatory, statistical, or geographic harvesting location;

(4) Starting date and ending date of claimed fishing period (MMYY);

(5) Number of actual days spent harvesting;

(6) Duties performed while directly involved in the harvesting of (be specific):

(7) Name and ADF&G vessel registration number or USCG documentation number of the vessel upon which above duties were performed;

(8) Name of vessel owner;

(9) Name of vessel operator;

(10) Reference name. Enter the name of a person (other than applicant) who is able to verify the above experience;

(11) Reference's relationship to applicant;

(12) Reference's business mailing address and telephone number.

(F) *Applicant certification.* (1) Printed name and signature of applicant and date signed;

(2) Notary Public signature, date commission expires, and notary stamp or seal.

(G) Verification that the applicant applying for eligibility to receive crab QS/IFQ or PQS/IPQ by transfer has submitted an EDR, if required to do so under § 680.6;

(H) A non-profit entity seeking approval to receive crab QS or IFQ by transfer on behalf of a ECC must first complete an Application to Become an ECCO under paragraph (j) of this section.

(d) *Transfer of CVO, CPO, CVC, CPC QS or PQS—*(1) *General.* PQS or QS may be transferred, with approval of the Regional Administrator, to persons qualified to receive PQS or QS by transfer. However, the Regional Administrator will not approve a transfer of any type of PQS or QS that would cause a person to exceed the maximum amount of PQS or QS allowable under the use limits provided for in § 680.42, except as provided for under paragraph (f) of this section.

(2) *CVO QS.* CVO QS may be transferred to any person eligible to receive CVO or CPO QS as defined under paragraph (c) of this section.

(3) *CPO QS.* Persons holding CPO QS may transfer CPO QS as CVO QS and PQS to eligible recipients under the following provisions:

(i) Each unit of CPO QS shall yield 1 unit of CVO QS, and 0.9 units of PQS; and

(ii) The CVO QS and PQS derived from the transfer of CPO QS may be

transferred separately, except that these shares must receive the same regional designation. The regional designation shall be determined at the time of transfer by the person receiving the CVO QS.

(4) *CVC or CPC QS.* CVC or CPC QS may be transferred to any person eligible to receive CVC or CPC QS as defined under paragraph (c) of this section. CVC and CPC QS may only be used in the sector for which it is originally designated.

(e) *Transfer of IFQ or IPQ by Lease—*(1) *IFQ derived from CVO or CPO QS.* IFQ derived from CVO or CPO QS may be transferred by lease until June 30, 2010. IFQ derived from CVO or CPO QS must be leased:

(i) If the IFQ will be used on a vessel on which the QS holder has less than a 10 percent ownership interest; or

(ii) If the IFQ will be used on a vessel on which the QS holder or the holder of a crab IFQ hired master permit, under § 680.4, is not present.

(2) Ownership of a vessel, for the purposes of this section, means:

(i) A sole proprietor; or

(ii) A relationship between 2 or more entities in which one directly or indirectly owns a 10 percent or greater interest in a vessel.

(3) *IFQ derived from CVC QS or CPC QS.* (i) IFQ derived from CVC or CPC QS may be transferred by lease only until June 30, 2008, unless the IFQ permit holder demonstrates a hardship.

(ii) In the event of a hardship, as described at paragraph (e)(2)(iii) in this section, a holder of CVC or CPC QS may lease the IFQ derived from this QS for the term of the hardship. However, the holder of CVC or CPC QS may not lease the IFQ under this provision for more than 2 crab fishing years total in any 10 crab fishing year period. Such transfers are valid only during the crab fishing year for which the IFQ permit is issued and the QS holder must re-apply for any subsequent transfers.

(iii) NMFS will not approve transfers of IFQ under this provision unless the QS holder can demonstrate a hardship by an inability to participate in the crab QS fisheries because:

(A) Of a medical condition of the QS holder. The QS holder is required to provide documentation of the medical condition from a licensed medical doctor who verifies that the QS holder cannot participate in the fishery because of the medical condition.

(B) Of a medical condition involving an individual who requires the QS holder's care. The QS holder is required to provide documentation of the individual's medical condition from a licensed medical doctor. The QS holder

must verify that he or she provides care for that individual and that the QS holder cannot participate in the fishery because of the medical condition of that individual.

(C) Of the total or constructive physical loss of a vessel. The QS holder must provide evidence that the vessel was lost and could not be replaced in time to participate in the fishery for which the person is claiming a hardship.

(4) *IPQ derived from PQS.* IPQ derived from PQS may be leased.

(f) *Transfer of QS, PQS, IFQ or IPQ with restrictions.* If QS, PQS, IFQ or IPQ must be transferred as a result of a court order, operation of law, or as part of a security agreement, but the person receiving the QS, PQS, IFQ or IPQ by transfer does not meet the eligibility requirements of this section, the Regional Administrator will approve, with restrictions, an Application for transfer of crab QS/IFQ or PQS/IPQ. The Regional Administrator will not assign IFQ or IPQ resulting from the restricted QS or PQS to any person. IFQ or IPQ with restrictions may not be used for harvesting or processing species covered under the CR program. The QS, PQS, IFQ or IPQ will remain restricted until:

(1) The person who received the QS, PQS, IFQ or IPQ with restrictions meets the eligibility requirements of this section and the Regional Administrator approves an application for eligibility for that person; or

(2) The Regional Administrator approves the application for transfer from the person who received the QS, PQS, IFQ or IPQ with restrictions to a person who meets the eligibility requirements of this section.

(g) *Survivorship transfer privileges.* (1) On the death of an individual who holds QS or PQS, the surviving spouse or, in the absence of a surviving spouse, a beneficiary designated pursuant to paragraph (g)(3) of this section, receives all QS, PQS and IFQ or IPQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will. The Regional Administrator will approve an application for transfer to the surviving spouse or designated beneficiary when sufficient evidence has been provided to verify the death of the individual.

(2) A QS or PQS holder may provide the Regional Administrator with the name of the designated beneficiary from the QS or PQS holder's immediate family to receive survivorship transfer privileges in the event of the QS or PQS holders death and in the absence of a surviving spouse.

(3) The Regional Administrator will approve, for 3 calendar years following

the date of the death of an individual, an Application for transfer of crab QS/IFQ or PQS/IPQ from the surviving spouse or, in the absence of a surviving spouse, a beneficiary from the QS or PQS holder's immediate family designated pursuant to this section, to a person eligible to receive IFQ or IPQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ and IPQ in this section and the use limitations under § 680.42.

(h) *Application for transfer of crab QS/IFQ or PQS/IPQ—(1) General.* (i) An Application for transfer of crab QS/IFQ or PQS/IPQ must be approved by the Regional Administrator before the transferee may use the IFQ or IPQ to harvest or process crab QS species.

(ii) Persons who submit an Application for transfer of crab QS/IFQ or PQS/IPQ for approval will receive notification of the Regional Administrator's decision to approve or disapprove the application, and if applicable, the reason(s) for disapproval, by mail, unless another communication mode is requested on the application.

(2) *Contents.* A complete Application for transfer of crab QS/IFQ or PQS/IPQ must include the following information:

(i) *Type of transfer.* (A) Indicate type of transfer requesting.

(B) Indicate (YES or NO) whether this is a transfer of IFQ or IPQ only due to a hardship (medical emergency, etc.). If YES, provide documentation supporting the need for such transfer (doctor's statement, etc.).

(C) If requesting transfer of PQS/IPQ for use outside an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (l), the application must include an affidavit signed by the applicant stating that notice of the desired transfer has been provided to the ECC entity under civil contract terms referenced under § 680.40(f)(3) for the transfer of any PQS or IPQ subject to ROFR.

(ii) *Transferor information.* (A) The transferor is the person currently holding the QS, PQS, IFQ, or IPQ.

(B) Enter the transferor's name and NMFS Person ID, social security number or tax ID number, transferor's permanent business mailing address and any temporary mailing address the transferor wishes to use, business telephone, business facsimile, and business e-mail address (if available).

(iii) *Transferee information.* (A) The transferee is person receiving QS, PQS or IFQ, IPQ by transfer.

(B) Enter the transferee's name and NMFS Person ID, social security number or tax ID number, transferee's permanent business mailing address

and any temporary mailing address the transferee wishes to use, business telephone, business facsimile, and business e-mail address (if available);

(iv) *Transfer of QS or PQS and IFQ or IPQ.* Complete the following information if QS or PQS and IFQ or IPQ are to be transferred together or if transferring only QS or PQS:

(A) QS species;

(B) QS type;

(C) Range of serial numbers to be transferred (shown on QS certificate) numbered to and from;

(D) Number of QS units to be transferred;

(E) Transferor (seller) IFQ or IPQ permit number;

(F) Indicate (YES or NO) whether remaining IFQ or IPQ pounds for the current fishing year should be transferred; if NO, specify the number of pounds to be transferred;

(G) If this is a transfer of CPO QS, indicate whether being transferred as CPO QS or CVO QS and PQS;

(H) If CPO QS is being transferred as both CVO QS and PQS, specify number of units of each; and

(I) If CPO QS is being transferred as CVO QS, select region for which the QS is designated.

(v) *Transfer of IFQ or IPQ only.*

Complete the following information if transferring IFQ or IPQ only:

(A) QS species;

(B) IFQ/IPQ type;

(C) Range of serial numbers shown on QS certificate, numbered to and from;

(D) Number of IFQ or IPQ pounds to be transferred;

(E) Transferor (seller) IFQ or IPQ permit number; and

(F) Crab fishing year of the transfer.

(vi) *Price paid for the QS, PQS and/or IFQ, IPQ.* The transferor must provide the following information.

(A) Indicate whether (YES or NO) a broker was used for this transaction; If YES, provide dollar amount paid in brokerage fees or percentage of total price.

(B) Provide the total amount paid for the QS/IFQ or PQS/IPQ in this transaction, including all fees.

(C) Provide the price per unit of QS (price divided by QS units) and the price per pound (price divided by IFQ or IPQ pounds) of IFQ or IPQ.

(D) Indicate all reasons that apply for transferring the QS/IFQ or PQS/IPQ.

(vii) *Method of financing for the QS, PQS and/or IFQ, IPQ.* The transferee must provide the following information.

(A) Indicate (YES or NO) whether QS/IFQ or PQS/IPQ purchase will have a lien attached; if YES, provide the name of lien holder.

(B) Indicate one primary source of financing for this transfer.

(C) Indicate the sources used to locate the QS, PQS and/or IFQ, IPQ being transferred.

(D) Indicate the relationship, if any, between the transferor and the transferee.

(E) Indicate (YES or NO) whether an agreement exists to return the QS/IFQ or PQS/IPQ to the transferor or any other person, or with a condition placed on resale; If YES, provide written explanation.

(F) Attach a copy of the terms of agreement for the transfer, the bill of sale for QS or PQS, or lease agreement for IFQ or IPQ.

(G) Indicate whether an EDR was submitted, if required by § 680.6, and whether all fees have been paid, as required under § 680.44.

(viii) *Notary information*—(A) *Certification of transferor.* (1) Printed name and signature of transferor or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferor must be provided with the application; and (2) Notary Public signature, date commission expires, and notary stamp or seal

(B) *Certification of transferee.* (1) Printed name and signature of transferee or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferee must be provided with the application; and

(2) Notary Public signature, date commission expires, and notary stamp or seal.

(ix) *Attachments to the application and other conditions to be met.* (A) Indicate whether the person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR, if required to do so under § 680.6, and has paid all fees, as required by § 680.44; and

(B) All individuals applying to receive CVC QS or IFQ or CPC QS or IFQ by transfer must submit proof of at least one delivery of a crab species in any CR crab fishery in the 365 days prior to submission to NMFS of the Application for Transfer of QS/IFQ or PQS/IPQ. Proof of this landing is:

(1) Signature of the applicant on an ADF&G Fish Ticket; or

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

(i) *Approval criteria for an Application for transfer of crab QS/IFQ or PQS/IPQ.* Except as provided in paragraph (f) of this section, an

application for transfer of QS/IFQ or PQS/IPQ will not be approved until the Regional Administrator has determined that:

(1) The person applying to receive the QS, PQS, IFQ or IPQ meets the requirements of eligibility in paragraph (c) of this section;

(2) The person applying for transfer and the person applying to receive QS or IFQ/IPQ have their original notarized signatures on the application;

(3) No fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either party exist;

(4) The person applying to receive QS, PQS, IFQ or IPQ currently exists;

(5) The transfer would not cause the person applying to receive the QS, PQS, IFQ or IPQ to exceed the use limits in § 680.42;

(6) The person applying to make or receive the QS, PQS, IFQ or IPQ transfer has paid all IFQ or IPQ fees described under § 680.44; or has timely appealed the IAD of underpayment as described under § 680.44;

(7) The person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR, if required to do so under § 680.6;

(8) In the case of an application for transfer of PQS or IPQ for use outside an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (l), the Regional Administrator will not act upon the application for a period of 10 days. At the end of that time period, the application will be approved pending meeting the criteria set forth in this paragraph (i).

(9) In the case of an application for transfer of PQS for use within an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (l), The Regional Administrator will not approve the application unless either the ECC entity provides an affidavit to the Regional Administrator that the ECC wishes to permanently waive ROFR for the PQS or the proposed recipient of the PQS provides an affidavit affirming the completion of a contract for ROFR that includes the terms enacted under section 313(j) of the Magnuson-Stevens Act and referenced under § 680.40(f)(3).

(10) Other pertinent information requested on the application for transfer has been supplied to the satisfaction of the Regional Administrator.

(j) *Transfer of crab QS/IFQ to or from and ECCO*—(1) *Designation of an ECCO.*

(i) The appropriate governing body of each ECC may designate a non-profit organization to serve as the ECCO for

that ECC. To transfer and hold QS on the behalf of that ECC, this designation must be submitted by the non-profit organization in its Application to Become an ECCO.

(ii) If the non-profit entity is approved by NMFS to serve as the ECCO, then the appropriate governing body of the ECC must authorize the transfer of any QS from the ECCO.

(iii) The appropriate governing body for purposes of designating a non-profit organization for the Application to Become an ECCO, or acknowledging the transfer of any QS from an ECCO in each ECC is as follows:

(A) If the ECC is also a community eligible to participate in the Western Alaska CDQ Program, then the CDQ group is the appropriate governing body;

(B) If the ECC is not a CDQ community and is incorporated as a municipality and is not within an incorporated borough, then the municipal government is the appropriate governing body;

(C) If the ECC is not a CDQ community and is incorporated as a municipality and also within an incorporated borough, then the municipality and borough jointly serve as the appropriate governing body and both must agree to designate the same non-profit organization to serve as the ECCO or acknowledge the transfer of QS from the ECCO; and

(D) If the ECC is not a CDQ community and is not incorporated as a municipality and is in a borough, then the borough in which the ECC is located is the appropriate governing body.

(iv) The appropriate governing body in each ECC may designate only one non-profit organization to serve as the ECCO for that community at any one time.

(2) *Application to become an ECCO.* Prior to initially receiving QS or IFQ by transfer on behalf of a specific ECC, a non-profit organization that intends to represent that ECC as a ECCO must submit an application to become an ECCO and have that application approved by the Regional Administrator. The Regional Administrator shall provide an application to become an ECCO to any person on request or on the Internet at <http://www.fakr.noaa.gov/>.

(i) *Contents of application*—(A) *Applicant identification.* (1) Enter the name of the non-profit organization, taxpayer ID number, and NMFS Person ID, applicant's permanent business mailing address and any temporary business mailing address the applicant wishes to use, and the name of contact person, business telephone number,

business facsimile number, and e-mail address (if available);

(2) Name of community or communities represented by the non-profit organization; and

(3) Name of contact person for the governing body of each community represented.

(B) Required attachments to the application. (1) The articles of incorporation under the laws of the State of Alaska for that non-profit organization;

(2) A statement indicating the ECC(s) represented by that non-profit organization for purposes of holding QS;

(3) The bylaws of the non-profit organization;

(4) A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers;

(5) Additional contact information of the managing personnel for the non-profit organization and resumes of management personnel;

(6) A description of how the non-profit organization is qualified to manage QS on behalf of the ECC it is designated to represent, and a demonstration that the non-profit organization has the management skills and technical expertise to manage QS and IFQ; and

(7) A statement describing the procedures that will be used to determine the distribution of IFQ to residents of the ECC represented by that non-profit organization, including procedures used to solicit requests from residents to lease IFQ and criteria used to determine the distribution of IFQ leases among qualified community residents and the relative weighting of those criteria.

(C) *Applicant certification.* (1) Printed name of applicant or authorized agent, authorized signature, and date signed. If authorized agent, proof of authorization to act on behalf of the applicant must be provided with the application.

(2) Notary Public signature and date when commission expires, and notary seal or stamp.

(ii) [Reserved].

(k) *Application for transfer of crab QS/IFQ to or from an ECCO.* (1) An application for transfer of crab QS/IFQ to or from an ECCO must be approved by the Regional Administrator before the transferee may use the IFQ to harvest crab QS species.

(2) An application for transfer of crab QS/IFQ to or from an ECCO will not be approved until the Regional Administrator has reviewed and approved the transfer agreement signed by the parties to the transaction. Persons

who submit an application for transfer of crab QS/IFQ to or from an ECCO for approval will receive notification of the Regional Administrator's decision to approve or disapprove the application, and if applicable, the reason(s) for disapproval, by mail, unless another communication mode is requested on the application.

(3) *Contents.* A complete application for transfer of crab QS/IFQ to or from an ECCO includes the following:

(i) *General requirements.* (A) This form may only be used if an ECCO is the proposed transferor or the proposed transferee of the QS or IFQ.

(B) The party to whom an ECCO is seeking to transfer the QS/IFQ must be eligible to receive QS/IFQ by transfer.

(C) If the ECCO is applying to permanently transfer QS, a representative of the community on whose behalf the QS is held must sign the application.

(D) If authorized representative represents either the transferor or transferee, proof of authorization to act on behalf of transferor or transferee must be attached to the application.

(ii) *Transferor information.* Enter the transferor's (person currently holding the QS or IFQ) name, NMFS Person ID, social security number or Tax ID, permanent business mailing address, business telephone, business facsimile, and business e-mail address. If transferor is an ECCO, enter the name of ECC represented by the ECCO. The transferor may also provide a temporary address for each transaction in addition to the permanent business mailing address.

(iii) *Transferee information.* Enter the transferee's (person receiving QS or IFQ by transfer) name, NMFS Person ID, social security number or Tax ID, permanent business mailing address, business telephone, business facsimile, and business e-mail. If transferee is an ECCO, name of the community (ECC) represented by the ECCO. The transferee may also provide a temporary address for each transaction in addition to the permanent business mailing address.

(iv) *Identification of QS/IFQ to be transferred.* Complete the following information if QS and IFQ are to be transferred together or if transferring only QS:

(A) QS species;

(B) QS type;

(C) Number of QS or IFQ units to be transferred;

(D) Total QS units;

(E) Number of IFQ pounds;

(F) Range of serial numbers to be transferred (shown on QS certificate) numbered to and from;

(G) Name of community to which QS are currently assigned; and

(H) Indicate (YES or NO) whether remaining IFQ pounds for the current fishing year should be transferred; if NO, specify the number of pounds to be transferred.

(v) *Transfer of IFQ only.* (A) IFQ permit number and year of permit, and

(B) Actual number of IFQ pounds to be transferred.

(vi) *Transferor Information, if an ECCO.* Reason(s) for transfer:

(A) ECCO management and administration;

(B) Fund additional QS purchase;

(C) Participation by community residents;

(D) Dissolution of ECCO; and

(E) Other (specify).

(vii) *Price paid for QS, PQS, and/or IFQ, IPQ (Transferor).* The transferor must provide the following information:

(A) Whether (YES or NO) a broker was used for this transaction; If YES, provide dollar amount paid in brokerage fees or percentage of total price;

(B) Provide the total amount paid for the QS/IFQ in this transaction, including all fees;

(C) Provide the price per unit of QS (price divided by QS units) and the price per pound (price divided by IFQ) of IFQ; and

(D) Indicate all reasons that apply for transferring the QS/IFQ.

(viii) *Price paid for QS, PQS, and/or IFQ, IPQ (Transferee).* The transferee must provide the following information:

(A) Indicate (YES or NO) whether QS/IFQ purchase will have a lien attached; if YES, provide the name of lien holder;

(B) Indicate one primary source of financing for this transfer;

(C) Indicate the sources used to locate the QS or IFQ being transferred;

(D) Indicate the relationship, if any, between the transferor and the transferee;

(E) Indicate (YES or NO) whether an agreement exists to return the QS or IFQ to the transferor or any other person, or with a condition placed on resale; If YES, explain; and

(F) Attach a copy of the terms of agreement for the transfer, the bill of sale for QS, or lease agreement for IFQ.

(ix) *Notary information—(A) Certification of transferor.* (1) Printed name and signature of transferor or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferor must be provided with the application.

(2) Notary Public signature, date commission expires, and notary stamp or seal.

(B) *Certification of transferee.* (1) Printed name and signature of transferor



or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferee must be provided with the application.

(2) Notary Public signature, date commission expires, and notary stamp or seal.

(C) *Certification of authorized representative of community.* (1) Printed name, title and signature of authorized community representative, date signed, and printed name of community.

(2) Notary Public signature, date commission expires, and notary stamp or seal;

(4) *Attachments to the application and other conditions to be met.* (i) Indicate whether the person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR, if required to do so under § 680.6, and paid all fees, as required by § 680.44.

(ii) A copy of the terms of agreement for the transfer, the bill of sale for QS or PQS, or lease agreement for IFQ or IPQ.

(iii) An affirmation that the individual receiving IFQ from an ECCO has been a permanent resident in the ECC for a period of 12 months prior to the submission of the Application for Transfer QS/IFQ to or from an ECCO on whose behalf the ECCO holds QS.

(5) *Approval criteria for an application for transfer of crab QS/IFQ to or from an ECCO.* In addition to the criteria required for approval under paragraph (i) of this section, the following criteria are also required:

(i) The ECCO applying to receive or transfer crab QS has submitted a complete annual report(s) required by § 680.5;

(ii) The ECCO applying to transfer crab QS has provided information on the reasons for the transfer as described in paragraph (e) of this section; and

(iii) An individual applying to receive IFQ from an ECCO is a permanent resident of the ECC in whose name the ECCO is holding QS.

(l) *Eligible crab community right of first refusal (ROFR)*—(1) *Applicability*—

(i) *Exempt Fisheries.* PQS and IPQ issued for the BST, WAG, or WAI crab QS fisheries are exempt from ROFR provisions.

(ii) *Eligible Crab Communities (ECCs).* The ROFR extends to the ECCs, other

than Adak, and their associated governing bodies. The ROFR may be exercised by the ECC entity representing that ECC.

(2) *Community representation*—(i) *CDQ Communities.* ECC entity for purposes of exercise of ROFR for any ECC that is also a CDQ community shall be the CDQ group to which the ECC is a member.

(ii) *Non-CDQ communities.* (A) Any ECC, other than Adak, that is a non-CDQ community may designate an ECC entity that will represent the community in the exercise of ROFR at least 30 days prior to the ending date for the initial application period for the crab QS program specified in the **Federal Register**.

(B) The ECC entity eligible to exercise the right of first refusal on behalf of an ECC will be identified by the governing body(s) of the ECC. If the ECC is incorporated under the laws of the State of Alaska, and not within an incorporated borough, then the municipality is the governing body; if the ECC is incorporated and within an incorporated borough, then the municipality and borough are the governing bodies and must agree to designate the same ECC entity; if the ECC is not incorporated and in an incorporated borough, then the borough is the governing body.

(C) Each ECC may designate only one ECC entity to represent that community in the exercise of ROFR at any one time through a statement of support from the governing body of the ECC. That statement of support identifying the ECC entity must be submitted to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802, at least 30 days prior to the ending date of the initial application period for the crab QS program under § 680.40.

(D) The ECC ROFR is not assignable by the ECC entity.

(3) *Restrictions on transfer of PQS or IPQ out of North Gulf of Alaska communities*—(i) *Applicability.* Any community in the Gulf of Alaska north of a line at 56°20' N. lat.

(ii) *Notification of PQS or IPQ transfer.* A PQS holder submitting an application to transfer PQS or IPQ for use in processing outside any

community identified under paragraph (l)(3)(i) must notify the ECC entity designated by the City of Kodiak and Kodiak Island Borough under paragraph (l)(2) of this section 10 days prior to the intended transfer of PQS or IPQ for use outside the community. At the end of that time period, the application will be approved pending meeting the criteria set forth in paragraph (i) of this section.

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

(a) *QS and IFQ use caps*—(1) *General.* Separate and distinct QS and IFQ use caps apply to all QS and IFQ categories pertaining to a given crab QS fishery with the following provisions:

(i) A person who receives an initial allocation of QS that exceeds the use cap listed in paragraph (a)(2) of this section may not receive QS by transfer unless and until that person's holdings are reduced to an amount below the use cap.

(ii) A person will not be issued QS in excess of the use cap established in this section based on QS derived from landings attributed to an LLP license obtained via transfer after June 10, 2002 unless;

(A) The person applies to receive QS based on an LLP transferred after June 10, 2002 but prior to November 24, 2004, and

(B) The person will receive the amount of QS associated with that transferred LLP in excess of the use cap established in this section for a crab QS fishery solely because of the adjustment to legal landings available for QS allocation resulting from the BSAI Crab Capacity Reduction Program.

(iii) QS and IFQ use caps shall be based on the initial QS pools used to determine initial allocations of QS.

(2) Except for non-individual persons who hold PQS, as provided for in paragraph (b)(1)(ii) of this section, or a CDQ group, as provided for in paragraph (b)(3) of this section, a person, individually or collectively, may not:

(i) Hold QS in amounts in excess of the amounts specified in the following table, unless that person's QS was received in the initial allocation:

Fishery	CVO/CPO use cap in QS units	CVC/CPC use cap in QS units
(A) Percent of the initial QS pool for BBR .....	1.0% = 3,880,000 .....	2.0% = 240,00
(B) Percent of the initial QS pool for BSS .....	1.0% = 9,700,000 .....	2.0% = 600,00
(C) Percent of the initial QS pool for BST .....	1.0% = 1,940,000 .....	2.0% = 120,00
(D) Percent of the initial QS pool for PIK .....	2.0% = 582,000 .....	4.0% = 36,000
(E) Percent of the initial QS pool for SMB .....	2.0% = 582,000 .....	4.0% = 36,000
(F) Percent of the initial QS pool for EAG .....	10.0% = 970,000 .....	20.0% = 60,000
(G) Percent of the initial QS pool for WAG .....	10.0% = 3,880,000 .....	20.0% = 240,000

Fishery	CVO/CPO use cap in QS units	CVC/CPC use cap in QS units
(H) Percent of the initial QS pool for WAI .....	10.0% = 5,820,000 .....	20.0% = 360,000

(ii) Use IFQ in excess of the amount of IFQ that results from the QS caps in paragraph (a)(2)(i) of this section, unless that IFQ results from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(3) A CDQ Group, individually or collectively, may not:

(i) Hold QS in excess of more than the amounts of QS specified in the following table:

Fishery	CDQ CVO/CPO use cap in QS units
(A) 5.0 percent of the initial QS pool for BBR .....	19,400,000
(B) 5.0 percent of the initial QS pool for BSS .....	48,500,000
(C) 5.0 percent of the initial QS pool for BST .....	9,700,000
(D) 10.0 percent of the initial QS pool for PIK .....	2,910,000
(E) 10.0 percent of the initial QS pool for SMB .....	2,910,000
(F) 20.0 percent of the initial QS pool for EAG .....	1,940,000
(G) 20.0 percent of the initial QS pool for WAG .....	7,760,000
(H) 20.0 percent of the initial QS pool for WAI .....	11,640,000

(ii) Use IFQ in excess of the amount of IFQ that results from the QS caps in paragraph (a)(2)(i) of this section, unless that IFQ results from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(4) A person who is not an individual and who holds PQS may not:

(i) Hold QS in excess of the amounts specified in the following table:

Fishery	CVO/CPO use cap in QS units
(A) 5.0 percent of the initial QS pool for BBR .....	19,400,000
(B) 5.0 percent of the initial QS pool for BSS .....	48,500,000
(C) 5.0 percent of the initial QS pool for BST .....	9,700,000
(D) 5.0 percent of the initial QS pool for PIK .....	1,455,000
(E) 5.0 percent of the initial QS pool for SMB .....	1,455,000
(F) 5.0 percent of the initial QS pool for EAG .....	485,000
(G) 5.0 percent of the initial QS pool for WAG .....	1,940,000
(H) 5.0 percent of the initial QS pool for WAI .....	2,910,000

(ii) Use IFQ in excess of the amount of IFQ that results from the QS caps in paragraph (a)(2)(i) of this section, unless

that IFQ results from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(iii) A non-individual person that holds PQS would be limited to a QS and IFQ cap that would be calculated based on the sum of all QS or IFQ held by that PQS holder and all QS or IFQ held by any entity in which that PQS holder has a 10 percent or greater direct or indirect ownership interest.

(5) IFQ that is used by a crab harvesting cooperative is not subject to the use caps in paragraph (b) of this section.

(6) Non-individual persons holding QS will be required to provide, on an annual basis, a list of persons with an ownership interest in the non-individual QS holder. This list of owners shall be provided to the individual level and will include the percentage of ownership held by each individual. This annual submission of information must be submitted as part of the complete annual application for crab IFQ/IPQ permit.

(b) *PQS and IPQ Use Caps.* (1) A person may not:

(i) Hold more than 30 percent of the initial PQS pool in any crab QS fishery unless that person received an initial allocation of PQS in excess of this limit. A person will not be issued PQS in excess of the use caps established in this section based on PQS derived from the transfer of legal processing history after June 10, 2002.

(ii) Use IPQ in excess of the amount of IPQ that results from the PQS caps in paragraph (b)(1)(i) of this section unless that IPQ is yielded from PQS that was received by that person in the initial allocation of PQS for that crab QS fishery.

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

(3) Non-individual persons holding PQS will be required to provide, on an annual basis, a list of persons with an ownership interest in the non-individual PQS holder. This list of owners shall be provided to the individual level and will include the percentage of ownership held by each individual. This annual submission of information must be submitted as part of the complete annual application for crab IFQ/IPQ permit. 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) Directly or indirectly owns a 10 percent or greater interest in an entity that holds PQS.

(iii) A person that holds PQS would be limited to a PQS use cap that would be calculated based on the sum of all PQS held by that PQS holder and all PQS held by any entity in which that PQS holder has a 10 percent or greater direct or indirect ownership interest.

(iv) A person that holds IPQ would be limited to an IPQ use cap that would be calculated based on the sum of all IPQ held by that IPQ holder and all IPQ held by any entity in which that IPQ holder has a 10 percent or greater direct or indirect ownership interest.

(4) Before July 1, 2007, IPQ for the BSS, BBR, PIK, SMB, and EAG crab QS fisheries may not be used to process crab derived from PQS based on activities in an ECC, except in the geographic boundaries established in paragraph (b)(4)(iv) of this section, except that, before July 1, 2007:

(i) Ten percent of the IPQs that are issued for a crab QS fishery or an amount of IPQ that yields up to 500,000 raw crab pounds (226.7 mt) on an annual basis, whichever is less, may be leased for use in processing crab outside that ECC. The amount of IPQ that is issued on an annual basis for use in that ECC and the amount that may be leased outside that ECC will be established annually and will be divided on a pro rata basis among all PQS permit holders issued IPQ for use in that ECC for that year.

(ii) IPQ in excess of the amounts specified in paragraph (c)(7)(i) of this section may be used outside the ECC for which that IPQ is designated if an unavoidable circumstance prevents crab processing within that ECC. For purposes of this section, an unavoidable circumstance exists if the specific intent to conduct processing for a crab QS species in that ECC was thwarted by a circumstance that was:

(A) Unavoidable;

(B) Unique to the IPQ permit holder, or to the processing facility used by the IPQ permit holder in that ECC;

(C) Unforeseen and reasonably unforeseeable to the IPQ permit holder;

(D) The circumstance that prevented the IPQ permit holder from processing crab in that ECC actually occurred; and

(E) The IPQ permit holder took all reasonable steps to overcome the circumstance that prevented the IPQ permit holder from conducting processing for that crab QS fishery in that ECC.

(iii) This provision does not exempt any IPQ permit holder from any regional designation that may apply to that IPQ.

(iv) Geographic boundaries for use of IPQ outside ECCs for purposes of paragraph (b)(4) of this section:

(A) Akutan, False Pass, King Cove, or Port Moller: IPQ may not be used outside of the boundaries of the Aleutians East Borough as those boundaries are established by the State of Alaska;

(B) Kodiak: IPQ may not be used outside of the boundaries of the Kodiak Island Borough as those boundaries are established by the State of Alaska;

(C) Adak: IPQ may not be used outside of the boundaries of the City of Adak as those boundaries are established by the State of Alaska;

(D) Unalaska/Dutch Harbor: IPQ may not be used outside of the boundaries of the City of Unalaska as those boundaries are established by the State of Alaska.

(E) St. George: IPQ may not be used outside of the boundaries of the City of St. George as those boundaries are established by the State of Alaska.

(F) St. Paul: IPQ may not be used outside of the boundaries of the City of St. Paul as those boundaries are established by the State of Alaska.

(5) Any person harvesting crab under a Class A CVO or Class A CVC IFQ Permit, except as provided under paragraph (b)(4) of this section, must deliver that crab:

(i) Only to RCRs with unused IPQ for the same crab QS fishery; and

(ii) Only to an RCR in the region for which the QS and IFQ is designated.

(6) Any person harvesting crab under a Class B IFQ, CPO IFQ, CVC IFQ prior to July 1, 2008, or CPC IFQ permit may deliver that crab to any RCR.

(c) *Vessel limitations.* (1) Except for vessels that participate solely in a crab harvesting cooperative as described under § 680.21 and under the provisions described in paragraph (c)(4) of this section, no vessel may be used to harvest CVO or CPO IFQ in excess of the following percentages of the TAC for that crab QS fishery for that crab fishing year:

- (i) 2.0 percent for BSS;
- (ii) 2.0 percent for BBR;
- (iii) 2.0 percent for BST;
- (iv) 4.0 percent for PIK;
- (v) 4.0 percent for SMB;
- (vi) 20.0 percent for EAG;
- (vii) 20.0 percent for WAG; or
- (viii) 20.0 percent for the WAI crab QS fishery west of 179° W. long.

(2) CVC or CPC QS used on a vessel will not be included in determining whether a vessel use cap is met.

(3) A single person who receives an initial allocation of QS that results in IFQ that is in excess of the vessel use caps, in paragraph (c)(1) of this section, that person may catch and retain crab harvested with the resulting IFQ with a single vessel. However, this provision does not apply to IFQ resulting from QS derived from transfer of an LLP crab license that occurred after June 10, 2002. Two or more persons may not catch and retain their IFQ with one vessel in excess of these limitations.

(4) A vessel use cap would not apply to a vessel if all of the IFQ used on that vessel in a crab fishing year is held by a crab harvesting cooperative. This exemption is forfeited if that vessel is used to harvest any amount of IFQ not held by a crab harvesting cooperative during the same crab fishing year.

(5) A person holding a CVC or CPC IFQ permit is required to be aboard the vessel upon which their IFQ is being harvested.

(6) A person holding CVO or CPO QS does not have to be aboard the vessel being used to harvest their IFQ if they hold at least a 10 percent ownership interest in the vessel upon which the IFQ is to be harvested and are represented on board the vessel by a crab IFQ hired master employed by that QS holder as authorized under § 680.4.

(7) Ownership of a vessel means, for purposes of this section:

- (i) A sole proprietor; or
- (ii) A person that directly or indirectly owns a 10 percent or greater interest in an entity that owns a vessel.

#### **§ 680.43 Determinations and appeals.**

See § 679.43 of this chapter.

#### **§ 680.44 Cost recovery.**

(a) *Cost recovery fees*—(1) *Responsibility.* The person documented on the IFQ, IPQ, CDQ, RCR, Commercial Fisheries Entry Commission (CFEC), or State of Alaska Commissioner's permit as the permit holder at the time of a CR crab landing must comply with the requirements of this section.

(i) Subsequent transfer of IFQ, IPQ, CDQ, or QS does not affect the permit holder's liability for noncompliance with this section.

(ii) Non-renewal of an RCR permit does not affect the permit holder's liability for noncompliance with this section.

(2) *Fee liability determination.* (i) All CR allocation holders and RCR permit holders will be subject to a fee liability for any CR crab debited from a CR allocation during a crab fishing year.

(ii) Fee liability must be calculated by multiplying the applicable fee percentage by the ex-vessel value of the CR crab received by the RCR at the time of receipt, except as provided by paragraph (b)(3) of this section.

(iii) NMFS will provide a summary to all CR allocation and RCR permit holders available through a secure Internet site or on request during the last quarter of the crab fishing year. The summary will explain the fee liability determination including the current fee percentage, details of raw crab pounds debited from CR allocations by permit, port or port-group, species, date, and prices.

(3) *Fee collection.* (i) All RCRs who receive CR crab are responsible for submitting the cost recovery payment for all CR crab received.

(ii) All RCRs who receive CR crab in a crab fishing year must maintain and submit records for any crab cost recovery fees collected under the corresponding RCR permit.

(4) *Payment*—(i) *Payment due date.*

An RCR permit holder must submit any crab cost recovery fee liability payment(s) to NMFS at the address provided in paragraph (a)(4)(iii) of this section no later than July 31 of the crab fishing year following the crab fishing year in which the payment for a CR crab landing was made.

(ii) *Payment recipient.* Make payment payable to NMFS.

(iii) *Payment address.* Mail payment and related documents to the Administrator, Alaska Region, NMFS, Attn: Operations, Management, & Information Division (OMI), P.O. Box 21668, Juneau, AK 99802-1668, Facsimile (907-586-7354). Payments may also be submitted electronically to NMFS via forms available from RAM or on the RAM area of the Alaska Region Home Page at <http://www.fakr.noaa.gov/ram>.

(iv) *Payment method.* Payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank certified check, or credit card.

(b) *Ex-vessel value determination and use*—(1) *General.* An RCR permit holder must use either the ex-vessel value determined for shoreside processors or the ex-vessel value determined for at-sea Catcher/Processors (CP), depending on their activity. Ex-vessel value includes all cash, services, or other goods-in-kind exchanged for CR crab.

(2) *Shoreside ex-vessel value.* Shoreside processing facilities must use the price paid at the time of purchase as ex-vessel value for the purposes of calculating fee liability. Shoreside processing facilities must include any

subsequent retroactive payments as adjustments to the initial calculation of fee liability.

(3) *Catcher/processor ex-vessel value*—(i) *General*. Catcher/processors must use the corresponding CP standard price(s) for the purposes of calculating fee liability.

(ii) *CP standard prices*. As part of the summary described in paragraph (a)(2)(iii) of this section, the Regional Administrator will provide CP standard prices calculated for the current year during the last quarter of each crab fishing year. The CP standard prices will be described in U.S. dollars per raw crab pound, for CR crab debited from CR allocations during the current crab fishing year.

(iii) *Effective period*. CP standard prices established by NMFS shall apply to all landings made in the same crab fishing year as the CP standard price provided for that year and shall replace any CP standard prices previously provided by NMFS.

(iv) *Determination*. NMFS will calculate the CP standard prices to reflect, as closely as possible, the current crab fishing year's average shoreside processor price by fishery and by species, and any variations in reported shoreside ex-vessel values of CR crab. The Regional Administrator will base CP standard prices on the following types of information:

(A) Landed pounds by CR crab, port-group, and month;

(B) Total shoreside ex-vessel value by CR crab, port-group, and month; and

(C) Price adjustments, including retroactive payments.

(4) *Fee liability calculation*. All RCRs must base all fee liability calculations on the ex-vessel value that correlates to CR crab that is debited from a CR allocation and recorded in raw crab pounds.

(c) *Crab fee percentage*—(1) *Default percentage*. The crab fee percentage is 3 percent of the ex-vessel value of crab unless adjusted by the Regional Administrator by publication in the **Federal Register** in accordance with paragraphs (c)(3) and (c)(4) of this section.

(i) The calculated crab fee percentage will be divided equally between the harvesting and processing sectors.

(ii) Catcher/processors must pay the full crab fee percentage determined by the fee percentage calculation for all CR crab debited from a CR allocation.

(2) *Calculating fee percentage value*. Each year the Regional Administrator will calculate the fee percentage.

(i) *Factors*. In making the calculations the Regional Administrator will consider the following factors:

(A) The catch to which the crab cost recovery fee will apply;

(B) The projected ex-vessel value of that catch;

(C) The costs directly related to the management and enforcement of the Crab Rationalization Program;

(D) The funds available for the Crab Rationalization Program in the Limited Access System Administrative Fund (LASAF);

(E) Nonpayment of fee liabilities.

(ii) *Methodology*. In making the calculation, the Regional Administrator will use the following methodology:

Harvesting and Processing Sectors:

$$[[100 \times (\text{DPC} - \text{AB}) / \text{V}] / (1 - \text{NPR})] \times 0.5$$
 Catcher/Processors: 
$$[100 \times (\text{DPC} - \text{AB}) / \text{V}] / (1 - \text{NPR})$$

Where:

DPC is the direct program costs for the Crab Rationalization Program for the previous fiscal year,

AB is the projected end of the year LASAF account balance for the Crab Rationalization Program, and

V is the projected ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year, and NPR is the fraction of the fee assessments that is expected to result in nonpayment.

(3) *Adjustments*. During the first quarter of each crab fishing year, the Regional Administrator will consider adjusting the crab fee percentage. Consideration will be based on the calculations described in paragraph (c)(2) of this section.

(4) *Publication*. The Regional Administrator will make any adjustments in the crab fee percentage by publication in the **Federal Register**.

(5) *Applicable percentage*. The RCR permit holder must use the crab fee percentage in effect at the time a CR crab is debited from a CR allocation to calculate the crab cost recovery fee liability for such CR crab. The RCR permit holder must use the crab fee percentage in effect at the time a CR crab is debited from a CR allocation to calculate the crab cost recovery fee liability for any retroactive payments for that CR crab.

(d) *Underpayment of fee liability*. (1) Under § 680.4, an applicant will not receive new IFQ, IPQ, or RCR permits until he or she submits a complete application. A complete application shall include full payment of an applicant's complete crab cost recovery fee liability as reported by the RCR.

(2) If an RCR fails to submit full payment for crab cost recovery fee liability by the date described in paragraph (a)(4) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the RCR permit holder stating that the RCR permit holder's estimated fee liability, as indicated by his or her own submitted information, is the crab cost recovery fee liability due from the RCR permit holder.

(ii) Disapprove any transfer of IFQ, IPQ, QS, or PQS to or from the RCR permit holder in accordance with § 680.41.

(3) If an RCR fails to submit full payment by the application deadline described at § 680.4, no IFQ or IPQ permit will be issued to that RCR for that crab fishing year.

(4) Upon final agency action determining that an RCR permit holder has not paid his or her crab cost recovery fee liability, the Regional Administrator may continue to withhold issuance of any new IFQ, IPQ, or RCR permit for any subsequent crab fishing years. If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(e) *Over payment*. Upon issuance of final agency action, any amount submitted to NMFS in excess of the crab cost recovery fee liability determined to be due by the final agency action will be returned to the RCR permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future crab cost recovery fee liability.

(f) *Appeals and requests for reconsideration*. An RCR permit holder who receives an IAD may either appeal the IAD pursuant to 50 CFR 679.43 or request reconsideration. Within 60 days from the date of issuance of the IAD, the Regional Administrator may undertake reconsideration of the IAD on his or her own initiative. If a request for reconsideration is submitted or the Regional Administrator initiates reconsideration, the 60-day period for appeal under 50 CFR 679.43 will begin anew upon issuance of the Regional Administrator's reconsidered IAD. The Regional Administrator may undertake only one reconsideration of the IAD, if any. If an RCR permit holder fails to file an appeal of the IAD pursuant to 50 CFR 679.43 or request reconsideration within the time period provided, the IAD will become the final agency action. In any appeal or reconsideration of an IAD made under this section, an RCR permit holder has the burden of proving his or her claim.

(g) *Fee submission form*. An RCR must submit an RCR permit holder fee submission form according to § 680.5(f).

TABLE 1 TO PART 680.—CRAB RATIONALIZATION (CR) FISHERIES

Fishery code	CR fishery	Geographic area
BBR .....	Bristol Bay red king crab ( <i>Paralithodes camtschaticus</i> ).	In waters of the EEZ with: (1) a northern boundary of 58°30' N. lat., (2) a southern boundary of 54°36' N. lat., and (3) a western boundary of 168° W. long. and including all waters of Bristol Bay.
BSS .....	Bering Sea Snow crab ( <i>Chionoecetes opilio</i> ).	In waters of the EEZ with: (1) a northern and western boundary of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991). (2) a southern boundary of 54°30' N. lat. to 171° W. long., and then south to 54°36' N. lat.
BST .....	Bering Sea Tanner crab ( <i>Chionoecetes bairdi</i> ).	In waters of the EEZ with: (1) a northern and western boundary of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991). (2) a southern boundary of 54°30' N. lat. to 171° W. long., and then south to 54°36' N. lat.
EAG .....	Eastern Aleutian Islands golden king crab ( <i>Lithodes aequispinus</i> ).	In waters of the EEZ with: (1) an eastern boundary the longitude of Scotch Cap Light (164°44' W. long.) To 53°30' N. lat., then West to 165° W. long. (2) a western boundary of 174° W. long., and (3) a northern boundary of a line from the latitude of Cape Sarichef (54°36' N. lat.) westward to 171° W. long., then north to 55°30' N. lat., then west to 174° W. long.
PIK .....	Pribilof red king and blue king crab ( <i>Paralithodes camtschaticus</i> and <i>P. platypus</i> ).	In waters of the EEZ with: (1) a northern boundary of 58°30' N. lat., (2) an eastern boundary of 168° W. long., (3) a southern boundary line from 54°36' N. lat., 168° W. long., to 54°36' N. lat., 171° W. long., to 55°30' N. lat., 171° W. long., to 55°30' N. lat., 173°30' E. lat., and then westward to the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
SMB .....	St. Matthew blue king crab ( <i>Paralithodes platypus</i> ).	In waters of the EEZ with: (1) a northern boundary of 62° N. lat., (2) a southern boundary of 58°30' N. lat., and (3) a western boundary of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
WAG .....	Western Aleutian Islands golden king crab ( <i>Lithodes aequispinus</i> ).	In waters of the EEZ with: (1) an eastern boundary the longitude 174° W. long., (2) a western boundary the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) a northern boundary of a line from the latitude of 55°30' N. lat., then west to the U.S.-Russian Convention line of 1867.
WAI .....	Western Aleutian Islands red king crab ( <i>Paralithodes camtschaticus</i> ).	In waters of the EEZ with: (1) an eastern boundary the longitude 179° crab W. long., (2) a western boundary of the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) a northern boundary of a line from the latitude of 55°30' N. lat., then west to the Maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).

TABLE 2 TO PART 680.—CRAB SPECIES CODES

Species code	Common name	Scientific name
900 .....	Box .....	<i>Lopholithodes mandtii</i> .
910 .....	Dungeness .....	<i>Cancer magister</i> .
921 .....	Red king crab .....	<i>Paralithodes camtschaticus</i> .
922 .....	Blue king crab .....	<i>Paralithodes platypus</i> .
923 .....	Golden (brown) king crab .....	<i>Lithodes aequispinus</i> .
924 .....	Scarlet king crab .....	<i>Lithodes couesi</i> .
931 .....	Tanner crab .....	<i>Chionoecetes bairdi</i> .
932 .....	Snow crab .....	<i>Chionoecetes opilio</i> .
933 .....	Grooved Tanner crab .....	<i>Chionoecetes tanneri</i> .
934 .....	Triangle Tanner crab .....	<i>Chionoecetes angulatus</i> .
940 .....	Korean horsehair crab .....	<i>Erimacrus isenbeckii</i> .
951 .....	Multispinus crab .....	<i>Paralomis multispinus</i> .
953 .....	Verrilli crab .....	<i>Paralomis verrilli</i> .

TABLE 3A TO PART 680.—CRAB  
DELIVERY CONDITION CODES

[The condition of the fish or shellfish at the point it is weighed and recorded on the ADF&G fish ticket]

Code	Description
01 .....	Whole crab, live.
79 .....	Deadloss.

TABLE 3C TO PART 680.—CRAB  
PRODUCT CODES FOR ECONOMIC  
DATA REPORTS

Code	Description
01 .....	Whole crab.
80 .....	Sections.
81 .....	Meats.
97 .....	Other (specify).

TABLE 5 TO PART 680.—CRAB SIZE  
CODES

Size code	Description
1 .....	Standard or large sized crab or crab sections.
2 .....	Smaller size crab or crab sections, e.g., snow crab less than 4 inches.

TABLE 3B TO PART 680.—CRAB  
DISPOSITION OR PRODUCT CODES

Code	Description
80 .....	Sections.
95 .....	Personal use—not sold.
97 .....	Other retained product (specify condition).

TABLE 4 TO PART 680.—CRAB  
PROCESS CODES

Process code	Description
0 .....	Other (specify).
1 .....	Fresh.
2 .....	Frozen.
3 .....	Salted/brined.
6 .....	Cooked.
7 .....	Live.
18 .....	Fresh/vacuum pack.
21 .....	Frozen/block.
22 .....	Frozen/shatter pack.
28 .....	Frozen/vacuum pack.

TABLE 6 TO PART 680.—CRAB GRADE  
CODES

Grade/code	Description
1 .....	Standard or premium quality crab or crab sections.
2 .....	Lower quality product, e.g., dirty shelled crab or a pack that is of lower quality than No. 1 crab.

TABLE 7 TO PART 680.—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY

Column A: Crab QS Fisheries	Column B: Qualifying years for QS	Column C: Eligibility years for CVC and CPC QS	Column D: Recent participation seasons for CVC and CPC QS	Column E: Subset of qualifying years
For each crab QS fishery the Regional Administrator shall calculate (see § 680.40(c)(2):	QS for any qualified person based on that person's total legal landings of crab in each of the crab QS fisheries for any:	In addition, each person receiving CVC and CPC QS must have made at least one landing per year, as recorded on a State of Alaska fish ticket, in any three years during the base period described below:	In addition, each person receiving CVC or CPC QS, must have made at least one landing, as recorded on a State of Alaska fish ticket, in at least 2 of the last 3 fishing seasons in each of the crab QS fisheries as those seasons are described below:	The maximum number of qualifying years that can be used to calculate QS for each QS fishery is:

TABLE 7 TO PART 680.—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

<i>Column A: Crab QS Fisheries</i>	<i>Column B: Qualifying years for QS</i>	<i>Column C: Eligibility years for CVC and CPC QS</i>	<i>Column D: Recent participation seasons for CVC and CPC QS</i>	<i>Column E: Subset of qualifying years</i>
1. Bristol Bay red king crab (BBR)	4 years of the 5-year QS base period beginning on: (1) November 1, 1996 through November 5, 1996; (2) November 1, 1997 through November 5, 1997; (3) November 1, 1998 through November 6, 1998; (4) October 15, 1999 through October 20, 1999; and (5) October 16, 2000 through October 20, 2000	3 years of the 5-year QS base period beginning on: (1) November 1, 1996 through November 5, 1996; (2) November 1, 1997 through November 5, 1997; (3) November 1, 1998 through November 6, 1998; (4) October 15, 1999 through October 20, 1999; and (5) October 16, 2000 through October 20, 2000	(1) October 16, 2000 through October 20, 2000. (2) October 15, 2001 through October 18, 2001. (3) October 15, 2002 through October 18, 2002.	4
2. Bering Sea snow crab (BSS)	4 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 21, 1998; (4) January 15, 1999 through March 22, 1999; and (5) April 1, 2000 through April 8, 2000	3 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 21, 1998; (4) January 15, 1999 through March 22, 1999; and (5) April 1, 2000 through April 8, 2000	(1) April 1, 2000 through April 8, 2000. (2) January 15, 2001 through February 14, 2001. (3) January 15, 2002 through February 8, 2002.	4
3. Bering Sea Tanner crab (BST)	4 of the 6 seasons beginning on: (1) November 15, 1992 through March 31, 1993; (2) November 1, 1993 through November 10, 1993; (3) November 20, 1993 through January 1, 1994; (4) November 1, 1994 through November 21, 1994; (5) November 1, 1995 through November 16, 1995; and (6) November 1, 1996 through November 5, 1996 and November 15, 1996 through November 27, 1996.	3 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1, 1993 through November 10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1, 1994 through November 21, 1994; (5) November 1, 1995 through November 16, 1995; and (6) November 1, 1996 through November 5, 1996 and November 15, 1996 through November 27, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	4



TABLE 7 TO PART 680.—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

<i>Column A: Crab QS Fisheries</i>	<i>Column B: Qualifying years for QS</i>	<i>Column C: Eligibility years for CVC and CPC QS</i>	<i>Column D: Recent participation seasons for CVC and CPC QS</i>	<i>Column E: Subset of qualifying years</i>
4. Eastern Aleutian Islands golden king crab (EAG)	5 years of the 5-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 through November 24, 1997; (3) September 1, 1998 through November 7, 1998; (4) September 1, 1999 through October 25, 1999; and (5) August 15, 2000 through September 24, 2000.	3 years of the 5-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 through November 24, 1997; (3) September 1, 1998 through November 7, 1998; (4) September 1, 1999 through October 25, 1999; and (5) August 15, 2000 through September 25, 2000.	(1) September 1, 1999 through October 25, 1999. (2) August 15, 2000 through September 24, 2000. (3) August 15, 2001 through September 10, 2001.	5
5. Pribilof red king and blue king crab (PIK)	4 years of the 5-year period beginning on: (1) September 15, 1994 through September 21, 1994; (2) September 15, 1995 through September 22, 1995; (3) September 15, 1996 through September 26, 1996; (4) September 15, 1997 through September 29, 1997; and (5) September 15, 1998 through September 28, 1998.	3 years of the 5-year period beginning on: (1) September 15, 1994 through September 21, 1994; (2) September 15, 1995 through September 22, 1995; (3) September 15, 1996 through September 26, 1996; (4) September 15, 1997 through September 29, 1997; and (5) September 15, 1998 through September 28, 1998.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries, except that persons applying for an allocation to receive QS based on legal landings made aboard a vessel less than 60' LOA at the time of harvest are exempt from this requirement.	4
6. St. Matthew blue king crab (SMB)	4 years of the 5-year period beginning on: (1) September 15, 1994 through September 22, 1994; (2) September 15, 1995 through September 20, 1995; (3) September 15, 1996 through September 23, 1996; (4) September 15, 1997 through September 22, 1997; and (5) September 15, 1998 through September 26, 1998.	3 years of the 5-year period beginning on: (1) September 15, 1994 through September 22, 1994; (2) September 15, 1995 through September 20, 1995; (3) September 15, 1996 through September 23, 1996; (4) September 15, 1997 through September 22, 1997; and (5) September 15, 1998 through September 26, 1998.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries	4
7. Western Aleutian Islands golden king crab (WAG)	5 of the 5 seasons beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 through August 21, 1998; (3) September 1, 1998 through August 31, 1999; (4) September 1, 1999 through August 14, 2000; and (5) August 15, 2000 through March 28, 2001.	3 of the 5 seasons beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 through August 31, 1998; (3) September 1, 1998 through August 31, 1999; (4) September 1, 1999 through August 14, 2000; and (5) August 15, 2000 through March 28, 2001.	(1) September 1 1999 through August 14, 2000. (2) August 15, 2000 through March 28, 2001. (3) August 15 2001 through March 30, 2002.	5

TABLE 7 TO PART 680.—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	Column B: Qualifying years for QS	Column C: Eligibility years for CVC and CPC QS	Column D: Recent participation seasons for CVC and CPC QS	Column E: Subset of qualifying years
8. Western Aleutian Islands red king crab (WAI)	3 of the 4 seasons beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1993 through February 15, 1994; (3) November 1, 1994 through November 28, 1994; and (4) November 1, 1995 through February 13, 1996.	3 of the 4 seasons beginning on: 3 of the 4 seasons beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1995 through February 15, 1994; (3) November 1, 1994 through November 28, 1994; and (4) November 1, 1995 through February 13, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fishers.	3

TABLE 8 TO PART 680.—INITIAL QS AND PQS POOL FOR EACH CRAB QS FISHERY

Crab QS fishery	Initial QS pool	Initial PQS pool
BBR—Bristol Bay red king crab .....	400,000,000	400,000,000
BSS—Bering Sea snow crab ( <i>C. opilio</i> ) .....	1,000,000,000	1,000,000,000
BST—Bering Sea Tanner crab ( <i>C. bairdi</i> ) .....	200,000,000	200,000,000
EAG—Eastern Aleutian Islands golden king crab .....	10,000,000	10,000,000
PIK—Pribilof Islands red and blue king crab .....	30,000,000	30,000,000
SMB—St. Matthew blue king crab .....	30,000,000	30,000,000
WAG—Western Aleutian Islands golden king crab .....	40,000,000	40,000,000
WAI—Western Aleutian Islands red king crab .....	60,000,000	60,000,000

TABLE 9 TO PART 680.—INITIAL ISSUANCE OF CRAB PQS BY CRAB QS FISHERY

Column A: For each crab QS fishery	Column B: The Regional Administrator shall calculate PQS for any qualified person based on that person's total legal purchase of crab in each of the crab QS fisheries for any . . .
Bristol Bay red king crab (BBR) .....	3 years of the 3-year QS base period beginning on: (1) November 1, 1997 through November 5, 1997; (2) November 1, 1998 through November 6, 1998; and (3) October 15, 1999 through October 20, 1999.
Bering Sea snow crab (BSS) .....	3 years of the 3-year period beginning on: (1) January 15, 1997 through March 21, 1997; (2) January 15, 1998 through March 21, 1998; and (3) January 15, 1999 through March 22, 1999.
Bering Sea Tanner crab (BST) .....	Equivalent to 50 percent of the total legally processed crab in the Bering Sea snow crab fishery during the qualifying years established for that fishery, and 50 percent of the total legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that fishery.
Eastern Aleutian Island golden king crab (EAG) .....	4 years of the 4-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 through November 24, 1997; (3) September 1, 1998 through November 7, 1998; and (4) September 1, 1999 through October 25, 1999.
Pribilof Islands red and blue king crab (PIK) .....	3 years of the 3-year period beginning on: (1) September 15, 1996 through September 26, 1996; (2) September 15, 1997 through September 29, 1997; and (3) September 15, 1998 through September 28, 1998.
St. Matthew blue king crab (SMB) .....	3 years of the 3-year period beginning on: (1) September 15, 1996 through September 23, 1996; (2) September 15, 1997 through September 22, 1997; and (3) September 15, 1998 through September 26, 1998.
Western Aleutian Island golden king crab (WAG) .....	4 years of the 4-year base period beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 through August 31, 1998; (3) September 1, 1998 through August 31, 1999; and (4) September 1, 1999 through August 14, 2000.
Western Aleutian Island red king crab (WAI) .....	Equivalent to the total legally processed crab in the Western Aleutian Islands golden (brown) king crab fishery during the qualifying years established for that fishery.