

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 05/23/2008

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Suzanne Hilding
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 05/23/2008

ACTION REQUESTED: Revision of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200805-0648-008
AGENCY ICR TRACKING NUMBER:
TITLE: Alaska Region Catcher/Processor Owner Quota Shares And Individual Fishing Quota
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0576
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 05/31/2011 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	3	2	7
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	3	2	7
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Application for Converted CPO QS and IFQ	NA	Application for Converted CPO QS and IFQ	

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	10. Abstract
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
ALASKA REGION CATCHER/PROCESSOR OWNER QUOTA SHARES AND
INDIVIDUAL FISHING QUOTA
OMB CONTROL NO. 0648-XXXX**

INTRODUCTION

In January 2004, the U.S. Congress amended Section 313(j) of the [Magnuson-Stevens Act](#) to mandate the Secretary of Commerce (Secretary) to implement the Crab Rationalization Program (Program) for the Bering Sea and Aleutian Islands Management Area (BSAI) crab fisheries. The Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The North Pacific Fishery Management Council prepared, and National Marine Fisheries Service (NMFS) approved, the Fishery Management Plan (FMP) for BSAI King and Tanner Crabs. The FMP establishes criteria for the management of certain aspects of the BSAI crab fisheries by the State of Alaska Department of Fish and Game (ADF&G). The FMP is implemented by regulations at [50 CFR part 680](#).

This action is a request for a new collection-of-information for an annual permit application for Converted catcher/processor owner quota shares (CPO QS). This new collection will be integrated into Office of Management and Budget (OMB) Control No. 0648-0514.

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

On July 11, 2006, the President signed the U. S. Coast Guard and Maritime Transportation Act of 2006 (Coast Guard Act) which contained a provision mandating the Secretary to issue processor quota share (PQS) for the Bristol Bay red king crab and the Bering Sea snow crab fisheries to Blue Dutch, limited liability company (LLC), under specific conditions.

On January 12, 2007, the President signed the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA, Public Law 109-479), which added a new requirement in section 122(a) for the Secretary, not later than 90 days after the date of enactment of that Act, to amend the FMP to modify the Program to authorize conversion of catcher vessel owner quota shares (CVO QS) and PQS to CPO QS.

NMFS proposes regulations implementing Amendment 25 to the FMP which would amend the Program. Amendment 25 to the FMP would authorize conversion of CVO QS and PQS to newly created North Region CPO QS.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

Amendment 25 to the FMP complies with the MSRA by amending the FMP to include an additional provision to the Program. Amendment 25 authorizes an eligible entity and its commonly owned affiliates to combine North PQS and North CVO QS and exchange these

shares for newly created converted catcher/processor owner quota shares (CPO QS). Allowing entities to convert PQS and CVO QS to CPO QS would allow them to harvest and process crab onboard a catcher/processor. Electing to exercise this provision could reduce each eligible entity's operating costs associated with purchasing crab, processing crab on land or in a stationary floater processor (SFP), and complying with the Program's arbitration system.

Eligible entities would receive one unit of North CPO QS in exchange for one unit of North CVO QS and 0.9 units of North PQS. The amount of converted CPO QS issued to each entity could not exceed 1 million pounds during any calendar year.

According to the NMFS Official Record, three individual entities are eligible for these new provisions. Yardarm Knot, LLC, and its commonly owned affiliates, and Blue Dutch, LLC, and its commonly owned affiliates, would be eligible for the first type of conversion. Trident Seafoods, and its commonly owned affiliates, would be eligible for the second type of conversion. NMFS cannot predict the annual amount of converted CPO QS that would be annually issued because the participants would annually elect to exercise this provision and need not request conversion of all CVO QS and PQS held.

While the statutory language does not specifically define which fisheries are subject to this provision, converted CPO QS would only be created for the snow crab and Bristol Bay red king crab fisheries, because these were the only fisheries for which the eligible entities were initially issued North PQS and North CVO QS.

Annual Application for Crab Converted CPO QS and CPO Individual Fishing Quota (IFQ)

Crab QS is issued by the Regional Administrator to persons who successfully apply for an initial allocation under § 680.40 or receive QS by transfer under § 680.41. To qualify for a crab QS permit, the applicant must be a U.S. Citizen. Converted CPO QS permit is valid until the end of the crab fishing year for which the permit is issued. The application must be submitted with a completed Annual Application for an IFQ/individual processing quota (IPQ) Permit by August 1 of each year.

The application is not complete until NMFS has verified that the applicant has submitted all required Economic Data Reports, and the applicant has paid all outstanding fee obligations.

Annual application for crab converted CPO QS and CPO IFQ

Block A – Applicant information

Name and NMFS Person ID
Permanent business mailing address and temporary business mailing address (optional)
Business telephone number, fax number and e-mail address

Block B – Identification of North Region Bristol Bay Red King Crab (BBR) or Bering Sea Snow Crab (BSS) CVO QS and PQS for Conversion

Only persons affiliated with one or more of the entities below may apply for converted CPO IFQ. Indicate which of the entities, as described in § 680.40(c)(5)(ii) through (c)(5)(iv), with which affiliated:

- Entity A: Yardarm Knot, Inc. and any person who is affiliated with Yardarm Knot, Inc.
- Entity B: Blue Dutch, LLC and any person who is affiliated with Blue Dutch, LLC
- Entity C: Trident Seafoods, Inc. and any person who is affiliated with Trident Seafoods, Inc.

Identify the BBR or BSS North Region QS or PQS for conversion to CPO QS

Fishery
Sector
Region = North
Beginning Serial Number
Ending Serial Number

Block C – Applicant signature

Printed name and signature of applicant and date signed.
If the application is completed by an authorized representative, attach proof of authorization.

Annual application for Crab Converted CPO QS and CPO IFQ, Respondent	
Number of respondents	3
Total annual responses	3
Frequency of response = 1	
Total burden hours (0.5 x 3 = 1.50)	2 hr
Time per response = 0.5 hr	
Total personnel cost (\$25 x 2)	\$50
Total miscellaneous costs (7.42)	\$7
Annual postage (.41 x 2 = .82)	
Annual photocopy (2 x .10 x 3= 0.60)	
Annual fax (\$6 x 1 = 6)	

Annual application for Crab Converted CPO QS and CPO IFQ, Federal Government	
Number of responses	3
Total burden hours (.75)	1 hr
Time per response = (15/60) = 0.25	
Total personnel costs (\$25 x 1)	\$25
Total miscellaneous costs	0

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with National Oceanic and Atmospheric Administration (NOAA) standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

This application may be completed on the computer screen at www.alaskafisheries.noaa.gov by the participant, downloaded, printed, and faxed or submitted by e-mail. NMFS is pursuing an Internet method in the future whereby all of the information will be entered online and submitted directly and automatically into a database.

4. Describe efforts to identify duplication.

None of the information collected as part of this information collection duplicates other collections. This information collection is part of a specialized and technical program that is not like any other.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The proposed collection-of-information does not impose an impact on small entities: none of the three potential respondents is a small business.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Without the specified scheme, permitting scheme described in this Supporting Statement, NMFS would not be able to comply with the Coast Guard Act and Public Law 109-479.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

No special circumstances exist.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

NMFS Alaska Region will publish a proposed rule, RIN 0648-AV19, requesting comments from the public.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment or gift will be provided under this program.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

The information collected is confidential under section 302(i) of the Magnuson-Stevens Act (16 U.S.C. 1852 et seq.) and under NOAA Administrative Order (AO) 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

This information collection does not involve information of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

Estimated total respondents: 3. Estimated total responses: 3. Estimated total burden: 2 hr.
Estimated total personnel costs: \$50.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

Estimated total miscellaneous costs: \$7.

14. Provide estimates of annualized cost to the Federal government.

Estimated total responses: 3. Estimated total burden: 1 hr. Estimated total personnel costs: \$25.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

This is a new program.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The results of this collection-of-information will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.


In accordance with OMB requirements, the control number and the expiration date of OMB approval are shown on the application.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

No exceptions to the certification statement are requested.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

<p>Application for CONVERTED CPO QUOTA SHARE (QS) AND CPO IFQ</p>	<p>U.S. Department of Commerce NOAA Fisheries Service, Alaska Region Restricted Access Management (RAM) Post Office Box 21668 Juneau, Alaska 99802-1668</p> 
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Annual Application Deadline – August 1

This application must be submitted with a completed Annual Application for an IFQ/IPQ Permit.

NOTE: This application will not be considered to be complete until NMFS has verified that:

1. the applicant has submitted all required Economic Data Reports; and,
2. the applicant has paid all outstanding fee obligations.

BLOCK A –APPLICANT INFORMATION

1. Name of Applicant:	2. NMFS Person ID Number:	
3. Permanent Business Mailing Address:	4. Temporary Business Mailing Address (see instructions):	
5. Business Telephone Number:	6. Business Fax Number:	7. Business E-mail Address:

BLOCK B – IDENTIFICATION OF NORTH REGION BBR OR BSS CVO QS AND PQS FOR CONVERSION

Only persons affiliated with one or more of the entities below may apply for converted CPO IFQ. Indicate which of the entities, as described in § 680.40(c)(5)(ii) through (c)(5)(iv), you are or are affiliated with:

Entity A: Yardarm Knot, Inc. and any person who is affiliated with Yardarm Knot, Inc

Entity B: Blue Dutch, LLC and any person who is affiliated with Blue Dutch, LLC

Entity C: Trident Seafoods, Inc. and any person who is affiliated with Trident Seafoods, Inc.

Identify below the BBR or BSS North Region QS or PQS that you wish to have converted to CPO QS

<u>Fishery</u>	<u>Sector</u>	<u>Region</u>	<u>Beginning Serial Number</u>	<u>Ending Serial Number</u>
_____	_____	North	_____	_____
_____	_____	North	_____	_____

BLOCK C – APPLICANT SIGNATURE

Under penalty of perjury, I certify by my signature below that I have examined the information and the claims provided on this application and, to the best of my knowledge and belief, the information presented here is true, correct, and complete.

1. Signature of Applicant:

2. Date:

3. Printed Name of Applicant: (**Note:** If this is completed by an authorized representative, attach authorization.):

PUBLIC REPORTING BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing the instructions, searching the existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden estimate or any other aspect of this collection of information, to Assistant Regional Administrator, Sustainable Fisheries Division, NOAA Fisheries Service (NMFS), P.O. Box 21668, Juneau, AK 99802-1668.

ADDITIONAL INFORMATION

Before completing this form, please note the following: 1) Notwithstanding any other provision of 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 Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number; 2) This information is mandatory and is required to manage commercial fishing efforts under 50 CFR part 680, under section 402(a) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*) and under 16 U.S.C. 1862(j); 3) Responses to this information request are confidential under section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*). They are also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

**Instructions -- Application for Converted CPO Quota Share (QS)
And CPO IFQ**

This Application is due August 1st.

This Application must be submitted with a completed Annual Application for IFQ/IPQ Permit.

Under 50 CFR 680.40(c)(5), any persons who are members of or affiliated with the following entities, as described in 50 CFR 680.40(c), may request an issuance of converted CPO QS on an application for IFQ/IPQ for that crab fishing year:

- Entity A: Yardarm Knot, Inc. and any person who is affiliated with Yardarm Knot, Inc.;
- Entity B: Blue Dutch, LLC and any person who is affiliated with Blue Dutch, LLC; and
- Entity C: Trident Seafoods, Inc. and any person who is affiliated with Trident Seafoods, Inc.

Such requests must meet the criteria listed in regulations at 50 CFR 680.40 in order to be approved.

NOTE: RAM will not consider an application to be complete unless and until it has been determined that:

1. the applicant has submitted all required Economic Data Reports; and,
2. the applicant has paid all outstanding fee obligations (if any).

Completing the Application

Block A – Applicant Information

1. Provide the Applicant's name.
2. Provide the Applicant's NMFS Person ID Number.
3. Provide the Applicant's permanent mailing address.
4. Provide the Applicant's temporary mailing address (if any); if this information is provided, it will be to this address to which the IFQ/IPQ permit(s) will be mailed.
- 5-7. Provide the business telephone number, fax number, and e-mail address (if available) for the Applicant or the Applicant's designated representative

Block B – Identification of North Region BBR or BSS CVO QS and PQS for Conversion

Indicate the Bristol Bay Red (BBR) king crab or Bering Sea Snow (BSS) crab North Region CVO Quota Share (QS) and Processing Quota Share (PQS) to be converted to CPO QS/IFQ for the current fishing year.

Block C – Applicant Signature

Applicant must print and sign name and enter the date the application was signed. If the application is completed by the Applicant's authorized agent, attach proof of authorization.

Submit the completed application, which must be received **no later than August 1**, to:

<u>Mailing Address</u>	<u>Physical location</u>
NOAA Fisheries, Alaska Region (NMFS) Restricted Access Management (RAM) P.O. Box 21668 Juneau, Alaska 99802-1668	NOAA Fisheries, Alaska Region (NMFS/RAM) Federal Building 709 W. 9 th Street, Suite 713 Juneau, Alaska 99801

16 U.S.C. 1862
MSA § 313

101-627

SEC. 313. NORTH PACIFIC FISHERIES CONSERVATION

16 U.S.C. 1862

104-297, 109-479

(a) IN GENERAL.—The North Pacific Council may prepare, in consultation with the Secretary, a fisheries research plan for any fishery under the Council’s jurisdiction except a salmon fishery which—

(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council’s jurisdiction; and

(2) establishes a system, or system [sic]²⁴, of fees, which may vary by fishery, management area, or observer coverage level, to pay for the cost of implementing the plan.

102-582

(b) STANDARDS.—

(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to—

(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be fair and equitable to all vessels and processors;

(C) be consistent with applicable provisions of law; and

(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

109-479

(2) Any system of fees established under this section shall—

(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers, or electronic monitoring systems, on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

(D) not be used to offset amounts authorized under other provisions of law;

(E) be expressed as a fixed amount reflecting actual observer costs as described in subparagraph (A) or a percentage, not to exceed 2 percent, of the unprocessed ex-vessel value of the fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(F) be assessed against some or all fishing vessels and United States fish processors, including those not required to carry an observer or an electronic monitoring system under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

(H) provide that fees collected will only be used for implementing the plan established under this section;

(I) provide that fees collected will be credited against any fee for stationing observers or electronic monitoring systems on board fishing vessels and United States fish processors and the actual cost of inputting collected data to which a fishing vessel or fish processor is subject under section 304(d) of this Act; and

(J) meet the requirements of section 9701(b) of title 31, United States Code.

(c) ACTION BY SECRETARY.—

(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

16 U.S.C. 1862
MSA § 313

(d) **FISHERY OBSERVER FUND.**—There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(e) **SPECIAL PROVISIONS REGARDING OBSERVERS.**—

(1) The Secretary shall review—

(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of his section, to provide coverage for vessels and owners against liability from civil suits by observers, and

(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that—

(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.

104-297

(f) **BYCATCH REDUCTION.**—In implementing section 303(a)(11) and this section, the North Pacific Council shall submit conservation and management measures to lower, on an annual basis for a period of not less than four years, the total amount of economic discards occurring in the fisheries under its jurisdiction.

104-297

(g) BYCATCH REDUCTION INCENTIVES.—

(1) Notwithstanding section 304(d), the North Pacific Council may submit, and the Secretary may approve, consistent with the provisions of this Act, a system of fines in a fishery to provide incentives to reduce bycatch and bycatch rates; except that such fines shall not exceed \$25,000 per vessel per season. Any fines collected shall be deposited in the North Pacific Fishery Observer Fund, and may be made available by the Secretary to offset costs related to the reduction of bycatch in the fishery from which such fines were derived, including conservation and management measures and research, and to the State of Alaska to offset costs incurred by the State in the fishery from which such penalties were derived or in fisheries in which the State is directly involved in management or enforcement and which are directly affected by the fishery from which such penalties were derived.

(2)(A) Notwithstanding section 303(d), and in addition to the authority provided in section 303(b)(10), the North Pacific Council may submit, and the Secretary may approve, conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery, *Provided, That*—

(i) such allocations may not be transferred for monetary consideration and are made only on an annual basis; and

(ii) any such conservation and management measures will meet the requirements of subsection (h) and will result in an actual reduction in regulatory discards in the fishery.

(B) The North Pacific Council may submit restrictions in addition to the restriction imposed by clause (i) of subparagraph (A) on the transferability of any such allocations, and the Secretary may approve such recommendation.

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(h) CATCH MEASUREMENT.—

(1) By June 1, 1997 the North Pacific Council shall submit, and the Secretary may approve, consistent with the other provisions of this Act, conservation and management measures to ensure total catch measurement in each fishery under the jurisdiction of such Council. Such measures shall ensure the accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards.

(2) To the extent the measures submitted under paragraph (1) do not require United States fish processors and fish processing vessels (as defined in chapter 21 of title 46, United States Code) to weigh fish, the North Pacific Council and the Secretary shall submit a plan to the Congress by January 1, 1998, to allow for weighing, including recommendations to assist such processors and processing vessels in acquiring necessary equipment, unless the Council determines that such weighing is not necessary to meet the requirements of this subsection.

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(i) FULL RETENTION AND UTILIZATION.—

(1) The North Pacific Council shall submit to the Secretary by October 1, 1998 a report on the advisability of requiring the full retention by fishing vessels and full utilization by United States fish processors of economic discards in fisheries under its jurisdiction if such economic discards, or the mortality of such economic discards, cannot be avoided. The report shall address the projected impacts of such requirements on participants in the fishery and describe any full retention and full utilization requirements that have been implemented.

(2) The report shall address the advisability of measures to minimize processing waste, including standards setting minimum percentages which must be processed for human consumption. For the purpose of the report, 'processing waste' means that portion of any fish which is processed and which could be used for human consumption or other commercial use, but which is not so used.

108-199

(j) BERING SEA AND ALEUTIAN ISLANDS CRAB RATIONALIZATION.

(1) By not later than January 1, 2005, the Secretary shall approve and hereafter implement by regulation the Voluntary Three-Pie Cooperative Program for crab fisheries of the Bering Sea and Aleutian Islands 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. This section shall not preclude the Secretary from approving by January 1, 2005, and implementing any subsequent program amendments approved by the Council.

(2) Notwithstanding any other provision of this Act, in carrying out paragraph (1) the Secretary shall approve all parts of the Program referred to in such paragraph. Further, no part of such Program may be implemented if, as approved by the North Pacific Fishery Management Council, individual fishing quotas, processing quotas, community development quota allocation, voluntary cooperatives, binding arbitration, regional landing and processing requirements, community protections, economic data collection, or the loan program for crab fishing vessel captains and crew members, is invalidated subject to a judicial determination not subject to judicial appeal. If the Secretary determines that a processor has leveraged its Individual Processor Quota shares to acquire a harvesters open-delivery "B shares", the processor's Individual Processor Quota shares shall be forfeited.

(3) Subsequent to implementation pursuant to paragraph (1), the Council may submit and the Secretary may implement changes to or repeal of conservation and management measures, including measures authorized in this section, for crab fisheries of the Bering Sea and Aleutian Islands in accordance with applicable law, including this Act as amended by this subsection, to achieve on a continuing basis the purposes identified by the Council.

(4) The loan program referred to in paragraph (2) shall be carried out pursuant to the authority of sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f, 1279g).

(5) For purposes of implementing this section \$ 1,000,000 shall be made available each year until fully implemented from funds otherwise made available to the National Marine Fisheries Service for Alaska fisheries activities.

(6) Nothing in this Act shall constitute a waiver, either express or implied, of the antitrust laws of the United States. The Secretary, in consultation with the Department of Justice and the Federal Trade Commission, shall develop and implement a mandatory information collection and review process to provide any and all information necessary for the Department of Justice and the Federal Trade Commission to determine whether any illegal acts of anti-competition, anti-trust, or price collusion have occurred among persons receiving individual processing quotas under the Program. The Secretary may revoke any individual processing quota held by any person found to have violated a provision of the antitrust laws of the United States.

(7) An individual processing quota issued under the Program shall be considered a permit for the purposes of sections 307, 308, and 309, and may be revoked or limited at any time in accordance with this Act. Issuance of an individual processing quota under the program shall not confer any right of compensation to the holder of such individual processing quota if it is revoked or limited and shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is purchased from an individual fishing quota holder.

(8) The restriction on the collection of economic data in section 303 shall not apply with respect to any fish processor who is eligible for, or who has received, individual processing quota under the Program. The restriction on the disclosure of information in section 402(b)(1) shall not apply when the information is used to determine eligibility for or compliance with an individual processing quota program.

(9) The provisions of sections 308, 310, and 311 shall apply to the processing facilities and fish products of any person holding individual processing quota, and the provisions of subparagraphs (D), (E), and (L) of section 307(l) shall apply to any facility owned or controlled by a person holding individual processing quota.

Area number	Name	Latitude	Longitude
10	Unalaska I.	53 26.05 N 53 6.92 N 52 55.71 N 53 13.05 N	165 55.55 W 167 19.40 W 167 18.20 W 165 55.55 W

Note: Each area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. Projected coordinate system is North American Datum 1983, Albers.

[71 FR 36703, June 28, 2006]

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

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AUTHORITY: 16 U.S.C. 1862.

SOURCE: 70 FR 10241, Mar. 2, 2005, unless otherwise noted.

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

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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 indicators 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

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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 col-

lection 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

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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 Ration-alization 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 har-

vesting 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

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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,

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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.

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§ 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

Public Law 109–241
109th Congress

An Act

July 11, 2006
[H.R. 889]

Coast Guard and
Maritime
Transportation
Act of 2006.
14 USC 1 note.

To authorize appropriations for the Coast Guard for fiscal year 2006, to make technical corrections to various laws administered by the Coast Guard, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Coast Guard and Maritime Transportation Act of 2006”.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—AUTHORIZATION

- Sec. 101. Authorization of appropriations.
- Sec. 102. Authorized levels of military strength and training.
- Sec. 103. Supplemental authorization of appropriations.
- Sec. 104. Web-based risk management data system.

TITLE II—COAST GUARD

- Sec. 201. Extension of Coast Guard vessel anchorage and movement authority.
- Sec. 202. International training and technical assistance.
- Sec. 203. Officer promotion.
- Sec. 204. Coast Guard band director.
- Sec. 205. Authority for one-step turnkey design-build contracting.
- Sec. 206. Reserve recall authority.
- Sec. 207. Reserve officer distribution.
- Sec. 208. Expansion of use of auxiliary equipment to support Coast Guard missions.
- Sec. 209. Coast Guard history fellowships.
- Sec. 210. Icebreakers.
- Sec. 211. Operation as a service in the Navy.
- Sec. 212. Limitation on moving assets to St. Elizabeth’s Hospital.
- Sec. 213. Cooperative agreements.
- Sec. 214. Biodiesel feasibility study.
- Sec. 215. Boating safety director.
- Sec. 216. Hangar at Coast Guard Air Station Barbers Point.
- Sec. 217. Promotion of Coast Guard officers.
- Sec. 218. Redesignation of Coast Guard law specialists as judge advocates.

TITLE III—SHIPPING AND NAVIGATION

- Sec. 301. Treatment of ferries as passenger vessels.
- Sec. 302. Great Lakes pilotage annual ratemaking.
- Sec. 303. Certification of vessel nationality in drug smuggling cases.
- Sec. 304. LNG tankers.
- Sec. 305. Use of maritime safety and security teams.
- Sec. 306. Enhanced civil penalties for violations of provisions enacted by the Coast Guard and Maritime Transportation Act of 2004.

- Sec. 307. Training of cadets at United States Merchant Marine Academy.
- Sec. 308. Reports from mortgagees of vessels.
- Sec. 309. Determination of the Secretary.
- Sec. 310. Setting, relocating, and recovering anchors.
- Sec. 311. International tonnage measurement of vessels engaged in the Aleutian trade.
- Sec. 312. Riding gangs.

TITLE IV—MISCELLANEOUS

- Sec. 401. Authorization of junior reserve officers training program pilot program.
- Sec. 402. Transfer.
- Sec. 403. LORAN-C.
- Sec. 404. Long-range vessel tracking system.
- Sec. 405. Marine vessel and cold water safety education.
- Sec. 406. Reports.
- Sec. 407. Conveyance of decommissioned Coast Guard Cutter MACKINAW.
- Sec. 408. Deepwater reports.
- Sec. 409. Helicopters.
- Sec. 410. Newtown Creek, New York City, New York.
- Sec. 411. Report on technology.
- Sec. 412. Assessment and planning.
- Sec. 413. Homeport.
- Sec. 414. Navigational safety of certain facilities.
- Sec. 415. Port Richmond.
- Sec. 416. Western Alaska community development quota program.
- Sec. 417. Quota share allocation.
- Sec. 418. Maine fish tender vessels.
- Sec. 419. Automatic identification system.
- Sec. 420. Voyage data recorder study and report.
- Sec. 421. Distant water tuna fleet.

TITLE V—LIGHTHOUSES

- Sec. 501. Transfer.
- Sec. 502. Misty Fiords National Monument and Wilderness.
- Sec. 503. Miscellaneous Light Stations.
- Sec. 504. Inclusion of lighthouse in St. Marks National Wildlife Refuge, Florida.

TITLE VI—DELAWARE RIVER PROTECTION AND MISCELLANEOUS OIL PROVISIONS

- Sec. 601. Short title.
- Sec. 602. Requirement to notify Coast Guard of release of objects into the navigable waters of the United States.
- Sec. 603. Limits on liability.
- Sec. 604. Requirement to update Philadelphia Area Contingency Plan.
- Sec. 605. Submerged oil removal.
- Sec. 606. Assessment of oil spill costs.
- Sec. 607. Delaware River and Bay Oil Spill Advisory Committee.
- Sec. 608. Nontank vessels.

TITLE VII—HURRICANE RESPONSE

- Sec. 701. Homeowners assistance for Coast Guard personnel affected by Hurricanes Katrina or Rita.
- Sec. 702. Temporary authorization to extend the duration of licenses, certificates of registry, and merchant mariners' documents.
- Sec. 703. Temporary authorization to extend the duration of vessel certificates of inspection.
- Sec. 704. Preservation of leave lost due to Hurricane Katrina operations.
- Sec. 705. Reports on impact to Coast Guard.
- Sec. 706. Reports on impacts on navigable waterways.

TITLE VIII—OCEAN COMMISSION RECOMMENDATIONS

- Sec. 801. Implementation of international agreements.
- Sec. 802. Voluntary measures for reducing pollution from recreational boats.
- Sec. 803. Integration of vessel monitoring system data.
- Sec. 804. Foreign fishing incursions.

TITLE IX—TECHNICAL CORRECTIONS

- Sec. 901. Miscellaneous technical corrections.
- Sec. 902. Correction of references to Secretary of Transportation and Department of Transportation; related matters.

TITLE I—AUTHORIZATION**SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

Funds are authorized to be appropriated for fiscal year 2006 for necessary expenses of the Coast Guard as follows:

(1) For the operation and maintenance of the Coast Guard, \$5,633,900,000, of which \$24,500,000 is authorized to be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(5)).

(2) For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, \$1,903,821,000, of which—

(A) \$20,000,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990, to remain available until expended;

(B) \$1,316,300,000 is authorized for acquisition and construction of shore and offshore facilities, vessels, and aircraft, including equipment related thereto, and other activities that constitute the Integrated Deepwater Systems; and

(C) \$284,369,000 is authorized for sustainment of legacy vessels and aircraft, including equipment related thereto, and other activities that constitute the Integrated Deepwater Systems.

(3) To the Commandant of the Coast Guard for research, development, test, and evaluation of technologies, materials, and human factors directly relating to improving the performance of the Coast Guard's mission in search and rescue, aids to navigation, marine safety, marine environmental protection, enforcement of laws and treaties, ice operations, oceanographic research, and defense readiness, \$24,000,000, to remain available until expended, of which \$3,500,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990.

(4) For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, \$1,014,080,000, to remain available until expended.

(5) For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, and for personnel and administrative costs associated with the Bridge Alteration Program, \$38,400,000.

(6) For environmental compliance and restoration at Coast Guard facilities (other than parts and equipment associated with operation and maintenance), \$12,000,000, to remain available until expended.

(7) For the Coast Guard Reserve program, including personnel and training costs, equipment, and services, \$119,000,000.

SEC. 102. AUTHORIZED LEVELS OF MILITARY STRENGTH AND TRAINING.

(a) **ACTIVE-DUTY STRENGTH.**—The Coast Guard is authorized an end-of-year strength for active-duty personnel of 45,500 for the fiscal year ending on September 30, 2006.

(b) **MILITARY TRAINING STUDENT LOADS.**—For fiscal year 2006, the Coast Guard is authorized average military training student loads as follows:

- (1) For recruit and special training, 2,500 student years.
- (2) For flight training, 125 student years.
- (3) For professional training in military and civilian institutions, 350 student years.
- (4) For officer acquisition, 1,200 student years.

SEC. 103. SUPPLEMENTAL AUTHORIZATION OF APPROPRIATIONS.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—In addition to amounts provided to the Coast Guard from another Federal agency for reimbursement of expenditures for Hurricane Katrina, there are authorized to be appropriated to the Secretary of the department in which the Coast Guard is operating the following amounts for nonreimbursed expenditures:

(1) For the operation and maintenance of the Coast Guard in responding to Hurricane Katrina, including search and rescue efforts, clearing channels, and emergency response to oil and chemical spills, and for increased costs of operation and maintenance of the Coast Guard due to higher than expected fuel costs, \$300,000,000.

(2) For the acquisition, construction, renovation, and improvement of aids to navigation, shore and offshore facilities, and vessels and aircraft, including equipment related thereto, related to damage caused by Hurricane Katrina, \$200,000,000.

(b) **CONSTRUCTION WITH OTHER FUNDING.**—The amounts authorized to be appropriated by subsection (a) are in addition to any other amounts authorized to be appropriated to the Secretary of the department in which the Coast Guard is operating under any other provision of law.

(c) **AVAILABILITY.**—The amounts made available under subsection (a) shall remain available until expended.

SEC. 104. WEB-BASED RISK MANAGEMENT DATA SYSTEM.

There is authorized to be appropriated for each of fiscal years 2006 and 2007 to the Secretary of the department in which the Coast Guard is operating \$1,000,000 to continue deployment of a World Wide Web-based risk management system to help reduce accidents and fatalities.

TITLE II—COAST GUARD

SEC. 201. EXTENSION OF COAST GUARD VESSEL ANCHORAGE AND MOVEMENT AUTHORITY.

Section 91 of title 14, United States Code, is amended by adding at the end the following new subsection:

“(d) As used in this section ‘navigable waters of the United States’ includes all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988.”.

SEC. 202. INTERNATIONAL TRAINING AND TECHNICAL ASSISTANCE.

(a) IN GENERAL.—Section 149 of title 14, United States Code, is amended—

(1) by amending the section heading to read as follows:

“§ 149. Assistance to foreign governments and maritime authorities”;

(2) by inserting before the undesignated text the following:

“(a) DETAIL OF MEMBERS TO ASSIST FOREIGN GOVERNMENTS.—”; and

(3) by adding at the end the following new subsection:

“(b) TECHNICAL ASSISTANCE TO FOREIGN MARITIME AUTHORITIES.—The Commandant, in coordination with the Secretary of State, may provide, in conjunction with regular Coast Guard operations, technical assistance (including law enforcement and maritime safety and security training) to foreign navies, coast guards, and other maritime authorities.”.

(b) CLERICAL AMENDMENT.—The item relating to such section in the analysis at the beginning of chapter 7 of such title is amended to read as follows:

“149. Assistance to foreign governments and maritime authorities”.

SEC. 203. OFFICER PROMOTION.

Section 257 of title 14, United States Code, is amended by adding at the end the following new subsection:

“(f) The Secretary may waive subsection (a) to the extent necessary to allow officers described therein to have at least two opportunities for consideration for promotion to the next higher grade as officers below the promotion zone.”.

SEC. 204. COAST GUARD BAND DIRECTOR.

(a) BAND DIRECTOR APPOINTMENT AND GRADE.—Section 336 of title 14, United States Code, is amended—

(1) in subsection (b)—

(A) by striking the first sentence and inserting the following: “The Secretary may designate as the director any individual determined by the Secretary to possess the necessary qualifications.”; and

(B) in the second sentence, by striking “a member so designated” and inserting “an individual so designated”;

(2) in subsection (c)—

(A) by striking “of a member” and inserting “of an individual”; and

(B) by striking “of lieutenant (junior grade) or lieutenant” and inserting “determined by the Secretary to be most appropriate to the qualifications and experience of the appointed individual”;

(3) in subsection (d) by striking “A member” and inserting “An individual”; and

(4) in subsection (e)—

(A) by striking “When a member’s designation is revoked,” and inserting “When an individual’s designation is revoked,”; and

(B) by striking “option.” and inserting “option—”.

(b) CURRENT DIRECTOR.—The individual serving as Coast Guard band director on the date of enactment of this Act may be immediately promoted to a commissioned grade, not to exceed captain,

determined by the Secretary of the department in which the Coast Guard is operating to be most appropriate to the qualifications and experience of that individual.

SEC. 205. AUTHORITY FOR ONE-STEP TURNKEY DESIGN-BUILD CONTRACTING.

(a) IN GENERAL.—Chapter 17 of title 14, United States Code, is amended by adding at the end the following new section:

“§ 677. Turnkey selection procedures

“(a) AUTHORITY TO USE.—The Secretary may use one-step turnkey selection procedures for the purpose of entering into contracts for construction projects.

“(b) DEFINITIONS.—In this section, the following definitions apply:

“(1) The term ‘one-step turnkey selection procedures’ means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary.

“(2) The term ‘construction’ includes the construction, procurement, development, conversion, or extension of any facility.

“(3) The term ‘facility’ means a building, structure, or other improvement to real property.”

(b) CLERICAL AMENDMENT.—The analysis at the beginning of such chapter is amended by inserting after the item relating to section 676 the following:

“677. Turnkey selection procedures”.

SEC. 206. RESERVE RECALL AUTHORITY.

Section 712 of title 14, United States Code, is amended—

(1) in subsection (a) by striking “during a” and inserting “during a, or to aid in prevention of an imminent,”;

(2) in subsection (a) by striking “or catastrophe,” and inserting “catastrophe, act of terrorism (as defined in section 2(15) of the Homeland Security Act of 2002 (6 U.S.C. 101(15))), or transportation security incident as defined in section 70101 of title 46,”;

(3) in subsection (a) by striking “thirty days in any four-month period” and inserting “60 days in any 4-month period”;

(4) in subsection (a) by striking “sixty days in any two-year period” and inserting “120 days in any 2-year period”; and

(5) by adding at the end the following:

“(e) For purposes of calculating the duration of active duty allowed pursuant to subsection (a), each period of active duty shall begin on the first day that a member reports to active duty, including for purposes of training.”

SEC. 207. RESERVE OFFICER DISTRIBUTION.

Section 724 of title 14, United States Code, is amended—

(1) in subsection (a) by inserting after the first sentence the following: “Reserve officers on an active-duty list shall not be counted as part of the authorized number of officers in the Reserve.”; and

Computation. (2) in subsection (b) by striking all that precedes paragraph (2) and inserting the following:

“(b)(1) The Secretary shall make, at least once each year, a computation to determine the number of Reserve officers in an active status authorized to be serving in each grade. The number in each grade shall be computed by applying the applicable percentage to the total number of such officers serving in an active status on the date the computation is made. The number of Reserve officers in an active status below the grade of rear admiral (lower half) shall be distributed by pay grade so as not to exceed percentages of commissioned officers authorized by section 42(b) of this title. When the actual number of Reserve officers in an active status in a particular pay grade is less than the maximum percentage authorized, the difference may be applied to the number in the next lower grade. A Reserve officer may not be reduced in rank or grade solely because of a reduction in an authorized number as provided for in this subsection, or because an excess results directly from the operation of law.”.

SEC. 208. EXPANSION OF USE OF AUXILIARY EQUIPMENT TO SUPPORT COAST GUARD MISSIONS.

(a) USE OF MOTORIZED VEHICLES.—Section 826 of title 14, United States Code, is amended—

(1) by inserting before the undesignated text the following:

“(a) MOTOR BOATS, YACHTS, AIRCRAFT, AND RADIO STATIONS.—”; and

(2) by adding at the end the following new subsection:

“(b) MOTOR VEHICLES.—The Coast Guard may utilize to carry out its functions and duties as authorized by the Secretary any motor vehicle (as defined in section 154 of title 23, United States Code) placed at its disposition by any member of the Auxiliary, by any corporation, partnership, or association, or by any State or political subdivision thereof, to tow Federal Government property.”.

(b) APPROPRIATIONS FOR FACILITIES.—Section 830(a) of such title is amended by striking “or radio station” each place it appears and inserting “radio station, or motorized vehicle utilized under section 826(b)”.

SEC. 209. COAST GUARD HISTORY FELLOWSHIPS.

(a) FELLOWSHIPS AUTHORIZED.—Chapter 9 of title 14, United States Code, is amended by adding at the end the following:

“§ 198. Coast Guard history fellowships

“(a) FELLOWSHIPS.—The Commandant of the Coast Guard may prescribe regulations under which the Commandant may award fellowships in Coast Guard history to individuals who are eligible under subsection (b).

“(b) ELIGIBLE INDIVIDUALS.—An individual shall be eligible under this subsection if the individual is a citizen or national of the United States and—

“(1) is a graduate student in United States history;

“(2) has completed all requirements for a doctoral degree other than preparation of a dissertation; and

“(3) agrees to prepare a dissertation in a subject area of Coast Guard history determined by the Commandant.

“(c) LIMITATIONS.—The Commandant may award up to 2 fellowships annually. The Commandant may not award any fellowship under this section that exceeds \$25,000 in any year.

“(d) REGULATIONS.—The regulations prescribed under this section shall include—

“(1) the criteria for award of fellowships;

“(2) the procedures for selecting recipients of fellowships;

“(3) the basis for determining the amount of a fellowship;

and

“(4) subject to the availability of appropriations, the total amount that may be awarded as fellowships during an academic year.”

(b) CLERICAL AMENDMENT.—The analysis at the beginning of such chapter is amended by adding at the end the following:

“198. Coast Guard history fellowships”.

SEC. 210. ICEBREAKERS.

14 USC 93 note.

(a) OPERATION AND MAINTENANCE PLAN.—Not later than 90 days after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a plan—

Deadline.

(1) for operation and maintenance after fiscal year 2006 of the Coast Guard polar icebreakers POLAR STAR, POLAR SEA, and HEALY, that does not rely on the transfer of funds to the Coast Guard by any other Federal agency; and

(2) for the long-term recapitalization of these assets.

(b) NECESSARY MEASURES.—The Secretary shall take all necessary measures to ensure that the Coast Guard maintains, at a minimum, its current vessel capacity for carrying out ice breaking in the Arctic and Antarctic, Great Lakes, and New England regions, including the necessary funding for operation and maintenance of such vessels, until it has implemented the long-term recapitalization of the Coast Guard polar icebreakers POLAR STAR, POLAR SEA, and HEALY in accordance with the plan submitted under subsection (a).

(c) REIMBURSEMENT.—Nothing in this section shall preclude the Secretary from seeking reimbursement for operation and maintenance costs of such polar icebreakers from other Federal agencies and entities, including foreign countries, that benefit from the use of the icebreakers.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal year 2006 to the Secretary of the department in which the Coast Guard is operating \$100,000,000 to carry out this section with respect to the polar icebreakers referred to in subsection (a).

SEC. 211. OPERATION AS A SERVICE IN THE NAVY.

Section 3 of title 14, United States Code, is amended by inserting “if Congress so directs in the declaration” after “Upon the declaration of war”.

SEC. 212. LIMITATION ON MOVING ASSETS TO ST. ELIZABETH'S HOSPITAL.

The Commandant of the Coast Guard may not move any Coast Guard personnel, property, or other assets to the West Campus

Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006

Public Law 109-479

109th Congress (2nd Session)

The following are excerpts, **highlighted in red**, from the final legislation and/or conference report which contain references to and studies for The National Academies. (Pound signs [##] between passages denote the deletion of unrelated text.)

HR5946 Pombo (R.-Calif.) 12/09/06
Enrolled (finally passed both houses)

To amend the Magnuson-Stevens Fishery Conservation and Management Act to authorize activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and for other purposes.

SEC. 113. REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM.

(a) IN GENERAL.—Title III (16 U.S.C. 1851 et seq.) is amended by adding at the end the following:

“SEC. 315. REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM.

“(a) IN GENERAL.—When there is a catastrophic regional fishery disaster the Secretary may, upon the request of, and in consultation with, the Governors of affected States, establish a regional economic transition program to provide immediate disaster relief assistance to the fishermen, charter fishing operators, United States fish processors, and owners of related fishery infrastructure affected by the disaster.

“(b) PROGRAM COMPONENTS.—

“(1) IN GENERAL.—Subject to the availability of appropriations, the program shall provide funds or other economic assistance to affected entities, or to governmental entities for disbursement to affected entities, for—

“(A) meeting immediate regional shoreside fishery infrastructure needs, including processing facilities, cold storage facilities, ice houses, docks, including temporary docks and storage facilities, and other related shoreside fishery support facilities and infrastructure while ensuring that those projects will not result in an increase or replacement of fishing capacity;

“(B) financial assistance and job training assistance for fishermen who wish to remain in a fishery in the region that may be temporarily closed as a result of environmental or other effects associated with the disaster;

“(C) funding, pursuant to the requirements of section 312(b), to fishermen who are willing to scrap a fishing vessel and permanently surrender permits for fisheries named on that vessel; and

“(D) any other activities authorized under section 312 of this Act or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).

“(2) JOB TRAINING.—Any fisherman who decides to scrap a fishing vessel under the program shall be eligible for job training assistance.

“(3) STATE PARTICIPATION OBLIGATION.—The participation by a State in the program shall be conditioned upon a commitment by the appropriate State entity to ensure that the relevant State fishery meets the requirements of section 312(b) of this Act to ensure excess capacity does not re-enter the fishery.

“(4) NO MATCHING REQUIRED.—The Secretary may waive the matching requirements of section 312 of this Act, section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107), and any other provision of law under which the Federal share of the cost of any activity is limited to less than 100 percent if the Secretary determines that—

“(A) no reasonable means are available through which applicants can meet the matching requirement; and

“(B) the probable benefit of 100 percent Federal financing outweighs the public interest in imposition of the matching requirement.

“(5) NET REVENUE LIMIT INAPPLICABLE.—Section 308(d)(3) of the Interjurisdictional Fisheries Act (16 U.S.C. 4107(d)(3)) shall not apply to assistance under this section.

“(c) REGIONAL IMPACT EVALUATION.—Within 2 months after a catastrophic regional fishery disaster the Secretary shall provide the Governor of each State participating in the program a comprehensive economic and socio-economic evaluation of the affected region’s fisheries to assist the Governor in assessing the current and future economic viability of affected fisheries, including the economic impact of foreign fish imports and the direct, indirect, or environmental impact of the disaster on the fishery and coastal communities.

“(d) CATASTROPHIC REGIONAL FISHERY DISASTER DEFINED.—In this section the term ‘catastrophic regional fishery disaster’ means a natural disaster, including a hurricane or tsunami, or a regulatory closure (including regulatory closures resulting from judicial action) to protect human health or the marine environment, that—

“(1) results in economic losses to coastal or fishing communities;

“(2) affects more than 1 State or a major fishery managed by a Council or interstate fishery commission; and

“(3) is determined by the Secretary to be a commercial fishery failure under section 312(a) of this Act or a fishery resource disaster or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).”.

(b) SALMON PLAN AND STUDY.—

(1) RECOVERY PLAN.—Not later than 6 months after the date of enactment of this Act, the Secretary of Commerce shall complete a recovery plan for Klamath River Coho salmon and make it available to the public.

(2) ANNUAL REPORT.—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Secretary of Commerce shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources on—

(A) the actions taken under the recovery plan and other law relating to recovery of Klamath River Coho salmon, and how those actions are specifically contributing to its recovery;

(B) the progress made on the restoration of salmon spawning habitat, including water conditions as they relate to salmon health and recovery, with emphasis on the Klamath River and its tributaries below Iron Gate Dam;

(C) the status of other Klamath River anadromous fish populations, particularly Chinook salmon; and

(D) the actions taken by the Secretary to address the calendar year 2003 National Research Council recommendations regarding monitoring and research on Klamath River Basin salmon stocks.

(c) OREGON AND CALIFORNIA SALMON FISHERY.—Federally recognized Indian tribes and small businesses, including fishermen, fish processors, and related businesses serving the fishing industry, adversely affected by Federal closures and fishing restrictions in the Oregon and California 2006 fall Chinook salmon fishery are eligible to receive direct assistance under section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)) and section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)). The Secretary may use no more than 4 percent of any monetary assistance to pay for administrative costs.

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SEC. 201. RECREATIONAL FISHERIES INFORMATION.

Section 401 (16 U.S.C. 1881) is amended by striking subsection (g) and inserting the following:

“(g) RECREATIONAL FISHERIES.—

“(1) FEDERAL PROGRAM.—The Secretary shall establish and implement a regionally based registry program for recreational fishermen in each of the 8 fishery management regions. The program, which shall not require a fee before January 1, 2011, shall provide for—

“(A) the registration (including identification and contact information) of individuals who engage in recreational fishing—

“(i) in the Exclusive Economic Zone;

“(ii) for anadromous species; or

“(iii) for Continental Shelf fishery resources beyond the Exclusive Economic Zone; and

“(B) if appropriate, the registration (including the ownership, operator, and identification of the vessel) of vessels used in such fishing.

“(2) STATE PROGRAMS.—The Secretary shall exempt from registration under the program recreational fishermen and charter fishing vessels licensed, permitted, or registered under the laws of a State if the Secretary determines that information from the State program is suitable for the Secretary’s use or is used to assist in completing marine recreational fisheries statistical surveys, or evaluating the effects of proposed conservation and management measures for marine recreational fisheries.

“(3) DATA COLLECTION.—

“(A) IMPROVEMENT OF THE MARINE RECREATIONAL FISHERY STATISTICS SURVEY.—Within 24 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary, in consultation with representatives of the recreational fishing industry and experts in statistics, technology, and other appropriate fields, shall establish a program to improve the quality and accuracy of information generated by the Marine Recreational Fishery Statistics Survey, with a goal of achieving acceptable accuracy and utility for each individual fishery.

“(B) NRC REPORT RECOMMENDATIONS.—The program shall take into consideration and, to the extent feasible, implement the recommendations of the National Research Council in its report *Review of Recreational Fisheries Survey Methods (2006)*, including—

“(i) redesigning the Survey to improve the effectiveness and appropriateness of sampling and estimation procedures, its applicability to various kinds of management decisions, and its usefulness for social and economic analyses; and

“(ii) providing for ongoing technical evaluation and modification as needed to meet emerging management needs.

“(C) METHODOLOGY.—Unless the Secretary determines that alternate methods will achieve this goal efficiently and effectively, the program shall, to the extent possible, include—

“(i) an adequate number of intercepts to accurately estimate recreational catch and effort;

“(ii) use of surveys that target anglers registered or licensed at the State or Federal level to collect participation and effort data;

“(iii) collection and analysis of vessel trip report data from charter fishing vessels;

“(iv) development of a weather corrective factor that can be applied to recreational catch and effort estimates; and

“(v) an independent committee composed of recreational fishermen, fishery academics, persons with expertise in assessment and survey design, appropriate and available personnel from the National Marine Fisheries Service, and other personnel to evaluate the collection estimates, geographic, and other variables related to intercepts dockside and to identify deficiencies in recreational data collection, and possible correction measures.

“(D) DEADLINE.—The Secretary shall complete the program under this paragraph and implement the improved

Marine Recreational Fishery Statistics Survey not later than January 1, 2009.

“(4) REPORT.—Within 24 months after establishment of the program, the Secretary shall submit a report to Congress that describes the progress made toward achieving the goals and objectives of the program.”.

SEC. 212. IMPACT OF TURTLE EXCLUDER DEVICES ON SHRIMPING.

(a) **IN GENERAL.**—The Undersecretary of Commerce for Oceans and Atmosphere shall execute an agreement with the National Academy of Sciences to conduct, jointly, a multi-year, comprehensive in-water study designed—

- (1) to measure accurately the efforts and effects of shrimp fishery efforts to utilize turtle excluder devices;
- (2) to analyze the impact of those efforts on sea turtle mortality, including interaction between turtles and shrimp trawlers in the inshore, nearshore, and offshore waters of the Gulf of Mexico and similar geographical locations in the waters of the Southeastern United States; and
- (3) to evaluate innovative technologies to increase shrimp retention in turtle excluder devices while ensuring the protection of endangered and threatened sea turtles.

(b) **OBSERVERS.**—In conducting the study, the Undersecretary shall ensure that observers are placed onboard commercial shrimp fishing vessels where appropriate or necessary.

(c) **INTERIM REPORTS.**—During the course of the study and until a final report is submitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources, the National Academy of Sciences shall transmit interim reports to the Committees biannually containing a summary of preliminary findings and conclusions from the study.

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SEC. 701. STUDY OF THE ACIDIFICATION OF THE OCEANS AND EFFECT ON FISHERIES.

The Secretary of Commerce shall request the National Research Council to conduct a study of the acidification of the oceans and how this process affects the United States.

SEC. 804. TSUNAMI FORECASTING AND WARNING PROGRAM.

(a) **In General.**—The Administrator, through the National Weather Service and in consultation with other relevant Administration offices, shall operate a program to provide tsunami detection, forecasting, and warnings for the Pacific and Arctic Ocean regions and for the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico region.

(b) **Components.**—The program under this section shall—

- (1) include the tsunami warning centers established under subsection (d);
- (2) utilize and maintain an array of robust tsunami detection technologies;
- (3) maintain detection equipment in operational condition to fulfill the detection, forecasting, and warning requirements of this title;
- (4) provide tsunami forecasting capability based on models and measurements, including tsunami inundation models and maps for use in increasing the preparedness of communities, including through the TsunamiReady program;
- (5) maintain data quality and management systems to support the requirements of the program;

(6) include a cooperative effort among the Administration, the United States Geological Survey, and the National Science Foundation under which the Geological Survey and the National Science Foundation shall provide rapid and reliable seismic information to the Administration from international and domestic seismic networks;

(7) provide a capability for the dissemination of warnings to at-risk States and tsunami communities through rapid and reliable notification to government officials and the public, including utilization of and coordination with existing Federal warning systems, including the National Oceanic and Atmospheric Administration Weather Radio All Hazards Program;

(8) allow, as practicable, for integration of tsunami detection technologies with other environmental observing technologies; and

(9) include any technology the Administrator considers appropriate to fulfill the objectives of the program under this section.

(c) System Areas.—The program under this section shall operate—

(1) a Pacific tsunami warning system capable of forecasting tsunami anywhere in the Pacific and Arctic Ocean regions and providing adequate warnings; and

(2) an Atlantic Ocean, Caribbean Sea, and Gulf of Mexico tsunami warning system capable of forecasting tsunami and providing adequate warnings in areas of the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico that are determined—

(A) to be geologically active, or to have significant potential for geological activity; and

(B) to pose significant risks of tsunami for States along the coastal areas of the Atlantic Ocean, Caribbean Sea, or Gulf of Mexico.

(d) Tsunami Warning Centers.—

(1) IN GENERAL.—The Administrator, through the National Weather Service, shall maintain or establish—

(A) a Pacific Tsunami Warning Center in Hawaii;

(B) a West Coast and Alaska Tsunami Warning Center in Alaska; and

(C) any additional forecast and warning centers determined by the National Weather Service to be necessary.

(2) RESPONSIBILITIES.—The responsibilities of each tsunami warning center shall include—

(A) continuously monitoring data from seismological, deep ocean, and tidal monitoring stations;

(B) evaluating earthquakes that have the potential to generate tsunami;

(C) evaluating deep ocean buoy data and tidal monitoring stations for indications of tsunami resulting from earthquakes and other sources;

(D) disseminating forecasts and tsunami warning bulletins to Federal, State, and local government officials and the public;

(E) coordinating with the tsunami hazard mitigation program described in section 805 to ensure ongoing sharing of information between forecasters and emergency management officials; and

(F) making data gathered under this title and post-warning analyses conducted by the National Weather Service or other relevant Administration offices available to researchers.

(e) Transfer of Technology; Maintenance and Upgrades.—

(1) IN GENERAL.—In carrying out this section, the National Weather Service, in consultation with other relevant Administration offices, shall—

(A) develop requirements for the equipment used to forecast tsunamis, which shall include provisions for multipurpose detection platforms, reliability and performance metrics, and to the maximum extent practicable how the equipment will be integrated with other United States and global ocean and coastal observation systems, the global earth observing system of systems, global seismic networks, and the Advanced National Seismic System;

(B) develop and execute a plan for the transfer of technology from ongoing research described in section 806 into the program under this section; and

(C) ensure that maintaining operational tsunami detection equipment is the highest priority within the program carried out under this title.

(2) REPORT TO CONGRESS.—

(A) Not later than 1 year after the date of enactment of this Act, the National Weather Service, in consultation with other relevant Administration offices, shall transmit to Congress a report on how the tsunami forecast system under this section will be integrated with other United States and global ocean and coastal observation systems, the global earth observing system of systems, global seismic networks, and the Advanced National Seismic System.

(B) Not later than 3 years after the date of enactment of this Act, the National Weather Service, in consultation with other relevant Administration offices, shall transmit a report to Congress on how technology developed under section 806 is being transferred into the program under this section.

(f) Federal Cooperation.—When deploying and maintaining tsunami detection technologies, the Administrator shall seek the assistance and assets of other appropriate Federal agencies.

(g) Annual Equipment Certification.—At the same time Congress receives the budget justification documents in support of the President's annual budget request for each fiscal year, the Administrator shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives a certification that—

(1) identifies the tsunami detection equipment deployed pursuant to this title, as of December 31 of the preceding calendar year;

(2) certifies which equipment is operational as of December 31 of the preceding calendar year;

(3) in the case of any piece of such equipment that is not operational as of such date, identifies that equipment and describes the mitigation strategy that is in place—

(A) to repair or replace that piece of equipment within a reasonable period of time; or

(B) to otherwise ensure adequate tsunami detection coverage;

(4) identifies any equipment that is being developed or constructed to carry out this title but which has not yet been deployed, if the Administration has entered into a contract for that equipment prior to December 31 of the preceding calendar year, and provides a schedule for the deployment of that equipment; and

(5) certifies that the Administrator expects the equipment described in paragraph (4) to meet the requirements, cost, and schedule provided in that contract.

(h) Congressional Notifications.—The Administrator shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives within 30 days of—

(1) impaired regional forecasting capabilities due to equipment or system failures; and

(2) significant contractor failures or delays in completing work associated with the tsunami forecasting and warning system.

(i) Report.—Not later than January 31, 2010, the Comptroller General of the United States shall transmit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives that—

(1) evaluates the current status of the tsunami detection, forecasting, and warning system and the tsunami hazard mitigation program established under this title, including progress toward tsunami inundation mapping of all coastal areas vulnerable to tsunami and whether there has been any degradation of services as a result of the expansion of the program;

(2) evaluates the National Weather Service's ability to achieve continued improvements in the delivery of tsunami detection, forecasting, and warning services by assessing policies and plans for the evolution of modernization systems, models, and computational abilities (including the adoption of new technologies); and

(3) lists the contributions of funding or other resources to the program by other Federal agencies, particularly agencies participating in the program.

(j) External Review.—The Administrator shall enter into an arrangement with the National Academy of Sciences to review the tsunami detection, forecast, and warning program established under this title to assess further modernization and coverage needs, as well as long-term operational reliability issues, taking into account measures implemented under this title. The review shall also include an assessment of how well the forecast equipment has been integrated into other United States and global ocean and coastal observation systems and the global earth observing system of systems. Not later than 2 years after the date of enactment of this Act, the Administrator shall transmit a report containing the National Academy of Sciences' recommendations, the Administrator's responses to the recommendations, including those where the Administrator disagrees with the Academy, a timetable to implement the accepted recommendations, and the cost of implementing all the Academy's recommendations, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives.

(k) Report.—Not later than 3 months after the date of enactment of this Act, the Administrator shall establish a process for monitoring and certifying contractor performance in carrying out the requirements of any contract to construct or deploy tsunami detection equipment, including procedures and penalties to be imposed in cases of significant contractor failure or negligence.

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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.

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(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 **EBT or WBT** 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) EBT				X
(D) WBT				X
(E) BSS	X	X		
(F) BBR	X	X		
(G) PIK	X	X		
(H) SMB	X	X		
(I) 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:

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(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 "P" based on each fully transferable LLP license "I" 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:

$$\left(\frac{\sum \text{legal landings}_{if}}{\text{AHD}_{if}} \right) \times 100$$

$$= \text{Percentage of the AHD}_{if}$$

(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

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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:

$$\frac{\sum \text{Percentages of the AHD}_{if}}{\text{Subset of Qualifying Years}_f} = \text{Average Percentage}_{if}$$

(D) Divide the Average percentage in paragraph (c)(2)(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:

$$\text{Average Percentage}_{if} \div \sum \text{Average Percentage}_{sf} = \text{Percentage of the Total Percentages}_{if}$$

(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:

$$\left(\frac{\text{legal landings}_{if}}{\text{AHD}_f} \right) \times 100 = \text{Percentage of the AHD}_{if}$$

(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:

$$\frac{\text{Percentages of the AHD}_{if}}{\text{Subset of Qualifying Year}_{sf}} = \text{Average Percentage}_{if}$$

(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:

$$\frac{\text{Average Percentage}_{if}}{\text{Average Percentage}_{sf}} = \text{Percentage of the Total Percentages}_{if}$$

(E) Multiply the Percentage of the Total Percentages in paragraph (c)(2)(v)(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 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.

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(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 (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

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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:

$$(A) \text{ Unadj. North QS - North QS only} \\ = \text{North QS for [North \& South] QS holders.}$$

$$(B) \text{ Unadj. South QS - South QS only} \\ = \text{South QS for [North \& South] QS holders.}$$

(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:

$$\text{Unadj. gaining region QS - Target gaining region} \\ \text{QS pool} = \text{Adjustment Amount}$$

(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:

$$\text{Adj. Amount} / \text{unadjusted losing region QS pool} \\ \text{for [North \& South] QS holders} = \text{RAF}$$

(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:

$$\text{QS adj. p} = \text{Unadjusted losing region QS p} \times \text{RAF}$$

(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:

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(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. Amount/ 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 x 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 **EBT or WBT** 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

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(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.

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(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) $PQS\ West\ for\ PQS\ West\ \&\ Und.\ Holders = PQS\ West - PQS\ West\ only$

(D) $PQS\ West\ for\ Person\ p\ West\ \&\ Und. = PQS\ p \times PQS\ West\ for\ PQS\ West\ \&\ Und.\ holders / (PQS\ West\ for\ PQS\ West\ \&\ Und.\ holders + PQS\ Und.)$

(E) $PQS\ Und.\ for\ Person\ p = PQS\ p - PQS\ West\ for\ Person\ p$

(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;

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(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.

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(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. 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 website at 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. 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 (Public Law 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 website at 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

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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(1), 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.

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(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) $IFQ_{p_f} = IFQ_{TAC_f} \times (QS_{p_f} / QS_{pool_f})$

(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_a) to Class A IFQ. A portion of the IFQ TAC_a is allocated to persons eligible to hold only Class A IFQ ($TAC_a\ only$), the remaining IFQ TAC (TAC_r) 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) $IFQ_{ap} = \frac{TAC_r}{(Class\ A/B\ IFQ\ TAC - TAC_{a\ only})} \times IFQ_p$

(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, then 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 will 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 will 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.

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(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_a). A person's annual IPQ is based on the amount of PQS held by a person (PQS_p) divided by the PQS pool for that crab QS fishery for all PQS holders ($PQS_{pool\ f}$). 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.

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§ 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 § 680.41 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 § 680.41 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.

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(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	No other eligibility requirements
	(B) An individual	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

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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 ECCO 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,

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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.

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(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;

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(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

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(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 (1), 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 (1), 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

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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, notarized 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

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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.

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(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.

(1) Eligible crab community right of first refusal (ROFR).

(1) Applicability.

(i) Exempt Fisheries. PQS and IPQ issued for the **EBT, WBT**, 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.

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(2) Community representation

(i) CDQ Communities. The 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 (1)(3)(i) must notify the ECC entity designated by the City of Kodiak and Kodiak Island Borough under paragraph (1)(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.

SECTION 515 PRE-DISSEMINATION REVIEW & DOCUMENTATION GUIDELINES

Background

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554, aka the Data Quality Act or Information Quality Act) directed the Office of Management and Budget (OMB) to issue government-wide guidelines that “provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies.” OMB complied by issuing guidelines which direct each federal agency to 1) issue its own guidelines; 2) establish administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with the OMB 515 Guidelines or the agency guidelines; and 3) report periodically to OMB on the number and nature of complaints received by the agency and how the complaints were handled. The OMB Guidelines can be found at:

<http://www.whitehouse.gov/omb/fedreg/reproducible2.pdf>

The Department of Commerce Guidelines can be found at: <http://www.osec.doc.gov/cio/oipr/iqg.htm>

The NOAA Section 515 Information Quality Guidelines, created with input and reviews from each of the components of NOAA Fisheries, went into effect on October 1, 2002. **The NOAA Information Quality Guidelines are posted on the NOAA home page under “Information Quality.”** <http://www.noaanews.noaa.gov/stories/iq.htm>

The guidelines apply to a wide variety of government information products and all types of media, including printed, electronic, broadcast or other. The guidelines define “Information” as, “any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.” For example, this definition includes information that an agency disseminates from a web page. The guidelines define “Dissemination” as, “agency initiated or sponsored distribution of information to the public.” Explicitly **not** included within this term is distribution limited to “government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.” It also does not include distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes. (See the NOAA IQ Guidelines, pgs 5-6).

To assist in Data Quality Act compliance, NOAA Fisheries has established a series of actions that should be completed for each new information product subject to the Data Quality Act. (See “Information Generation and Compliance Documentation” and “Pre-Dissemination Review” below.) **In addition to the information contained in this document, familiarity with the NOAA Section 515 Information Quality Guidelines (<http://www.noaanews.noaa.gov/stories/iq.htm>) is crucial for NOAA Fisheries employees who engage in the generation and dissemination of information.**

Information Generation and Compliance Documentation

- The fundamental step in the process is to create a Sec. 515 Information Quality file for each new information product. To aid in this process, a Section 515 Pre-Dissemination Review and Documentation form has been created. These guidelines are intended to serve as a supplement to the Pre-Dissemination Review and Documentation Form. The basic steps to the documentation process are outlined below.
- Complete general information (e.g., author/responsible office, title/description) section of the form.
- Determine the information category (i.e., original data; synthesized products; interpreted products; hydrometeorological, hazardous chemical spill, and space weather warnings, forecasts, and advisories; experimental products; natural resource plans; corporate and general information). **For most information products, you will only need to check one box.** More complex documents may be an “aggregate” of different categories of information products.
- Generate the information in a way that meets each of the applicable standards for the appropriate information category. See the NOAA Information Quality Guidelines.
- Document how the standards for **utility, integrity and objectivity** are met for each information product, describing what measures were taken to meet each of the applicable standards. Use the 2 page Pre-Dissemination Review & Documentation Form to document compliance with the Utility and Integrity standards contained in NOAA’s Information Quality Guidelines. The Utility and Integrity standards pertain to all categories of information disseminated by NOAA. Use these guidelines (pgs 4-11) to document compliance with the applicable objectivity standards for your information product and attach that documentation to the Pre-Dissemination Review & Documentation Form.
- Maintain the Sec. 515 Information Quality file in a readily accessible place. [Pre-Dissemination Review](#)
- Before information is disseminated, it must be reviewed for compliance with the NOAA Sec. 515 Information Quality Guidelines. This is accomplished by reviewing the information and the Sec. 515 Information Quality file.
- The Pre-Dissemination Review should be conducted during the normal course of clearing the information product for release. The person conducting the Pre-Dissemination Review will sign and date the Pre-Dissemination Review & Documentation Form. The reviewing official must be at least one level above the person generating the information product.
- The Pre-Dissemination Review form and the supporting information quality documentation must accompany the information product through the clearance process and be maintained on file.

Completing the Section 515 Pre-Dissemination Review & Documentation Form

Using the Section 515 Pre-Dissemination Review & Documentation Form and these guidelines, document how the information product meets the

following standards for **Utility, Integrity and Objectivity**. **Please note:** Use the Pre-Dissemination Review & Documentation Form to document how the information product complies with the Utility and Integrity standards that pertain to all categories of information products. The Utility and Integrity standards are presented here for your convenience. Use these guidelines to explain how the information product meets the applicable Objectivity standards for the information product and attach that documentation to the Pre-Dissemination Review & Documentation Form.

I. Utility of Information Product

Utility means that disseminated information is useful to its intended users. "Useful" means that the content of the information is helpful, beneficial, or serviceable to its intended users, or that the information supports the usefulness of other disseminated information by making it more accessible or easier to read, see, understand, obtain or use.

- A. Is the information helpful, beneficial or serviceable to the intended user? Explain.
- B. Who are the intended users of the data or information product? (e.g., the American public; other federal agencies; state and local governments; recreational concerns; national and international organizations). Is this data or information product an improvement over previously available information? Is it more detailed or current? Is it more useful or accessible to the public? Has it been improved based on comments or interactions with users?
- C. What media are used in the dissemination of the information? Printed publications? CD-ROM? Internet?
Is the product made available in a standard data format?
Does it use consistent attribute naming and unit conventions to ensure that the information is accessible to a broad range of users with a variety of operating systems and data needs?

II. Integrity of Information Product

Integrity refers to security - the protection of information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification. Prior to dissemination, NOAA information, independent of the specific intended distribution mechanism, is safeguarded from improper access, modification, or destruction, to a degree commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information. **Please note: all electronic information disseminated by NOAA adheres to the standards set forth in paragraph A below. If the information product is disseminated electronically, simply circle paragraph II(A) on the form.** You may also contact your IT Manager for further information.

Explain (circle) how the information product meets the following standards for integrity:

- A. All electronic information disseminated by NOAA adheres to the standards set out in Appendix III, "Security of Automated Information Resources," OMB Circular A-130; the Computer Security Act; and the Government Information Security Reform Act.
- B. If information is confidential, it is safeguarded pursuant to the Privacy Act and Titles 13, 15, and 22 of the U. S. Code (confidentiality of census, business and financial information).
- C. Other/Discussion
(e.g., 50 CFR 600, Subpart E, Confidentiality of Statistics of the Magnuson-Stevens Fishery Conservation and Management Act; NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics; 50 CFR 229.11, Confidentiality of information collected under the Marine Mammal Protection Act.)

III. Objectivity of Information Product

(1) Indicate which one of the following categories of information products apply for this product (check one):

- Original Data - go to Section A
- Synthesized Products - go to Section B
- Interpreted Products - go to Section C
- Hydrometeorological, Hazardous Chemical Spill, and Space Weather Warnings, Forecasts, and Advisories - go to Section D
- Experimental Products - go to Section E
- Natural Resource Plans - go to Section F
- Corporate and General Information - go to Section G

(2) Describe how this information product meets the applicable objectivity standards.

General Standard: Information is presented in an accurate, clear, complete, and unbiased manner, and in proper context. The substance of the information is accurate, reliable, and unbiased; in the scientific, financial or statistical context, original and supporting data are generated and the analytical results are developed using sound, commonly accepted scientific and research methods. "Accurate" means that information is within an acceptable degree of imprecision or error appropriate to the particular kind of information at issue and otherwise meets commonly accepted scientific, financial and statistical standards.

If the information is "influential," that is, it is expected to have a genuinely clear and substantial impact on major public policy and private sector decisions, it is noted as such and it is presented with the highest degree of transparency. If influential information constitutes an assessment of risks to human health, safety or the environment, indicate whether the risk assessment was qualitative or quantitative, and describe which SDWA-adapted quality standards at page 9 of NOAA's Section 515 Information Quality Guidelines were applied to the information product.

Use of third party information in the product (information not collected or generated by NOAA) is only done when the information is of known quality and consistent with NOAA's Section 515 Guidelines; any limitations, assumptions, collection methods, or uncertainties concerning the information are taken into account and disclosed.

Specific Standards: Specific objectivity standards for categories of information products disseminated by NOAA are listed below. Document how the general and specific objectivity standards for the particular information product were met.

A. Original Data

Original Data are data in their most basic useful form. These are data from individual times and locations that have not been summarized or processed to higher levels of analysis. While these data are often derived from other direct measurements (e.g., spectral signatures from a chemical analyzer, electronic signals from current meters), they represent properties of the environment. These data can be disseminated in both real time and retrospectively. Examples of original data include buoy data, survey data (e.g., living marine resource and hydrographic surveys), biological and chemical properties, weather observations, and satellite data.

Objectivity of original data is achieved using sound quality control techniques.

Detail how the data collection methods, systems, instruments, training, and/or tools are appropriate to meet the requirements of the intended users.

Were the methods, systems, instruments, etc., validated before use?

Were standard operating procedures (SOPs) followed for time series data collections? If not, document the valid scientific reasons for the deviation.

Document the quality control techniques used, for example:

- Gross error checks for data that fall outside of physically realistic ranges (e.g., a minimum, maximum or maximum change)
- Comparisons made with other independent sources of the same measurement
- Examination of individual time series and statistical summaries
- Application of sensor drift coefficients determined by a comparison of pre- and post-deployment calibrations
- Visual inspection of data

Describe any evolution and/or improvements in survey techniques, instrument performance and/or data processing.

Have metadata record descriptions and explanations of the methods and quality controls to which original data are subjected been included in the disseminated product? If not, they must be made available upon request.

B. Synthesized Products

Synthesized Products are those that have been developed through analysis of original data. This includes analysis through statistical methods; model interpolations, extrapolations, and simulations; and combinations of multiple sets of original data.

While some scientific evaluation and judgment is needed, the methods of analysis are well documented and relatively routine.

Examples of synthesized products include summaries of fisheries landings statistics, weather statistics, model outputs, data display through Geographical Information System techniques, and satellite-derived maps.

The objectivity of synthesized products is achieved by using data of known quality, applying sound analytical techniques, and reviewing the products or processes used to create them before dissemination. For synthesized products, please document the following:

Identify data sources (preferred option) or be prepared to make them available upon request.

Are the data used of known quality or from sources acceptable to the relevant scientific and technical communities?

Are the methods used to create the synthesized product published in standard methods manuals or generally accepted by the relevant scientific and technical communities? Are the methods documented in readily accessible formats by the disseminating office?

Describe the review process used to ensure the validity of the synthesized product or the procedures used to create them, e.g., statistical procedures, models, or other analysis tools.

If the synthesized product is unique or not regularly produced, was this product reviewed by internal and/or external experts?

If this is a routinely produced synthesized product, was the process for developing the product reviewed by internal and/or external experts?

Does the synthesized product include information about the methods used to create the product? If not, the methods must be made available upon request.

C. Interpreted Products

Interpreted Products are those that have been developed through interpretation of original data and synthesized products. In many cases, this information incorporates additional contextual and/or normative data, standards, or information that puts original data and synthesized products into larger spatial, temporal, or issue contexts. This information is subject to scientific interpretation, evaluation, and judgment. Examples of interpreted products include journal articles, scientific papers, technical reports, and production of and contributions to integrated assessments.

Objectivity of interpreted products is achieved by using data of known quality or from sources acceptable to the relevant scientific and technical communities and reliable supporting products, applying sound analytical techniques, presenting the information in the proper context, and reviewing the products before dissemination.

Are all data and information sources identified or properly referenced?

Are the methods used to create the interpreted product generally accepted by the relevant scientific and technical communities?

Is information concerning the quality and limitations of the interpreted product provided to help the user assess the suitability of the product for the user's application?

Describe the review process used to ensure that the product is valid, complete, unbiased, objective and relevant. For example, peer reviews, ranging from internal peer review by staff who were not involved in the development of the product to formal, independent, external peer review. The review should be conducted at a level commensurate with the importance of the interpreted product.

Does the interpreted product include a description of the methods used to create the product? If not, they must be made available upon

request.

D. Hydrometeorological, Hazardous Chemical Spill, and Space Weather

Warnings, Forecasts, and Advisories

Hydrometeorological, Hazardous Chemical Spill, and Space Weather Warnings, Forecasts, and Advisories are time-critical interpretations of original data and synthesized products, prepared under tight time constraints and covering relatively short, discrete time periods. As such, these warnings, forecasts, and advisories represent the best possible information in given circumstances. They are subject to scientific interpretation, evaluation, and judgment. Some products in this category, such as weather forecasts, are routinely prepared. Other products, such as tornado warnings, hazardous chemical spill trajectories, and solar flare alerts, are of an urgent nature and are prepared for unique circumstances.

Objectivity of information in this category is achieved by using reliable data collection methods and sound analytical techniques and systems to ensure the highest possible level of accuracy given the time critical nature of the products.

What is the source of the data or information used in the product? Are the data used of known quality or from sources acceptable to the relevant scientific and technical communities? Are the sources included in the information product? If not, they must be made available upon request. Are the methods used to create the product generally accepted by the relevant scientific and technical communities?

Please note if individual best judgment was used due to the time-critical nature of the product.

What mechanisms were used to evaluate the accuracy of the information product? Statistical analysis may be carried out for a subset of products for verification purposes.

E. Experimental Products

Experimental products are products that are experimental (in the sense that their quality has not yet been fully determined) in nature, or are products that are based in part on experimental capabilities or algorithms. Experimental products fall into two classes.

They are either (1) disseminated for experimental use, evaluation or feedback, or (2) used in cases where, in the view of qualified scientists who are operating in an urgent situation in which the timely flow of vital information is crucial to human health, safety, or the environment, the danger to human health, safety, or the environment will be lessened if every tool available is used. Examples of experimental products include imagery or data from non-NOAA sources, algorithms currently being tested and evaluated, experimental climate forecasts, and satellite imagery processed with developmental algorithms for urgent needs (e.g., wildfire detection).

Objectivity of experimental products is achieved by using the best science and supporting studies available, in accordance with sound and objective scientific practices, evaluated in the relevant scientific and technical communities, and peer-reviewed where feasible.

Describe the science and/or supporting studies used, the evaluation techniques used, and note any peer-review of the experimental product. Were the results of initial tests or evaluations made available where possible? Describe the review, by the appropriate NOAA unit, of the experimental products and capabilities documentation, along with any tests or evaluations.

Are explicit limitations provided concerning the quality of the experimental product? Is the degree of uncertainty indicated?

Describe the testing process used, e.g., the experimental product or capabilities are used only after careful testing, evaluation, and review by NOAA experts, and then are approved for provisional use only by selected field offices or other NOAA components. This process is repeated as needed to ensure an acceptable and reliable level of quality.

F. Natural Resource Plans

Natural Resource Plans are information products that are prescribed by law and have content, structure, and public review processes (where applicable) that will be based upon published standards, e.g., statutory or regulatory guidelines. Examples of such published standards include the National Standard Guidelines (50 CFR Part 600, Subpart D), Essential Fish Habitat Guidelines, and Operational Guidelines - Fishery Management Plan Process, all under the Magnuson-Stevens Fishery Conservation and Management Act; and the National Marine Sanctuary Management Plan Handbook (16 U.S.C. section 1434) under the National Marine Sanctuary Act. These Natural Resource Plans are a composite of several types of information (e.g., scientific, management, stakeholder input, and agency policy) from a variety of internal and external sources. Examples of Natural Resources Plans include fishery, protected resource, and sanctuary management plans and regulations, and natural resource restoration plans.

Objectivity of Natural Resource Plans will be achieved by adhering to published standards, using information of known quality or from sources acceptable to the relevant scientific and technical communities, presenting the information in the proper context, and reviewing the products before dissemination.

What published standard(s) governs the creation of the Natural Resource Plan? Does the Plan adhere to the published standards? (See the NOAA Sec. 515 Information Quality Guidelines, Section II(F) for links to the published standards for the Plans disseminated by NOAA.)

Was the Plan developed using the best information available? Please explain.

Have clear distinctions been drawn between policy choices and the supporting science upon which they are based? Have all supporting materials, information, data and analyses used within the Plan been properly referenced to ensure transparency?

Describe the review process of the Plan by technically qualified individuals to ensure that the Plan is valid, complete, unbiased, objective and relevant. For example, internal review by staff who were not involved in the development of the Plan to formal, independent, external peer review. The level of review should be commensurate with the importance of the Plan and the constraints imposed by legally enforceable deadlines.

G. Corporate and General Information

Corporate or general information includes all non-scientific, non-financial, non-statistical information. Examples include program and organizational descriptions, brochures, pamphlets, education and outreach materials, newsletters, and other general descriptions of NOAA operations and capabilities.

Corporate and general information disseminated by NOAA must be presented in a clear, complete, and unbiased manner, and in a context that enhances usability to the intended audience. To the extent possible, identify the sources of the disseminated information, consistent with confidentiality, privacy and security considerations and protections, and taking into account timely presentation, the medium of dissemination, and the importance of the information, balanced against the resources required and the time available.

Information disseminated by NOAA is reliable and accurate to an acceptable degree of error as determined by factors such as the importance of the information, the intended use, time sensitivity, expected degree of permanence, relation to the primary mission(s) of the disseminating office, and the context of the dissemination, balanced against the resources required and the time available.

For non-scientific, non-statistical information, has the information product been reasonably determined to be factually correct in the view of the disseminating office as of the time of dissemination?

Describe the review process for the information product. Review can be accomplished in a number of ways, including but not limited to combinations of the following:

- Active personal review of information by supervisory and management layers, either by reviewing each individual dissemination, or selected samples, or by any other reasonable method.
- Use of quality check lists, charts, statistics, or other means of tracking quality, completeness, and usefulness.
- Process design and monitoring to ensure that the process itself imposes checks on information quality .
- Review during information preparation.
- Use of management controls.
- Any other method, which serves to enhance the accuracy, reliability and objectivity of the information.

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(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a)(3) and (4) with respect to the optimum yield from, the capacity and extent to which United States fish processors will process United States harvested fish from, and the total allowable level of foreign fishing in, each fishery (except as provided in section subsection (a)(3)) within its geographical area of authority;

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(6) develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g);

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(7) develop, in conjunction with the scientific and statistical committee, multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, that shall—

(A) establish priorities for 5-year periods;

(B) be updated as necessary; and

(C) be submitted to the Secretary and the regional science centers of the National Marine Fisheries Service for their consideration in developing research priorities and budgets for the region of the Council; and

(8) conduct any other activities which are required by, or provided for in, this Act or which are necessary and appropriate to the foregoing functions.

97-453, 99-659, 101-627

(i) PROCEDURAL MATTERS.—

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(1) The Federal Advisory Committee Act (5 U.S.C. App. 2) shall not apply to the Councils, the Council coordination committee established under subsection (l), or to the scientific and statistical committees or other committees or advisory panels established under subsection (g).

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(2) The following guidelines apply with respect to the conduct of business at meetings of a Council, of the Council coordination committee established under subsection (l), and of the scientific and statistical committees or other committees or advisory panels established under subsection (g):

(A) Unless closed in accordance with paragraph (3), each regular meeting and each emergency meeting shall be open to the public.

(B) Emergency meetings shall be held at the call of the chairman or equivalent presiding officer.

(C) Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, shall be provided by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery), except that e-mail notification and website postings alone are not sufficient. Timely notice of each regular meeting shall also be published in the Federal Register. The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or within 14 days prior to the meeting date, unless such modification is to address an emergency action under section 305(c), in which case public notice shall be given immediately.

(D) Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings. All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement.

(E) Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Chairman shall certify the accuracy of the minutes of each such meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.

(F) Subject to the procedures established under paragraph (4), and the guidelines prescribed by the Secretary under section 402(b), relating to confidentiality, the administrative record, including minutes required under subparagraph (E), of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a single location in the offices of the Council or the Secretary, as appropriate.

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- (3) (A) Each Council, the Council Coordination Committee established under subsection (1), scientific and statistical committee, other committees, and advisory panel—
- (i) shall close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and
 - (ii) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested; and

16 U.S.C. 1852
MSA § 302

(B) If any meeting or portion is closed, the Council concerned shall provide notice by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery), except that e-mail notification and website postings alone are not sufficient, including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters. Subparagraphs (D) and (F) of paragraph (2) shall not apply to any meeting or portion thereof that is so closed.

(4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 402(b), must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics.

(5) Each Council shall specify those procedures that are necessary or appropriate to ensure that the committees and advisory panels established under subsection (g) are involved, on a continuing basis, in the development and amendment of fishery management plans.

(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

99-659, 104-297

(j) DISCLOSURE OF FINANCIAL INTEREST AND RECUSAL.—

104-297

(1) For the purposes of this subsection—

(A) the term “affected individual” means an individual who—

(i) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2); or

(ii) is a voting member of a Council appointed—

(I) under subsection (b)(2); or

(II) under subsection (b)(5) who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government; and

(B) the term “designated official” means a person with expertise in Federal conflict-of-interest requirements who is designated by the Secretary, in consultation with the Council, to attend Council meetings and make determinations under paragraph (7)(B).

Administrative Management and Executive Secretariat

NAO 216-100

PROTECTION OF CONFIDENTIAL FISHERIES STATISTICS Eff: 7/18/94; Iss: 7/26/94

SECTION 1. PURPOSE.

. 01 This Order:

- a. prescribes policies and procedures for protecting the confidentiality of data submitted to and collected by the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS) as authorized or required by law;
- b. informs authorized users of their obligations for maintaining the confidentiality of data received by NMFS;
- c. provides for operational safeguards to maintain the security of data; and
- d. states the penalties provided by law for disclosure of confidential data.

SECTION 2. SCOPE.

This Order covers all confidential data received, collected, maintained, or used by NMFS.

SECTION 3. DEFINITIONS.

. 01 **Access to data** means the freedom or ability to use data, conditioned by a statement of nondisclosure and penalties for unauthorized use.

. 02 **Aggregate or summary form** means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

. 03 **Agreement** refers to all binding forms of mutual commitment under a stated set of conditions to achieve a specific objective.

. 04 **Assistant Administrator** means the Assistant Administrator for Fisheries, NOAA, or a designee authorized to have access to confidential data.

. 05 **Authorized Use/User.**

a. **Authorized use** is that specific use authorized under the governing statute, regulation, order, contract or agreement.

b. An **authorized user** is any person who, having the need to collect or use confidential data in the performance of an official activity, has read this Order and has signed a statement of nondisclosure affirming the user's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure.

. 06 **Confidential data** means data that are identifiable with any person, accepted by the Secretary, and prohibited by law from being disclosed to the public. The term "as used" does not convey data sensitivity for national security purposes [See Executive Order (E.O.) 12356 dated April 2, 1982].

. 07 **Data** refers to information used as a basis for reasoning, discussion, or calculation that a person may submit, either voluntarily or as required by statute or regulation.

. 08 **GC** means the Office of General Counsel, NOAA.

. 09 **Person** means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of such governments, including Regional Fishery Management Councils (Councils).

. 10 **Public** means any person who is not an authorized user.

. 11 **Region** means NMFS Regional field offices, Fisheries Science Centers, and associated laboratories.

. 12 **Source document** means the document, paper, or electronic format on which data are originally recorded.

. 13 **State employee** means any member of a State agency responsible for developing and monitoring the State's program for fisheries or Marine Mammal Protection Act (MMPA) program.

. 14 **Submitter** means any person or the agent of any person who provides data to NMFS either

voluntarily or as required by statute or regulation.

SECTION 4. POLICY.

For data subject to this Order, it is NMFS policy that:

- a. confidential data shall only be disclosed to the public if required by the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, or by court order. Disclosure of data pursuant to a subpoena issued by an agency of competent jurisdiction is a lawful disclosure. Disclosure pursuant to a subpoena must be approved by GC;
- b. individual identifiers shall be retained with data, unless the permanent deletion is consistent with the needs of NMFS and good scientific practice [See Section 6.02c]; and
- c. a notice is required on all report forms requesting data and must comply with 5 U.S.C. 552a(e)(3) and Paperwork Reduction Act requirements in NAO 216-8, Information Collections and Requirements Needing Office of Management and Budget Clearance. [See E.O. 12600 of June 23, 1987, for additional information regarding the rights of submitters to designate commercial confidential data at the time of submission.]

SECTION 5. OPERATIONAL RESPONSIBILITIES.

. 01 The Regional Director of each region (or, in the case of headquarters, each Office Director) has the responsibility to maintain the confidentiality of all data collected, maintained, and disclosed by the respective region.

. 02 Each region shall submit to the Assistant Administrator specific procedures governing the collection, maintenance, and disclosure of confidential data. These documents shall be compiled as regional handbooks following the guidelines and standards:

- a. handbooks are to be developed in detail to ensure the maintenance of confidential data on a functional basis in each region; and
- b. handbooks shall be coordinated through the National Data Management Committee (a NMFS group established by the Assistant Administrator to develop data management policies and procedures) and reviewed annually. The regional handbooks will address, at minimum, the contents of Sections 6-7.

SECTION 6. PROCEDURES.

. 01 **Data Collection.** To collect data, the Secretary may use Federal employees, contractor employees, or, pursuant to an agreement, State employees.

a. General Requirements.

1. Personnel authorized to collect Federal data must maintain all documents containing confidential data in secure facilities; and
2. may not disclose confidential data, whether recorded or not, to anyone not authorized to receive and handle such data.

b. Specific Requirements.

1. Each Federal or contractor employee collecting or processing confidential data will be required to read, date, and sign a statement of nondisclosure, that affirms the employee's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure of the data. Upon signature, the employee's name will be placed on record as an "authorized user," and the employee will be issued certification.
2. Data collected by a contractor must be transferred timely to authorized Federal employees; no copies of these data may be retained by the contractor. NMFS may permit contractors to retain aggregated data. A data return clause shall be included in the agreement. All procedures applicable to Federal employees must be followed by contractor employees collecting data with Federal authority.
3. Under agreements with the State, each State data collector collecting confidential data will sign a statement at least as protective as the one signed by Federal employees, which affirms that the signer understands the applicable procedures and regulations and the penalties for unauthorized disclosure.

.02 Maintenance.

- a. Maintenance is defined as the procedures required to keep confidential data secure from the time the source documents are received by NMFS to their ultimate disposition, regardless of format. [See National Institute of Standards and Technology "Computer Security Publications, List 91" for guidance.]
- b. Specific procedures in regional handbooks must deal with the following minimum security requirements, as well as any others that may be necessary because of the specific data, equipment, or physical facilities:
 1. the establishment of an office or person responsible for evaluating requests for access to data;

2. the identifications of all persons certified as authorized users. These lists shall be kept current and reviewed on an annual basis;
 3. the issuance of employee security rules that emphasize the confidential status of certain data and the consequences of unauthorized removal or disclosure;
 4. the description of the security procedures used to prevent unauthorized access to and/or removal of confidential data;
 5. the development of a catalog/inventory system of all confidential data received including: the type of source document; the authority under which each item of data was collected; any statutory or regulatory restriction(s) which may apply; and routing from the time of receipt until final disposition; and
 6. The development of an appropriate coding system for each set of confidential data so that access to data that identifies, or could be used to identify, the person or business of the submitter is controlled by the use of one or more coding system(s). Lists that contain the codes shall be kept secure.
- c. The permanent deletion of individual identifiers from a database shall be addressed on a case-by-case basis. Identifiers may only be deleted after:
1. future uses of data have thoroughly been evaluated, e.g., the need for individual landings records for allocating shares under an individual transferable quota program;
 2. consultation with the agency(s) collecting data (if other than NMFS), the relevant Council(s), and NMFS Senior Scientist; and
 3. concurrence by the Assistant Administrator has been received prior to deletion.

.03 Access to Data Subject to This Order.

- a. **General Requirements.** In determining whether to grant a request for access to confidential data, the following information shall be taken into consideration:

1. the specific types of data required;
2. the relevance of the data to the intended uses;
3. whether access will be continuous, infrequent, or one-time;
4. an evaluation of the requester's statement of why aggregate or nonconfidential summaries of data would not satisfy the requested needs; and
5. the legal framework for the disclosure, in accordance with GC and this Order.

- b. **Within NMFS.** NMFS employees requesting confidential data must have certification as being authorized users for the particular type of data requested.

- b. **Councils.** Upon written request by the Council Executive Director:

1. "authorized user" status for confidential data collected under the Magnuson Fishery Conservation and Management Act (Magnuson Act) may be granted to a Council for use by the Council for conservation and management purposes consistent with the approval of the Assistant Administrator as described in 50 CFR 603.5;
2. "authorized user" status for confidential data, collected under the Magnuson Act and MMPA, will be granted to Council employees who are responsible for Fishery Management Plan development and monitoring; and
3. Councils that request access to confidential data must submit, on an annual basis, a copy of their procedures for ensuring the confidentiality of data to the region, or in the case of intercouncil fisheries, regions. The procedures will be evaluated for their effectiveness and, if necessary, changes may be recommended. As part of this procedure, an updated statement of nondisclosure will be included for each employee and member who requires access to confidential data.

d. **States.**

1. Requests from States for confidential data shall be directed in writing to the NMFS office that maintains the source data.
2. Each request will be processed in accordance with any agreement NMFS may have with the State:
 - (a) confidential data collected **solely** under Federal authority will be provided to a State by NMFS only if the Assistant Administrator finds that the State has authority to protect the confidentiality of the data comparable to, or more stringent than, NMFS' requirements; and
 - (b) the State will exercise its authority to limit subsequent access and use of the data to those uses allowed by authorities under which the data was collected.

3. If the State has no agreement with NMFS for the collection and exchange of confidential data, the request shall be treated as a public request and disclosure may be denied subject to FOIA or the Privacy Act.

4. Where a State has entered into a cooperative exchange agreement with another State(s), NMFS will facilitate transfer or exchange of State collected data in its possession if:

- (a) NMFS has written authorization for data transfer from the head of the collecting State agency; and
- (b) the collecting State has provided NMFS a list of authorized users in the recipient State(s); and
- (c) the collecting State agrees to hold the United States Government harmless for any suit that may arise from the misuse of the data.

e. Contractors.

1. Pursuant to an agreement with NMFS, a NMFS contractor (including universities, Sea Grant investigators, etc.) may be granted "authorized user" status consistent with this Order if the use furthers the mission of NMFS.

2. The region will notify the contractor of its decision on access in writing within 30 calendar days after receipt of the request.

3. Contingent upon approval, the contractor will be provided with details regarding conditions of data access, any costs involved, formats, timing, and security procedures. If the request is denied, the reason(s) for denial will be given by the NMFS office involved. The denial will not preclude NMFS consideration of future requests from the contractor.

4. If access is granted, language in the agreement specifically dealing with confidentiality of data will be required. The language shall include all of the relevant portions of this Order and shall prohibit the further disclosure of the data. No data may be retained beyond the termination date of the agreement; and any disclosure of data derived from the accessed confidential data must be approved by NMFS.

5. Each agreement shall be reviewed by GC prior to its execution, and shall, to the extent possible, be consistent with the model agreement contained in Appendix D (Not included --WebEd).

f. Submitters. The Privacy Act allows for data to be released back to the submitter upon receipt and verification of a written request stating the data required.

04. Requests for Confidential Data. NMFS is authorized to collect data under various statutes [See Appendix A (Not include --WebEd)]. Two types of statutes govern the disclosure of confidential data collected by the Federal Government, those that contain specific and non-discretionary language within the Act, and those that provide overall guidance to the Federal Government. Sections of these Acts that deal with exceptions to disclosure may be found in Appendix B (Not included -- WebEd).

a. Magnuson Act and MMPA.

1. Data collected under 16 U.S.C. 1853 (a) or (b), and 16 U.S.C. 1383a (c),(d),(e),(f),or (h) will be handled in the following manner:

(a) data will only be disclosed to Federal employees and Council employees who are responsible for management plan development and monitoring; State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; a Council for conservation and management purposes [not applicable for MMPA data] or when required by court order. [See 50 CFR 229.10 and part 603];

(b) Council advisory groups are not permitted access to such confidential data [See 50 CFR 601.27(b)];

(c) requests from States that do not have an agreement with the Secretary will be processed in accordance with the Privacy Act or FOIA; and

(d) data collected by an observer under 16 U.S.C. 1853 (a) or (b) are not considered to have been "submitted to the Secretary by any person," and therefore are not confidential under Section 6.04.a of this Order. Data collected by an observer may be withheld from disclosure under the Privacy Act, or subsections (b)(3),(4),(5),(6), or (7) of FOIA.

2. Confidential data submitted to the Secretary under other Sections of the Magnuson Act or MMPA may only be disclosed in accordance with the Privacy Act or FOIA. Types of data and the collection authority may include among others:

(a) Processed Product Data -- 16 U.S.C. 1854(e);

(b) Fish Meal and Oil, Monthly -- 16 U.S.C. 1854(e);

(c) Data Collected Under State Authority and Provided to NMFS -- 16 U.S.C. 1854(e); and

(d) Tuna-Dolphin Observer Program -- 16 U.S.C. 1361 et seq.

b. **South Pacific Tuna Act.** Data collected under South Pacific Tuna Act 16 U.S.C. 973j is protected from disclosure to the public in accordance with section 973j(b).

c. **Other Statutes.** Confidential data collected under other NMFS programs as authorized by statutes other than South Pacific Tuna Act (16 U.S.C 973j), MMPA (16 U.S.C. 1361 et seq.), and Magnuson Act (16 U.S.C. 1801 et seq.), may only be disclosed to the public in accordance with the Privacy Act and FOIA. Types of data and the collection authority may include among others:

- (1) Monthly Cold Storage Fish Report -- 16 U.S.C. 742(a);
- (2) Market News Data -- 16 U.S.C. 742(a); and
- (3) Seafood Inspection Data -- 7 U.S.C. 1621 et seq.

d. Special Procedures.

1. **Cold Storage Summary Reports.** NMFS publishes monthly cold storage holdings of fishery products. Advance knowledge of the content of these reports could give those who trade in the products an opportunity to gain competitive advantage. Therefore, in addition to the confidential protection provided to individual reports, the monthly summary report will not be disclosed to the public until 3:00 p.m. Eastern Time of the official release date. Release dates for these data are published 1 year in advance in November, and can be obtained from the NMFS Fisheries Statistics Division.

2. **Surplus commodity purchases by USDA.** NMFS and the Department of Agriculture (USDA) have an interagency agreement relating to the purchase of surplus fishery products. NMFS is responsible for providing confidential data and recommendations to the USDA regarding these purchases. Advance knowledge of these data could cause a competitive advantage or disadvantage to the general public, fishing industry, and the program. Therefore, all NMFS personnel engaged in the surplus commodity purchase program will be required to sign a specific "USDA Responsibility Statement." A copy will be maintained in the Office of Trade Services.

3. **Agreements for Disclosure of Confidential Data.** A letter of agreement may authorize the disclosure of confidential data when both the Government and the submitter agree to disclosure of the data. The need to provide security for the data will vary depending on the type of data collected and the form of the disclosure. Disclosure can be undertaken if all the following conditions are met:

- (a) the person has agreed in writing to the disclosure and is aware that disclosure is irrevocable;
- (b) the recipient has been informed in writing of the sensitivity of the data; and
- (c) the wording of the agreement has been approved by GC.

.05 Disposal. NAO 205-1, NOAA Records Management Program, shall govern the disposition of records covered under this Order.

SECTION 7. PENALTIES.

.01 **Civil and Criminal.** Persons who make unauthorized disclosure of confidential data may be subject to civil penalties or criminal prosecution under:

- a. Trade Secrets Act (18 U.S.C. 1905);
- b. Privacy Act (5 U.S.C. 552a(i)(1));
- c. Magnuson Act (16 U.S.C. 1858); and
- d. MMPA (16 U.S.C. 1375).

.02 **Conflict of Interest.** Employees are prohibited by Department of Commerce employee conduct regulations [15 CFR part 0] and by ethics regulations applicable to the Executive Branch [5 CFR 2635.703] from using nonpublic information subject to this Order for personal gain, whether or not there is a disclosure to a third party.

.03 **Disciplinary Action.** Persons may be subject to disciplinary action, including removal, for failure to comply with this Order. Prohibited activities include, but are not limited to, unlawful disclosure or use of the data, and failure to comply with implementing regulations or statutory prohibitions relating to the collection, maintenance, use and disclosure of data covered by this Order.

SECTION 8. EFFECT ON OTHER ISSUANCES. None.

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SEC. 402. INFORMATION COLLECTION

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

(1) COUNCIL REQUESTS.—If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) SECRETARIAL INITIATION.—If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

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(b) CONFIDENTIALITY OF INFORMATION.—

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

(E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);

(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;

(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.