

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 680**

[Docket No. 110207108–2709–01]

RIN 0648–BA82

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

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

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 41 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). If approved, these regulations will amend the Bering Sea/Aleutian Islands Crab Rationalization Program (CR Program) by establishing a process whereby holders of regionally designated individual fishing quota (IFQ) and individual processor quota (IPQ) in six CR Program fisheries may receive an exemption from regional delivery requirements in the North or South Region. The six CR Program fisheries are Bristol Bay red king crab, Bering Sea snow crab, Saint Matthew Island blue king crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, and Pribilof Islands red and blue king crab. Current regulations require that a portion of crab harvested in these fisheries be delivered and processed within the boundaries of the North or South Region. This action is necessary to mitigate disruptions in a CR Program fishery that prevent participants from complying with regional delivery requirements. This proposed action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

**DATES:** Written comments must be received no later than 5:00 p.m. Alaska local time (A.l.t.) March 1, 2013.

**ADDRESSES:** You may submit comments, identified by NOAA–NMFS–2011–0032, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.

To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA–NMFS–2011–0032 in

the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on that line.

- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P. O. Box 21668, Juneau, AK 99802.

- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of Amendment 41 to the FMP, the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), and the Categorical Exclusion prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The Environmental Impact Statement (EIS), RIR, and Social Impact Assessment prepared for the CR Program are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the above

address; emailed to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or faxed to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

NMFS published the final rule to implement the CR Program, Amendments 18 and 19 to the FMP, on March 2, 2005 (70 FR 10174). Regulations implementing the FMP and all amendments to the CR Program are at 50 CFR part 680.

The CR Program is a catch share program for nine BSAI crab fisheries that allocates those resources among harvesters, processors, and coastal communities. Under the CR Program, NMFS issued quota share (QS) to eligible harvesters based on their participation during a set of qualifying years in one or more of the nine CR Program fisheries. QS is an exclusive, revocable privilege allowing the holder to harvest a specific percentage of the annual total allowable catch (TAC) in a CR Program fishery.

A QS holder’s annual allocation, called IFQ, is expressed in pounds and is based on the amount of QS held in relation to the total QS pool for that fishery. NMFS issues IFQ in three classes: Class A IFQ, Class B IFQ, and Class C IFQ. Three percent of IFQ is issued as Class C IFQ for captains and crew. Of the remaining IFQ, 90 percent is Class A IFQ and 10 percent is Class B IFQ.

NMFS issued processor quota share (PQS) to qualified individuals and entities based on processing activities in CR Program fisheries during a period of qualifying years. PQS is an exclusive, revocable privilege to receive deliveries of a fixed percentage of the annual TAC from a CR Program fishery. A PQS holder’s annual allocation is individual processing quota (IPQ). NMFS issues IPQ at a one-to-one correlation between the amount of IPQ and Class A IFQ issued for each CR Program fishery. Class A IFQ must be delivered to a processor holding a matching amount of IPQ; Class C IFQ and Class B IFQ may be delivered to any registered crab receiver.

**Regional Delivery Requirements**

The CR Program established regional delivery requirements to preserve the

historic geographic distribution of deliveries in the crab fisheries. NMFS assigned a regional designation to QS and PQS for seven of the nine CR Program fisheries. Regional designations of QS and PQS are described, respectively, in § 680.40(b)(2) and (d)(2).

Amendment 41 and this proposed rule would apply to QS and PQS that have a regional designation for the North Region or South Region. NMFS assigned a North Region designation or a South Region designation to the QS and PQS in six CR Program fisheries: Bristol Bay red king crab, Bering Sea snow crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, Saint Matthew Island blue king crab, and Pribilof Islands red and blue king crab. The North Region is north of 54°20' N. latitude. The South Region is south of 54°20' N. latitude.

NMFS also assigned a West Region designation to a portion of the Western Aleutian Islands golden king crab QS and PQS; the remaining QS and PQS in that fishery is undesignated and may be delivered without regional limitation. Eastern Bering Sea Tanner crab QS and PQS, and Western Bering Sea Tanner crab fishery QS and PQS do not have a regional designation. Amendment 41 and this proposed rule would not apply to QS and PQS issued for these fisheries.

Class A IFQ has the same regional designation as the underlying QS. Class B IFQ and Class C IFQ do not have regional designations: the crab harvested under Class B IFQ or Class C IFQ can be delivered to any registered crab receiver. For Class A IFQ with a regional designation, CR Program regulations at § 680.7(a)(2) prohibit a processor from receiving crab in any region other than the region designated on the IFQ permit.

IPQ has the same regional designation as the underlying PQS. CR Program regulations at § 680.7(a)(4) prohibit the use of IPQ to process crab in any region other than the region designated on the IPQ permit.

Environmental or man-made conditions have created obstacles to regional deliveries in every year since implementation of the CR Program. Each year, icing conditions have been an obstacle to delivering crab harvested with North Region IFQ in the North Region. For an entire season, deliveries to a floating processor that served most of the North Region were prevented by a fire that disabled the processor. Whether a delivery is prevented depends on the circumstances, such as the spatial distribution and type of ice, the specific vessel, the location of the

vessel relative to the processing facility, the amount and condition of crab on board, and any factors affecting the willingness of the captain to wait for conditions to change.

Despite these circumstances, participants have met regional delivery requirements in all CR Program fisheries except Western Aleutian Islands golden king crab. Amendment 37, described below, addressed the problems in that fishery. In the North Region, IFQ holders have complied with regional delivery requirements by using their harvesting cooperatives to adjust the timing of crab harvests and using other available IFQ in lieu of North Region IFQ. Such ad hoc responses to severe weather conditions or other circumstances that restrict landings have enabled the participants in the North Region to meet regional delivery requirements; however, these measures have not provided long-term solutions that sufficiently address timeliness, safety, economic efficiency, and other factors.

Western Aleutian Islands golden king crab fishery had suffered from a chronic lack of processing capacity in the West Region. Amendment 37 to the FMP addressed the difficulties of IFQ and IPQ holders meeting the regional delivery requirement in this fishery. Under regulations implementing Amendment 37, eligible participants in the Western Aleutian Islands golden king crab fishery may enter into a contractual agreement and request that NMFS exempt them from regional delivery requirements for West Region Class A IFQ and corresponding IPQ. Upon approval of a completed application, NMFS will exempt holders of West Region Class A IFQ and corresponding IPQ from regional delivery requirements, thereby allowing eligible participants to deliver and receive crab at facilities outside of the West Region. Additional information on Amendment 37 is contained in the final rule (76 FR 35781, June 20, 2011).

Because the conditions that have impeded deliveries within the West Region (e.g., limited, or no, available processing capacity) differ from the conditions impeding deliveries in the North Region (e.g., icing conditions), the Council chose to develop Amendment 41 to respond to the specific delivery conditions in CR fisheries subject to North and South regional designations.

#### IPQ Use Caps

The CR Program has PQS and IPQ use caps. When the Council recommended the CR Program, it was concerned that excessive consolidation of PQS could reduce competition and reduce

processing in communities where processing had historically occurred. Therefore, the Council created limits on the total amount of PQS that a person can hold, the amount of IPQ that a person can use, and the amount of IPQ that can be processed at a single facility. For a complete discussion of the PQS and IPQ use caps, please see the proposed rule for the CR Program (69 FR 63200; October 29, 2004). As discussed below, this proposed rule modifies the CR Program use caps so that NMFS would not count crab delivered pursuant to an exemption toward those caps. This change is necessary to allow IPQ holders and facilities to accept crab for delivery and processing once the crab is subject to an exemption from the regional delivery requirements.

#### Amendment 41

The Council adopted Amendment 41 to the FMP at its December 2010 meeting. Amendment 41 would promote the safety of human life at sea and mitigate economic harm by allowing participants to receive an exemption from regional delivery requirements in situations where events prevent participants from delivering crab harvested with North Region IFQ in the North Region or South Region IFQ in the South Region.

In recommending Amendment 41, the Council recognized that weather conditions or other natural or man-made circumstances can hinder harvesting activities and restrict access to processing facilities in the North or South Region. Natural or man-made catastrophes could result in lost revenue to harvesters, processors, and communities. Safety risks increase when harvesters attempt to meet regional delivery requirements in inclement weather (e.g., icing conditions) and other potentially unsafe situations. Unforeseen delays in delivering crab could result in deadloss (crab that die before being processed). Harvesters may avoid or delay the harvest of regionally designated IFQ, thereby increasing the potential for unharvested crab or crab harvested later in the fishing season than would have been otherwise required for a given TAC level. Such changes in fishing behavior could result in unused IPQ, increased processing cost, loss of market share, and loss of revenue to remote communities dependent on revenues from crab deliveries and processing.

The Council recognized that the purpose of prohibiting holders of regionally designated Class A IFQ and IPQ from delivering and processing crab outside the designated region is to ensure that each region retains the

economic benefits from deliveries within the region. Therefore, under Amendment 41, the Council recommended an exemption process in which deliveries of regionally designated Class A IFQ outside the region would need to be negotiated among IFQ holders, IPQ holders, and representatives of affected communities. The Council also recognized that any exemption must include requirements for IFQ holders and IPQ holders to make efforts to avoid the need for an exemption and, if an exemption is needed, to limit the amount of IFQ and IPQ that would be subject to an exemption. The Council recommended a process that supports the existing regional delivery requirements while establishing a process to mitigate disruptions in a CR Program fishery that restrict the ability of participants to comply with the delivery requirements.

The Council also recognized the potential for insurmountable administrative difficulties if NMFS specified the conditions for granting an exemption and then determined whether those conditions existed in a particular situation. Therefore, the Council recommended a system of civil contracts among harvesters, processors, and community representatives as the means of establishing the exemption from the regional delivery requirements.

Under Amendment 41, the parties—Class A IFQ holders, IPQ holders, and affected communities—would develop private contractual arrangements that specify when, and under what terms, they could request and receive an exemption from regional delivery requirements in the North or South Region. The contract terms would not be established in the FMP or in regulation. The parties would enter into two private contractual arrangements—a preseason framework agreement and an inseason exemption contract—before the specified IFQ and IPQ would be exempt from the regional delivery requirements. These contracts would govern the roles and responsibilities of the parties to the contract and would establish each party's specific obligations. The goal is that, through the framework agreement process, before the crab season, the parties would plan for adverse conditions and would agree to take actions to reduce the need for an exemption. Then, in the event that these actions were unsuccessful in averting the need for an exemption, the parties would execute an exemption contract. The parties would notify NMFS and certify that they had executed an exemption contract as required by the regulation. The exemption would go into effect the day after NMFS receives

the inseason notice. If any party to a framework agreement or exemption contract believes that any other party did not comply with their contractual obligation, that party could seek redress as a private civil matter.

Overall, the exemption process in the proposed rule seeks to allow fishery participants to respond to an emergency situation during the crab fishing season in accord with ground rules that they themselves established before the season.

Amendment 41 and this proposed rule do not prescribe specific conditions or terms of agreement for the framework agreement or exemption contract. But the Council's Statement of Council Intent should guide the parties in establishing the required contracts. Additionally, section 2.4.2 of the RIR for this action provides background about the range of private arrangements that the Council considered and that the parties could put in the framework agreement and the exemption contract.

The following Statement of Council Intent was included in the Council's December 2010 motion:

The Council intends that exemptions will be developed by agreement of the holders of Class A IFQ, holders of IPQ, and regional/community representatives. For emergency events of less than 2 million pounds in the aggregate, compensatory deliveries offer the opportunity to restore the landings to a region that are intended in current regulations; therefore no party should unreasonably withhold their agreement or unreasonably restrict the industry's ability to respond to those events. A prerequisite to an exemption will be that the parties have entered a nonbinding framework agreement. It is the Council's intent that this framework agreement will define certain terms of the exemption, including mitigation requirements and a range of terms of compensation, and that the exemption contract describes the conditions under which the exemption is being or would be requested, including mitigation requirements and terms of compensation specific to the exemption being sought. Mitigation would be intended to mitigate the effects on parties that might suffer some loss because of the granting of an exemption. Compensation would be intended to compensate parties for losses arising from the exemption. All framework agreements are expected to contain provisions for a reserve pool. A reserve pool would be intended to provide industry wide, civil contract based delivery relief without regulatory or administrative intervention. Specifically, a reserve pool would be an agreement among holders of IFQ to certain arrangements in the use of their IFQ to reduce the need for exemptions from the regional landing requirement. It is believed that an effective reserve pool must (1) commit each participant in the pool to be bound by its rules; and (2) include not less than 70% of the Class A IFQ held by:

(a) unaffiliated cooperatives and unaffiliated IFQ holders not in a cooperative, in the aggregate; or

(b) affiliated cooperatives and affiliated IFQ holders not in a cooperative, in the aggregate.

Allowing several IFQ holders, IPQ holders, and community/regional entities to be a party to the same framework agreement is intended to streamline negotiations, facilitate the use of reserve pools, and allow for the incorporation of compensatory deliveries (should the parties believe compensating deliveries are appropriate). If an exemption is needed for compensatory deliveries, the process for receiving that exemption shall be the same as the process of affidavits used to make any other exempt deliveries under this action.

The framework agreement would define the steps that the parties would take prior to the crab fishing season to reduce the need for, and amount of, an exemption during the crab fishing year. A framework agreement could include an agreement among IFQ holders, whereby they aggregate a certain percentage of their IFQ to address inseason factors that could otherwise prevent compliance with regional delivery requirements. For example, the framework agreement could prioritize the harvest of North Region Class A IFQ while setting aside a portion of South Region Class A IFQ until the North Region Class A IFQ has been harvested and delivered to matching North Region IPQ. The framework agreement would also address the circumstances that would trigger an exemption. If those circumstances occurred, the framework agreement would describe the steps that the parties would take to mitigate the adverse effects of the exemption. The framework agreement might include steps to compensate the community that was losing the processing, the economic activity from the processing, and the tax revenues from the processing.

However, the Council did not recommend, and this proposed rule does not include, any terms that the parties must include in their framework agreement or exemption contract. The parties to the agreements would determine those terms.

### The Proposed Rule

This proposed rule would establish a process by which IFQ holders, IPQ holders, and affected communities could jointly apply for and receive an exemption from regional delivery requirements. This proposed rule would apply to the following crab fisheries: Bristol Bay red king crab, Bering Sea snow crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, Saint Matthew

Island blue king crab, and Pribilof Islands red and blue king crab.

This proposed rule would implement a two-step process for an exemption from regional delivery requirements: A preseason application and an inseason notice of exemption. Both parts of the application would be on one form: the Application for Exemption from CR Crab Regional Delivery Requirements. This application process would allow the parties to apply for an exemption from the regional delivery requirements without extensive administrative review by NMFS. Under this proposed rule, both the preseason application and the inseason notice must be signed by one or more members of the following three groups: (1) Holders of Class A IFQ in a CR Program fishery subject to this proposed rule; (2) holders of the IPQ in a CR Program fishery subject to this proposed rule; and (3) a representative of the affected community.

#### *Preseason Application Process*

The preseason application process itself has two parts: (1) The development of a framework agreement by the parties; and (2) the submission of a preseason application to NMFS. During the first part of the preseason process, Class A IFQ holders, IPQ holders, and representatives from affected communities could choose to work together to establish a framework agreement for that crab fishing year. The framework agreement is intended to provide participants in the crab fishery with the flexibility to prepare for, and agree upon, certain aspects of an exemption prior to the start of the crab fishing season. This proposed rule would not require fishery participants to enter a framework agreement; however, a framework agreement would be required for fishery participants to obtain an exemption from the regional delivery requirements in that crab fishing year.

Developing the provisions of a framework agreement preseason should prevent the parties from seeking an exemption for simple convenience as well as provide several benefits to the parties. First, agreement of all parties to a framework agreement should streamline the process for seeking an exemption from the regional delivery requirements inseason. A framework agreement would provide a means for IFQ holders and IPQ holders to quickly obtain an inseason exemption from the regional delivery requirement. Second, the framework agreement could prevent a party or parties from imposing unreasonable terms in the event that an exemption is needed. For example, absent a preseason agreement, an IFQ

holder who is hampered from making a landing due to unsafe icing conditions could potentially be at a disadvantage when negotiating terms of the exemption.

Once the parties establish a framework agreement, the parties would submit the preseason application. A completed preseason application must be received by NMFS by October 15 of the crab fishing year for which the applicants may need an exemption. October 15 is the opening date of the fishing season established by the Alaska Department of Fish and Game for five of the six CR Program fisheries subject to this proposed rule. NMFS notes that the October 15 application deadline is after the August 15 opening of the Eastern Aleutian Islands golden king crab fishery season. However, participants in any of the crab fisheries subject to this rule could submit their application before October 15. Specifically, the participants in the Eastern Aleutian Islands golden king crab fishery could submit their preseason application before August 15.

The applicants would be responsible for ensuring that NMFS receives a complete application package. A complete preseason application would identify the CR program fishery for which the applicants are seeking an exemption. A complete preseason application must be signed by the holders of the IFQ and IPQ that are the subject of the preseason application and by the community representative.

A preseason application also includes an affidavit that the parties submitting the preseason application have signed a framework agreement that: (1) Specifies the CR crab fisheries that are the subject of the framework agreement; (2) specifies the actions that the parties will take to reduce the need for, and the amount of, an exemption; (3) specifies the circumstances under which the parties would execute an exemption contract and receive an exemption; (4) specifies the actions that the parties would take to mitigate the effects of an exemption; (5) specifies the compensation, if any, that any party would provide to any other party; and (6) affirms that the required parties have signed the framework agreement. The parties may include any other mutually agreeable terms in the framework agreement.

NMFS would review each preseason application. If a preseason application was timely and complete, NMFS would approve the application. If a preseason application was not received by October 15, NMFS would deny the application. If NMFS denied a preseason application for any reason, those applicants would

not be eligible for an exemption from regional delivery requirements during the crab fishing year. However, the applicants would have the right to appeal the denial.

If NMFS approves a preseason application, the applicants who submitted the preseason application could make a delivery out-of-region during the crab fishing year if, before the delivery, the applicants took two actions that are specified in the regulation: (1) The applicants executed an exemption contract; and (2) the applicants submitted an inseason notice to NMFS that they are exercising the exemption.

The preseason application process in the proposed rule is consistent with the Council's intent that NMFS only determine whether the applicants have certified to NMFS that they have signed a framework agreement that contains the required elements. The preseason application process would allow the parties themselves to establish the terms of the framework agreement. The preseason application process would allow the affected parties to enter the fishing season knowing the steps that the parties would take to avoid an exemption, the circumstances that would trigger an exemption, the steps they would need to take to obtain an exemption, and any mutually-agreed upon compensatory actions that the parties would take as a result of exercising the exemption.

#### *Inseason Process*

If parties to an approved preseason application conclude during the crab fishing year that circumstances have occurred that justify an inseason exemption under the framework agreement, those applicants must do two things to obtain an exemption. They must enter into an exemption contract with each other and they must jointly submit an inseason notice of the exemption to NMFS.

First, the exemption contract: the proposed rule specifies that the parties to an exemption contract must be, at a minimum, one IFQ holder, one IPQ holder, and the representative of the affected community. The parties to an exemption contract may be multiple IFQ holders, IPQ holders, and one or more community representatives. The proposed rule also specifies subjects that must be addressed in the exemption contract: (1) The IFQ amount and IPQ amount, by crab fishery, that is subject to the exemption contract; (2) the circumstances under which the parties are exercising the exemption; (3) the actions that the parties must take to mitigate the effects of the exemption; (4)

the compensation, if any, that any party must make to any other party; (5) whether all required parties have signed the exemption contract. The parties may include any other mutually agreeable terms in the exemption contract.

Second, an inseason notice to NMFS: after the parties execute an exemption contract, the parties would jointly submit an inseason notice to NMFS. The parties would certify to NMFS that the required parties are submitting the inseason notice, namely the holders of the IFQ and IPQ that is the subject of the inseason notice and the community representative eligible to submit an inseason notice of exemption for this IFQ and IPQ. The parties would also certify to NMFS that they have signed an exemption contract that addresses the mandatory subjects in the contract. Each applicant would affirm that all information and claims in the inseason notice are true, correct and complete.

If the parties submit a complete inseason notice to NMFS, the exemption would automatically go into effect the day after submission. The exemption would be in effect only for the IFQ and IPQ specified on the inseason notice. NMFS would post the effective date of the exemption on the NMFS Alaska Region Web site.

Once an exemption is effective, crab harvested with the IFQ specified on the notice could be delivered outside the designated region (North or South) during the rest of the crab fishing year. Once an exemption is effective, crab processed with the IPQ specified on the notice could be processed outside the designated region during the rest of the crab fishing year. Deliveries of crab out-of-region that are not allowed by an exemption would continue to be fishery violations. The regulation has no limit on the number of times in a crab fishing year that applicants with an approved preseason application could submit an inseason notice of an exemption.

The exemption process under Amendment 41 for the North and South Region differs from the exemption process under Amendment 37 for the West Region in four ways. First, under Amendment 37, any person that holds more than 20 percent of the West Region QS or West Region PQS in the Western Aleutian Islands golden king crab fishery must be a party to any request for an exemption from the regional delivery requirements. Persons holding 20 percent or less of either share type have no direct input into the contract negotiations or application. Under Amendment 41, each IFQ holder and each IPQ applies for an exemption. It does not matter how much IFO and IPQ an applicant holds.

Second, an exemption granted under Amendment 37 applies to all West Region IFQ and West Region IPQ in the Western Aleutian Islands golden king crab fishery. Under Amendment 41, an exemption only applies to the IFQ and IPQ that is the subject of a preseason application and an inseason notice.

Third, under Amendment 37, only the IFQ holders and IPQ holders apply for an exemption. Under Amendment 41, the affected community would also apply for an exemption.

Finally, Amendment 37 has only a preseason application and, although the applicants must have entered into a master contract, the regulation does not specify subjects that must be addressed in the contract. Under Amendment 41, the parties enter into both a preseason framework contract and an inseason exemption contract and the regulation specifies subjects that must be addressed in both contracts.

#### *Community Representatives*

This proposed rule gives affected communities a role in the exemption process. The proposed rule would require that a representative of the affected community sign the framework agreement, the preseason application, the exemption contract, and the inseason notice. An affected community is the community that holds the Right of First Refusal (ROFR) on designated PQS. In communities holding or formerly holding the Right of First Refusal (ROFR) on designated PQS, the community representative would be the established non-profit eligible crab community (ECC) entity, defined at § 680.2. All these communities have designated EEC entities that NMFS has approved. For the communities of Saint Paul, Saint George, False Pass, and Akutan, the EEC entity is the local Community Development Quota (CDQ) group. For Unalaska, Port Moller, King Cove, and Kodiak, the ECC entity is designated by the municipal government.

NMFS also issued a portion of the PQS for the Bering Sea snow crab fishery and the Saint Matthew Island blue king crab fishery without a ROFR designation (non-ROFR PQS). Saint Paul and Saint George are the only two communities in the North Region that have historically received and processed Bering Sea snow crab and Saint Matthew Island blue king crab. Therefore, they would be the affected communities for the purposes of an exemption from the regional delivery requirements. The Council recommended that the CDQ entities representing Saint Paul (Central Bering Sea Fishermen's Association or CBSFA)

and Saint George (Aleutian Pribilof Island Community Development Association or APICDA) select a single community representative to sign on their behalf, the framework agreement, the preseason application, the exemption contract, and the inseason notice for this non-ROFR PQS. The Council recommended one community representative for non-ROFR PQS to reduce the potential for additional administrative burden that may arise if representatives of both APICDA and CBSFA were required to sign these documents.

Under this proposed rule, APICDA and CBSFA would have 180 days from the effective date of the final rule to inform NMFS in writing that they have designated a single community representative responsible for signing the framework agreement, the preseason application, the exemption contract, and the inseason notice. After publication of the final rule, NMFS would notify APICDA and CBSFA of the deadline to designate a single community representative and provide instructions for informing NMFS of the community representative. The 180-day window should provide adequate time for the two CDQ entities to coordinate their recommendation but not create an undue delay.

The Council did not specify what would happen if APICDA and CBSFA do not designate a single community representative or if they want to revoke a designation in the future. NMFS therefore proposes that if APICDA and CBSFA do not designate a community representative to NMFS by the deadline, then both APICDA and CBSFA would need to sign the documents for the applicable North Region non-ROFR PQS. This provision ensures that both CDQ entities would participate in reaching these agreements if they did not designate a single community representative.

Additionally, NMFS proposes that APICDA or CBSFA may revoke its designation of a community representative by providing written notice to the other entity and to NMFS. If either APICDA or CBSFA revokes its designation of a community representative, then both APICDA and CBSFA would need to sign all documents related to the exemption: the framework agreement, the preseason application, the exemption contract, and the inseason notice. However, if APICDA or CBSFA revoke its designation after October 15, the revocation will not affect the validity of any action taken by the designated community representative pursuant to § 680.4(p) for that crab fishing year.

### *IPQ Use Caps*

This proposed rule would not change existing IPQ use caps; however, it would add exemptions from IPQ use caps when NMFS approves an exemption from the regional delivery requirements. The CR Program at § 680.42(b) limits the amount of IPQ that a single person may hold. Under the proposed rule at § 680.42(b)(7), NMFS would not count crab processed outside the designated region pursuant to an exemption against this limit.

The CR Program at § 680.42(b) also limits how much IPQ an individual facility may use or process. Under the proposed rule at § 680.42(b)(8), NMFS would not count crab processed outside the designated region under an exemption toward the IPQ use cap of the processing facility. It is likely that a facility would likely process crab from outside the designated region through a custom processing arrangement. The receiving processor would likely have little notice to prepare for the delivery. An exemption from the IPQ use caps would help to ensure that a facility would not refuse delivery of the crab to avoid exceeding the facility's IPQ use cap.

NMFS notes that IPQ holders would continue to be subject to the IPQ use caps for all processing that does not occur through an exemption from the regional delivery requirements.

### *Regional Delivery Exemption Report*

This proposed rule includes a reporting requirement to provide NMFS and the Council with the means to assess the exemption in terms of the Council's Statement of Council Intent for Amendment 41. In a crab fishing year when an IFQ holder submits a preseason application for an exemption from the regional delivery requirements, the IFQ holder must also submit an annual Regional Delivery Exemption Report to NMFS by June 30 of that crab fishing year. The Council did not recommend a deadline for submitting the Regional Delivery Exemption Report. To reduce the burden on fishery participants, NMFS is proposing the June 30 deadline to correspond with the end of the crab fishing year and with the deadline for the Eligible Crab Community Organization Annual Report in § 680.5(f).

The proposed rule requires that before IFQ holders submit the Regional Delivery Exemption Report to NMFS, they submit a copy of the report to the community representatives and IPQ holders that also signed the preseason application. NMFS proposes a deadline of June 15 for IFQ holders to take this

action. In response to the IFQ holder's report, community representatives and IPQ holders may choose to submit, respectively, a Community Impact Report or IPQ Holder Report. These reports would offer community representatives and IPQ holders an opportunity to provide the Council and NMFS with their perspectives on the framework agreement and exemption contract and to provide an additional viewpoint to the Regional Delivery Exemption Report.

Under the proposed rule, the annual Regional Delivery Exemption Report must include the following: (1) The amount of IFQ, if any, set aside to reduce the need for, and to limit the extent, or amount of, the exemption; (2) the mitigation measures employed before submitting an inseason notice; (3) the number of times an exemption was requested and used; (4) whether the exemption was necessary; and (5) any impacts resulting from the exemption on the fishery participants and communities that signed the preseason application. NMFS is not proposing similar reporting requirements for the Community Impact Report or IPQ Holder Report because these reports are voluntary. The Regional Delivery Exemption Report, Community Impact Report, and the IPQ Holder Report will provide documentation and transparency needed by the Council and NMFS to evaluate the efficacy of privately administered contracts described in this action.

### **Classification**

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

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

### *Regulatory Impact Review (RIR)*

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended Amendment 41 based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the initial regulatory flexibility analysis (IRFA) section.

### *Initial Regulatory Flexibility Analysis (IRFA)*

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the proposed action, why it is being considered, and the legal basis for this proposed action are contained in the **SUPPLEMENTARY INFORMATION** section of the preamble and are not repeated here. A summary of the IRFA follows. Copies of the IRFA are available from NMFS (see **ADDRESSES**).

The RIR/IRFA prepared for this proposed rule incorporates by reference an extensive RIR/IRFA prepared for Amendments 18 and 19 to the FMP that detailed the impacts of the CR Program on small entities.

### **Number and Description of Small Entities Regulated by the Proposed Action**

The proposed rule would create a process whereby IFQ holders and IPQ holders who enter an agreement with an ECC entity or community representative may apply for and receive an exemption from regional delivery requirements. Estimates of the number of small entities holding IFQ are based on estimates of gross revenues. During the 2009–2010 fishing season, nine entities held IFQ subject to regional delivery requirements; three of these IFQ holders were small entities. In that same season, 14 of the 22 entities that held IPQ subject to regional delivery requirements were small entities. Six small community entities, including two CDQ entities, would be directly regulated by this action.

### **Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities**

The Council considered two alternatives; status quo and the proposed action. The status quo is no exemption from the regional delivery requirements. The proposed action is an exemption from the regional delivery requirements. For the proposed action alternative, the Council considered a number of options to improve the functioning of the exemption and minimize adverse impacts on small entities. The Council also considered and eliminated from further considerations several alternatives that the Council determined would have limited the effectiveness of the exemption in achieving its intended purpose.

The analysis shows that the proposed action minimizes the adverse impacts

on small entities from the status quo. All of the directly regulated entities are expected to benefit from this action relative to the status quo alternative because the proposed rule would allow crab to be landed and processed outside the designated region if a circumstance occurs that the directly regulated entities agreed in advance prevents compliance with regional delivery requirements. Allowing for the exemption would potentially reduce deadloss, promote full utilization of the TAC, and improve safety at sea. It is unlikely that any party to the exemption would benefit more than any other because all applicants would have agreed, before the season, to the terms of mitigation and compensation.

The Council considered a number of options to improve the functioning of the exemption and minimize adverse impacts on small entities. The Council considered options that would allow communities benefiting from a ROFR to select a regional representative to act on their behalf rather than the ECC entity. The Council did not choose that option because of the potential difficulties that communities could encounter in selecting the regional representative and because of the additional administrative costs and burdens associated with this option. In addition to providing an expedited administrative process, the approach selected by the Council maintains the original intent of CR Program community protection measures in that it preserves community interests by providing not only a regional linkage for certain PQS, but also a close linkage between certain PQS and the community of origin for that PQS.

The Council also considered and eliminated from further consideration several alternatives during the development of Amendment 41. These alternatives are described in detail in Section 2.2.1 of the analysis for this action (see **ADDRESSES**). Generally, the Council perceived these alternatives as limiting the effectiveness of the exemption in achieving its intended purpose.

The Council considered and rejected alternatives in which NMFS would fully administer regional exemptions by determining whether specific conditions existed to qualify for an exemption from the regional delivery requirement. The Council did not advance these alternatives because the Council viewed them as overly expensive to administer and likely to prevent the exemption process from fulfilling its purpose as described in the Council's purpose and need statement for this action. The Council and NMFS recognized that the

necessary fact finding to make such a determination (e.g., that a specific amount of ice was prohibiting harvesting or delivery of crab in a specific location) would not only delay decision making, but could also be costly. Verification of conditions could be difficult or impracticable due to the remoteness of the location and poor quality of data available.

A factual finding would require NMFS to not only complete an assessment of the event that arguably prevents a delivery, but also of the potential availability of other processing facilities in the region to overcome the barrier to the delivery. These findings would require factual assessments of circumstances in remote areas. Such findings typically require time, which may jeopardize safety in emergencies, and information, which may not be available to NMFS. In addition, the need for administrative review of these findings could result in additional delays. Consequently, the Council elected to pursue alternatives that would not rely on agency administrative discretion. Instead, the affected parties would define the terms under which they would apply for and receive an exemption. This approach also allows the parties flexibility to develop mitigation and compensation requirements that would, in turn, minimize the need for the exemption and, if an exemption is necessary, ensure that the parties potentially harmed by the exemption receive reasonable compensation.

The Council also considered an alternative that would have defined specific exemption criteria in regulation; however, the Council eliminated this alternative because NMFS and the Council recognized that this approach might be overly restrictive and could not be adapted as circumstances might require. The Council also elected not to recommend an alternative that specifically defined compensation because the Council deemed this alternative too prescriptive to effectively balance the competing interests of parties, which are likely to change with the circumstances surrounding the granting of an exemption. Similarly, the Council chose not to advance alternatives that would redesignate IFQ and IPQ to compensate for landings redirected under the exemption because they would be administratively complex given the inability to rollover IFQ from one year to the next.

### **Duplicate, Overlapping, or Conflicting Federal Rules**

NMFS has not identified any duplication, overlap, or conflict between this proposed action and existing Federal rules.

### **Recordkeeping and Reporting Requirements**

The reporting, recordkeeping, and other compliance requirements would be increased under the proposed rule if parties enter into the agreements and contracts required as part of a completed Application for Exemption from CR Crab Regional Delivery Requirements. This proposed rule adds recordkeeping and reporting requirements necessary to implement Amendment 41, namely submission, prior to the start of the fishing season, of an application and affidavit affirming that IFQ holders, IPQ holders, and community representatives have entered into a framework agreement. A second notice and affidavit affirming that those parties have entered into an exemption contract is required if the parties subject to the framework agreement wish to seek an exemption during the fishing season.

Participation in an Application for Exemption CR Crab Regional Delivery Requirements is voluntary, but would be necessary to deliver crab outside of a designated region when circumstances necessitate an exemption from the regional delivery requirements.

The professional skills necessary to comply with reporting and recordkeeping requirements for small entities impacted by this proposed rule include the ability to read, write, and understand English; the ability to use a personal computer and the Internet; and the authority to take actions on behalf of the designated signatory. Each of the small entities must be capable of complying with the requirements of this proposed rule. Each small entity should have financial resources to obtain additional legal or technical expertise that they might require to advise them concerning the framework agreement or the exemption contract.

IFQ holders that sign a preseason application must also prepare and submit an annual Regional Delivery Exemption Report to the NMFS by June 30. At least 2 weeks prior to submission of the Regional Delivery Exemption Report to NMFS, the IFQ holders must submit a copy of the report to the community representatives and IPQ holders that also signed the preseason application. In response to the Regional Delivery Exemption Report, community representatives may voluntarily submit



a Community Impact Report and IPQ holders may voluntarily submit an IPQ Holder Report.

#### *Collection-of-Information Requirements*

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB Control No. 0648–0514.

Public reporting burden per response is estimated to average 20 hours for the proposed Application for Exemption from CR Crab Regional Delivery Requirements; 5 hours for CDQ Notification of Representative; 20 hours to prepare the Regional Delivery Exemption Report; and 2 hours to complete the Community Impact Report or IPQ Holder Report.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these, or any other aspects of the collection of information, to NMFS (see **ADDRESSES**) and by email to *OIRA\_Submission@omb.eop.gov* or fax to 202–395–7285.

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

#### **List of Subjects in 50 CFR Part 680**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 25, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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

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

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

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

■ 2. In § 680.4, add paragraph (p) to read as follows:

##### **§ 680.4 Permits.**

\* \* \* \* \*

(p) *Exemption from regional delivery requirements for the Bristol Bay red king crab, Bering Sea snow crab, Saint Matthew Island blue king crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, and Pribilof Islands red and blue king crab fisheries—*

(1) *Apply for an exemption.* Eligible applicants may submit an application to exempt North Region IFQ and IPQ or South Region IFQ and IPQ from the prohibitions at §§ 680.7(a)(2) and (a)(4).

(2) *Identification of eligible applicants.* Eligible applicants are:

(i) *IFQ holders.* Any person holding regionally designated IFQ for Bristol Bay red king crab, Bering Sea snow crab, Saint Matthew Island blue king crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, or Pribilof Islands red and blue king crab, or their authorized representative.

(ii) *IPQ holders.* Any person holding regionally designated IPQ for Bristol Bay red king crab, Bering Sea snow crab, Saint Matthew Island blue king crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, or Pribilof Islands red and blue king crab, or their authorized representative.

(iii) *Community representatives.*

(A) For communities that hold or formerly held the ROFR pursuant to § 679.41(l) of this chapter, the community representative that signs the preseason application, the framework agreement, the inseason notice, and the exemption contract is the ECC entity, as defined at § 680.2.

(B) For North Region Saint Matthew blue king crab PQS and North Region Bering Sea snow crab PQS that was issued without a ROFR, the community representative that signs the preseason application, the framework agreement, the inseason notice, and the exemption contract for Saint Paul and Saint George shall be either:

(1) Both Aleutian Pribilof Islands Community Development Association (APICDA) and the Central Bering Sea Fishermen's Association (CBSFA), or

(2) The community representative that APICDA and CBSFA designate in writing to NMFS by [INSERT DATE 180 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

(i) Either APICDA or CBSFA may revoke the designated community representative by providing written notice to the other entity and to NMFS.

(ii) If either APICDA or CBSFA revokes its designation of a community representative after October 15 of a crab fishing year, the revocation will not affect the validity of any action taken by the designated community representative pursuant to this paragraph (p) for that crab fishing year, including signing the preseason application, the framework agreement, the inseason notice, and the exemption contract.

(3) *Required applicants.* Multiple parties may apply for an exemption; however, a complete preseason application and a complete inseason notice must be submitted by a minimum of one Class A IFQ holder, one IPQ holder, and one community representative.

(4) *Application for an exemption from the CR Program regional delivery requirements—*(i) *Application form.* The application form consists of two parts: A preseason application for exemption and an inseason notice of exemption. The application form is available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>) or from NMFS at the address below. NMFS must receive both parts of the application form by one of the following methods:

(A) *Mail:* NMFS Regional Administrator, c/o Restricted Access Management Program, P.O. Box 21668, Juneau, AK 99802–1668; or

(B) *Fax:* 907–586–7354; or

(C) *Hand delivery or carrier:* NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(ii) *Part I: Preseason application—*

(A) A complete preseason application must be signed by the required applicants specified in paragraph (p)(3) of this section, contain the information specified on the form, have all applicable fields accurately completed, and have all required documentation attached.

(B) Each applicant must certify, through an affidavit, that the applicant has entered into a framework agreement that—

(1) Specifies the CR crab fisheries that are the subject of the framework agreement;

(2) Specifies the actions that the parties will take to reduce the need for, and amount of, an exemption;



(3) Specifies the circumstances that could be an obstacle to delivery or processing under which the parties would execute an exemption contract and receive an exemption;

(4) Specifies the actions that the parties would take to mitigate the effects of an exemption;

(5) Specifies the compensation, if any, that any party would provide to any other party; and

(6) Is signed by the holders of the IFQ and IPQ that are the subject of the framework agreement and by the community representative that is authorized to sign the framework agreement.

(C) Each applicant must sign and date the affidavit and affirm that, under penalty of perjury, the information and the claims provided on the application are true, correct, and complete.

(D) NMFS must receive the preseason application on or before October 15 of the crab fishing year for which the applicants are applying for an exemption.

(1) If a preseason application is submitted by mail, the date of receipt of the preseason application by NMFS will be the postmark date of the application;

(2) If an applicant disputes whether NMFS received a preseason application on or before October 15, the applicant must provide written documentation that was contemporaneous with NMFS's receipt of the application by October 15.

(E) If NMFS does not receive a timely and complete preseason application on or before October 15 of a crab fishing year, NMFS will deny the preseason application; those applicants will not be able to receive an exemption for that crab fishing year.

(F) If a preseason application is timely and complete, NMFS will approve the application. If NMFS approves a preseason application for an exemption, the applicants will be able to receive an exemption during the crab fishing year if the applicants comply with the requirements for an inseason notice of exemption specified below at paragraph (p)(4)(iii) of this section.

(G) If NMFS denies a preseason application for any reason, the applicants may appeal the denial pursuant to § 679.43 of this chapter.

(H) NMFS will notify all of the applicants whether NMFS has approved or denied the preseason application.

(iii) *Part II: Inseason notice of exemption—*

(A) A complete inseason notice must:

(1) Identify the IFQ amount and IPQ amount, by CR crab fishery, subject to the exemption;

(2) Contain the information specified on the form, have all applicable fields accurately completed, and have all required documentation attached; and

(3) Be signed by the required applicants specified in paragraph (p)(3) that also signed the preseason application.

(B) Each applicant must certify, through an affidavit, that the applicants have entered into an exemption contract that—

(1) Identifies the IFQ amount and IPQ amount, by CR crab fishery, is subject to the exemption contract;

(2) Describes the circumstances under which the exemption is being exercised;

(3) Specifies the action that the parties must take to mitigate the effects of the exemption;

(4) Specifies the compensation, if any, that any party must make to any other party; and

(5) Is signed by the holders of the IFQ and IPQ that are the subject of the exemption contract and by the community representative that is authorized to sign the exemption contract.

(C) Each applicant must sign and date the affidavit and affirm that, under penalty of perjury, the information and the claims provided on the notice are true, correct, and complete.

(D) NMFS must receive the inseason notice at least one day prior to the day on which the applicants want the exemption to take effect. If an inseason notice is submitted by mail, the date that NMFS receives the inseason notice is not the postmark date of the notice.

(E) The effective date of the exemption is the day after NMFS receives a complete inseason notice. Any delivery of North Region IFQ or South Region IFQ outside the designated region prior to the effective date of the exemption is prohibited under § 680.7(a)(2) and (a)(4). Any processing of North Region IPQ or South Region IPQ outside the designated region prior to the effective date of the exemption is prohibited under § 680.7(a)(2) and (a)(4).

(F) An exemption is effective for the remainder of the crab fishing year.

(5) *Regional delivery exemption report—*(i) Each IFQ holder that signs a preseason application, described in paragraph (p)(4)(ii) of this section, must submit a Regional Delivery Exemption Report to NMFS that includes an explanation of—

(A) The amount of IFQ, if any, set aside to reduce the need for, and the amount of, an exemption;

(B) The mitigation measures employed before submitting an inseason notice;

(C) The number of times an exemption was requested and used;

(D) Whether the exemption was necessary; and

(E) Any impacts resulting from the exemption on the fishery participants and communities that signed the preseason application.

(ii) On or before June 15, IFQ holders must submit a copy of the Regional Delivery Exemption Report to the IPQ holders and community representatives that also signed the preseason application.

(iii) On or before June 30, IFQ holders must submit the Regional Delivery Exemption Report to NMFS at the address in paragraph (p)(4)(i) of this section.

(6) *Public notice of the exemption.* NMFS will post the effective date of an exemption and the Regional Delivery Exemption Reports on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>).

■ 3. In § 680.7, revise paragraphs (a)(2), (a)(4), (a)(7), (a)(8), and (a)(9) to read as follows:

**§ 680.7 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(2) Receive CR crab harvested under an IFQ permit in any region other than the region for which the IFQ permit is designated, unless:

(i) Western Aleutian Islands golden king crab are received following the effective date of a NMFS-approved exemption pursuant to § 680.4(o), or

(ii) The IFQ permit and IFQ amount are subject to an exemption pursuant to § 680.4(p).

\* \* \* \* \*

(4) Use IPQ in any region other than the region for which the IPQ permit is designated, unless:

(i) Western Aleutian Islands golden king crab IPQ is used following the effective date of a NMFS-approved exemption pursuant to § 680.4(o), or

(ii) The IPQ permit and IPQ amount are subject to an exemption pursuant to § 680.4(p).

\* \* \* \* \*

(7) For an IPQ holder to use more IPQ than the maximum amount of IPQ that may be held by that person. Use of IPQ includes all IPQ held by that person, and all IPQ crab that are received by any RCR at any shoreside crab processor or stationary floating crab processor in which that IPQ holder has a 10 percent or greater direct or indirect ownership interest, unless that IPQ crab meets the requirements in § 680.42(b)(7) or § 680.42(b)(8).

(8) For a shoreside crab processor or stationary floating crab processor, that

does not have at least one owner with a 10 percent or greater direct or indirect ownership interest who also holds IPQ in that crab QS fishery, to receive in excess of 30 percent of the IPQ issued for that crab fishery, unless that IPQ meets the requirements described in § 680.42(b)(7) or § 680.42(b)(8).

(9) For any shoreside crab processor or stationary floating crab processor east of 174 degrees west longitude to use more than 60 percent of the IPQ issued in the EAG or WAI crab QS fisheries, unless that IPQ meets the requirements described in § 680.42(b)(8).

\* \* \* \* \*

- 4. In § 680.42,
- a. Revise paragraph (b)(1)(ii); and,
- b. Add paragraph (b)(8) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) Use IPQ in excess of the amount of IPQ that results from the PQS caps in paragraph (b)(1)(i) of this section, unless that IPQ is:

(A) Derived from PQS that was received by that person in the initial

allocation of PQS for that crab QS fishery, or

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

\* \* \* \* \*

(8) Any IPQ crab that is received by an RCR will not be considered use of IPQ by an IPQ holder for the purposes of paragraphs (b)(1) and (b)(2) of this section, if the IPQ is subject to an exemption pursuant to § 680.4(p).

\* \* \* \* \*

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